

## **Media Policies in Italy & United Kingdom**

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### **ABSTRACT:**

*The objectives of this project is to develop a policy paper on the role of the private mass media (mainly television) in securing (or undermining) the newly gained freedom of expression in the Central and East Europe. The goal of the policy paper will be to identify institutional arrangements that protect freedom of expression in private mass media. The final comparative policy paper on private media and freedom of expression in Poland and Slovakia is preceded by the present introductory comparative analysis of two Western media models. Italy and United Kingdom present different poles of treatment of the private media. While the UK managed to keep a high level of independence of private media from political actors, Italian media tycoon Silvio Berlusconi used his television stations as a vehicle into politics. This paper discusses the reasons for different development in Italy and UK and draws lessons to be learn from them for media policy makers in Central and Eastern Europe. Institutional mechanisms and political culture in most of the Western democracies protect freedom of expression in private mass media. Yet, most of the Central and Eastern European countries face the rise of private media tycoons without appropriate institutional arrangements and developed political culture that would guarantee and protect freedom of expression and non-partisan attitudes not only in public media, but also in private media. A comparison of private media in Italy and United Kingdom also serves as a proof that there is no such thing as “Western media model or standards”, but there are substantially different media systems in individual EU members states..*

### **INTRODUCTION:**

The purpose of this comparative policy paper examining private media and freedom of expression in Italy and the UK is to bring up relevant issues for the next stage of the project, which will look at media systems in two Central European countries. The comparison is divided into two sections – one on media policies in Italy and one on the UK. The structure of the paper is organised as an analysis of two cases followed by a comparative conclusion drawing lessons for transition countries and tentative policy recommendations. The study of both cases follows the same structure:

- Brief Overview
- Independence of Private Mass Media & Freedom of Expression
- Legislative Framework & Regulatory Institutional Arrangements
- Political Culture

## PRIVATE MASS MEDIA AND FREEDOM OF EXPRESSION IN ITALY

- **Brief Overview**

Manipulation of freedom of expression in private mass media motivated by economic interests or political aspirations of the media owners has become a major issue. Most of the media analysts and political scientists agree that private television in Italy is a profound deviation from all other models of private media (and media in general) in Western Europe. There are several reasons for the exceptionality of the Italian case:

- the weak antitrust legislation allowed for a creation of almost total monopoly in the field of national private television channels
- there is a very weak (if any) tradition of impartiality of both public and private television broadcasters
- the duopoly of two dominant broadcasters: public RAI and private Mediaset controls 80 to 90 percent of both audience shares and advertising revenues
- both RAI and Mediaset are currently under control of Italy's Prime Minister and Mediaset's majority owner Silvio Berlusconi.

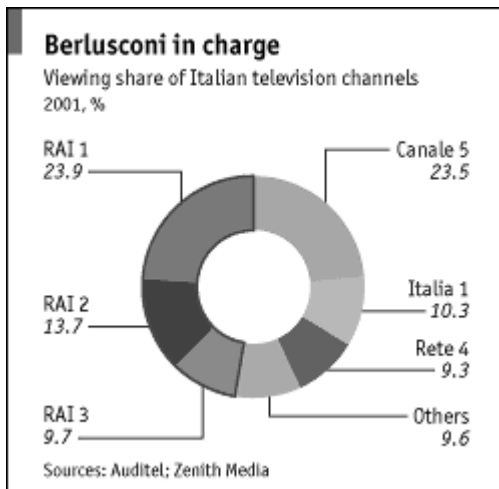
Italy gradually became an outcast among Europe's democracies when it comes to the media freedoms and respect of fundamental rules of democracy and equal access to media.

The duopoly of RAI and Mediaset has developed in the 1990s. RAI was established as a state broadcaster in 1954. Mediaset history started with a Milan-based local network called Telemilano in 1978 – at a time when the TV market was still dominated by state-owned RAI. Two years later the station became Canale 5, currently the flagship of the Berlusconi media empire. In 1982, Berlusconi bought from the publishing company Rusconi his second channel – Italia 1. The third channel Rete 4 was acquired in 1980 from Mondadori, another publishing firm, which he later on also took over. There is a head-on-head competition between three RAI channels (RaiUno, RaiDue, RaiTre) and three Mediaset channels (Canale 5, Italia 1, Rete 4). The audience shares of the two broadcasters are almost equal, typically at around 40-50 percent each.<sup>1</sup> In 2001, the average

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<sup>1</sup> For example in the week of 10 to 16 July 2002, the audience auditor Auditel registered following prime time audience rates of RAI (46,98%; 50,33%; 45,89%; 46,39%; 47,16%; 49,40%; 43,3%) and of Mediaset channels (42,74%, 38,84%; 43,40%, 42,27%, 40,95%; 40,23%; 46,92%). La7, the 'strongest' alternative broadcaster to the RAI and

audience share of RAI was 47,3 percent, while that viewer's rate of Mediaset was at 43,1 – leaving only 9,6 percent for other broadcasters. The chart<sup>2</sup> shows the split among individual channels.



The criticism has been directed from a number of sides – both international and domestic, governmental, inter-governmental or non-governmental institutions. In an interview on the development of freedom of expression in the former communist countries, the Czech President Václav Havel, a charismatic moral authority on freedom of expression, expressed his concerns for the media freedoms in Italy. Havel referred to the circumstances of a market-based democracy, “where there will be no direct political oppression and censorship, there might be much more complex issues, especially at the economic level, that may affect freedom of speech. Italy might represent an early form of this problem.”<sup>3</sup>

Freimut Duve, OSCE Representative on Media Freedom pointed out at that “in Italy, a founding member of the EU, the present political leadership is not following the constitutional tradition of Europe. Especially the pluralism of the broadcasting media was in jeopardy because of an ownership situation that allowed the executive to control both public and private broadcasting media.”<sup>4</sup> Duve even warned that Italy might regretfully become the first case to go through the

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Mediaset registered audience share from 1,61% to 3,47%. Source: Auditel, <http://www.auditel.it>.

<sup>2</sup> *The Prime Minister Objects*, The Economist, 25 April 2002.

<sup>3</sup> *Imperative to Democracy*, An interview with Václav Havel by World Association of Newspapers, Transitions Online, May 2002.  
<http://www.tol.cz/look/TOLnew/article.tpl?IdLanguage=1&IdPublication=4&NrIssue=34&NrSection=4&NrArticle=4299>

<sup>4</sup> *Italy's Media Ownership – A Challenge to the European Constitutional Architecture*, Press Release by OSCE Representative on Freedom of the Media, 12 March 2002.

procedures of the new Article 7 of the Nice Treaty which can go as far as to allow for the suspension of voting rights of a Member State once the treaty goes into effect.<sup>5</sup>

Another inter-governmental body that raised its concerns was the Parliamentary Assembly of the Council of Europe, whose Culture Committee said it was “deeply concerned by the fact that the government is practically in control of all national TV channels. In spite of promises made when he was elected last May, the Italian Prime Minister is still the owner of three national private TV channels and of an important publishing group, and has not yet isolated himself from running his media interests.”<sup>6</sup>

The International Press Institute (IPI), the global network of editors, media executives and leading journalists, is deeply critical of the Italian media situation. IPI Director Johann P. Fritz said that “the holdings of Mr. Berlusconi must either be sold or held at arms-length and he should refrain from speaking out against the media. The need to ring-fence the media from political pressure is of immediate concern.”<sup>7</sup>

In Italy concerns have been raised by politicians, media professionals and political scientists. Italian President Carlo Azeglio Ciampi wrote an appeal to the parliament that “pluralism and impartiality of information are essential tools to build a full democracy.”<sup>8</sup> News editor of a Milan-based independent broadcaster Radio Popolare (characteristically described by BBC Online as ‘a rare example of a broadcaster not controlled directly or indirectly by the media magnate Prime Minister’) said Italy was in a condition near monopoly. “Right now, we are victims in Italy of the strongest and most obvious mechanism of concentration of property and media control in the entire world,”<sup>9</sup> said Radio Popolare’s Piero Scaramucci. President of the National Association of the Communications Sciences and Director of the Communications Department at the La Sapienza University in Rome, Mario Morcellini described the Italian media system as a ‘system of non-system’ – Italian situation being the most bizarre comparing to other countries, because there is a

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<sup>5</sup> Article 7 of the Nice Treaty deals with clear risks of a serious breach by a EU Member State of principles mentioned in Article 6 (1) which states that “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”

<sup>6</sup> Statement on the media situation in Italy by the Parliamentary Assembly’s Committee on Culture, Science and Education, Council of Europe, 13 March 2002

<sup>7</sup> *IPI criticises pressure on the Italian media and notes an existing failure to keep politics at arms-length*, International Press Institute (IPI) Press Release, 29 June 2002. <http://www.freemedia.at/Protests%202002/Italy29.06.02.htm>

<sup>8</sup> *RAI and Other Wrongs*, The Economist, 25 July 2002.

<sup>9</sup> Benedetto Cataldi, *Italy’s Alternative Voice*, BBC News Online, 3 August 2002.

big public broadcaster, which controls around half of the audience and advertising revenues and a big commercial broadcaster, which masters the other half.<sup>10</sup>

- **Independence of Private Mass Media & Freedom of Expression**

There has been a long-lasting and deeply rooted tradition of servitude and dependence of the Italian TV towards its political masters since its very inception. The Italian state television RAI was established in 1954 and for the 20 years to follow served the ruling dominant political force – the Christian Democrats. The servitude of the state TV towards the political interests of the Christian Democrats continued despite a recommendation of the Constitutional Court in 1960 to introduce more pluralism in RAI. The monopoly of Christian Democrats over state TV ended only in the middle of the 1970s. In 1975, the control over RAI passed from the government to the parliament. However, RAI was not transformed into an independent broadcaster. Newly introduced ‘plurality’ meant that the RAI was virtually split among three major political forces: Christian Democrats continued to control RaiUno, their new coalition partner Socialists ‘received’ RaiDue and RaiTre fell under influence of the opposition Communists. It appears that this pattern of interaction between broadcasters and political forces has become strongly rooted in the Italian political system.

A qualitatively new situation started to develop when the audience hegemony of RAI started to erode because of its rising competitor – Berlusconi’s three commercial channels. The management of RAI had to make a strategic decision on its approach to competition with commercial channels. Instead of focusing on ‘public benefit’ function (information, culture, education) of RAI, the decision was made for a head-on-head competition with Mediaset channels. As a result both RAI and Mediaset channels started to look alike – broadcasting more and more entertainment programmes, talk shows and serials. The showcase of both media groups are *contenitori* – several hours long Sunday light entertainment programmes featuring dance, songs, talk show and low-quality humour. Also the Italian Communications Authority acknowledged that the public and private channels are becoming undistinguishable stating that “RAI and Mediaset, the two major operators on the Italian television market have followed similar operational lines in various ways and areas.”<sup>11</sup>

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<sup>10</sup> Mario Morcellini, *L'irrazionalità della TV italiana* (Irrationality of Italian TV) An Interview by Dario Volpe, Italian Communications Sciences Portal: [http://www.scienzedellacomunicazione.com/tv\\_articolo\\_morcellini.asp](http://www.scienzedellacomunicazione.com/tv_articolo_morcellini.asp)

<sup>11</sup> Communications Regulatory Authority, Annual Report on Activities and Work Programmes, III/4.3 The national market: TV and audiovisuals. Some elements characteristic of company activities; 30 June 1999: [http://www.agcom.it/eng/rel\\_99/rel\\_99\\_3143.htm](http://www.agcom.it/eng/rel_99/rel_99_3143.htm).

Competition between RAI and Mediaset channels got a new dimension in 2001, when Silvio Berlusconi became Italy's Prime Minister – position that guarantees an immense influence over RAI. The new board of RAI now includes three members from ruling coalition parties and two from opposition. In April 2002 the new board named the bosses of the three RAI networks and the editors of their news services. According to the old tradition of the spoils system, the appointments were divided along political lines. RaiUno went to Berlusconi's Forza Italia, RaiDue was split between its coalition partners – the National Alliance and the Northern League, and RaiTre was traditionally left over to the opposition.<sup>12</sup> This division copies the *partitocrazia* arrangements and thinking characteristic for the Italy of the 1970s and 1980s and is contrary to the principles of editorial and managerial independence of the public broadcasters.

The impact of the new political appointments became evident soon. Enzo Biagi and Michele Santoro, two journalists known for their criticism of Prime Minister Silvio Berlusconi, were sacked and their programmes cancelled after being accused by Berlusconi of making 'criminal use of public television,' Berlusconi also went on suggesting that RAI should 'not allow this to happen.' Sacking of Biagi and Santoro was criticised by a number of international bodies. Johann P. Fritz, Director of the International Press Institute (IPI) said that "an independent media ensures political accountability. By applying pressure on the media, the Italian government is denying the public the right to receive a plurality of views. The government and Mr. Berlusconi must learn to accept that criticism is essential to a democracy and society is undermined without criticism of political institutions. Rather than threatening the media, the government should accept the challenge of rejecting the accusations by entering into a dialogue which seeks to put forward the government's views."<sup>13</sup>

The OSCE Representative on Freedom of the Media, Freimut Duve asked for clarification on removal of the two political programmes saying: "some voices in Italy, including that of the Italian journalists' union, have called this removal a 'political move', given the fact that you reproached the two journalists running these programmes for having used public television 'in a criminal way.'"<sup>14</sup>

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<sup>12</sup> The Prime Minister Objects, *The Economist*, 25 April 2002.

<sup>13</sup> *IPI criticises pressure on the Italian media and notes an existing failure to keep politics at arms-length*, International Press Institute (IPI) Press Release, 29 June 2002. <http://www.freemedia.at/Protests%202002/Italy29.06.02.htm>

<sup>14</sup> OSCE Media Representative asks Berlusconi for clarification on removal of TV programmes, Press Release, 27 June 2002.

- **Legislative Framework & Regulatory Institutional Arrangements**

All EU member states have a rather detailed normative framework for the activities of public and private broadcasters and different sets of regulatory and oversight bodies. The configuration of broadcasting regulators and level of their independence from the executive and legislative power differs across EU. Italy was among Europe's first countries to introduce the 'single' or 'convergence' regulator in 1997. Compared with regulation authorities in other EU countries, the Communications Regulatory Authority (*Autorità per le Garanzie nelle Comunicazioni*) reveals some distinctive features: broad extent of its remit, which covers audiovisuals, telecommunications and the printed press. Only Finland and Switzerland have similar convergence authority system, while the United Kingdom is in the process of switching from specialised oversight bodies to a convergence authority, the Office for Communications (OFCOM).<sup>15</sup> In most European countries (also in Poland and Slovakia) the authorities are strictly separate for the two main sectors of communication.

The law defines the Communications Regulatory Authority as 'fully autonomous and independent'. Its organs comprising the President, the Commission for infrastructure and networks, the Commission for services and products and the Council. The Council comprises the President and all the Commissioners. There are eight Commissioners - four elected by the Senate and four by the Chamber of Deputies. The President of the Communications Regulatory Authority is appointed by the Italian President on the proposal of the Prime Minister.<sup>16</sup> Thus, the parliamentary majority is effectively under total control of the Communications Regulatory Authority.

The Communications Regulatory Authority carries out tasks both in the field of the telecommunications market and of audiovisual de-regulation. The Authority started its operational activities at the end of July 1998 absorbing the functions of the former Authority on Publishing and Press. From the human rights perspective, a problem with convergence regulator in any country is that it does not focus on broadcasting related issues, like protection of freedom of expression, access to the media, prevention of monopolies and concentration, and preservation of plurality and

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<sup>15</sup> Newly created Office for Communications (Ofcom) shall be operational by the end of 2003 and will merge the functions and responsibilities of five currently independent regulatory and oversight bodies: Broadcasting Standards Commission (BSC), Independent Television Commission (ITC), Office for Telecommunications (OfTel), Radio Authority (RA), and Radiocommunications Authority (RCA).

<sup>16</sup> The Act on the Institution of the *Autorità per le Garanzie nelle Comunicazioni* and the regulations for telecommunications and radio and television broadcasting systems, Art. 1. Authority for Equal Protection of Communications, [http://www.agcom.it/eng/e\\_1\\_naz/1\\_249\\_97.htm](http://www.agcom.it/eng/e_1_naz/1_249_97.htm).

diversity of opinion and programmes, but rather tends to adopt a business view of technological innovation, market indicators, growth. This problem appears even more acute in Italy, where a number of international and domestic, human rights related complaints and criticism have appeared regarding mass media.

The most important task of the Communications Regulatory Authority after its inception was to prepare Italy's first national television frequency plan. National frequency plan was a necessity as Italy has not developed cable and satellite television and thus totally relies on terrestrial broadcasting. Moreover, the broadcasting sector was fully liberalised in 1976, which led to a very high level of fragmentation into a large number of small and medium sized operators. Total liberalisation also allowed for one private company (Mediaset) owning three out of four national private TV channels. The Communications Regulatory Authority identified 17 television networks with countrywide coverage – 6 of them were earmarked for local stations and 11 for national broadcasters.

The Communications Regulatory Authority claims that the one of the most important features of the national plan is the “provision of a maximum of 11 national broadcasters and strict antitrust rules.” In 1999, the Authority indeed opened a preliminary investigation aiming at ascertaining the existence of a dominant position in the broadcasting sector. However, the activities of the Authority only confirmed the status quo.

The Act on Communications Regulatory Authority sets the rules for prohibition of dominant position in broadcasting. The law says that ‘any act or behaviour having as its objective or as its effect the creation or the maintenance of a dominant position by a single subject including controlled or affiliated subjects is forbidden.’ The dominant position is defined as ‘a single subject or subjects controlled by or affiliated to subjects who in their turn control other holders of concessions on the basis of criteria identified by the present law, can neither be issues concessions or authorisations which allow them to cover more than 20 percent of respectively analogue television or radio networks and digital television or radio programmes, in the ambit of the national territory, transmitted over terrestrial broadcasting frequencies.’ In respect to the revenues, the subjects to whom the television concessions are issued in a national context (including the public service) may rise revenue for a share not superior to 30 percent of the resources of the television



sector. The law also says that the Communications Regulatory Authority has the right to adopt measures necessary for the elimination or prevention of the creation of dominant positions.<sup>17</sup>

Thus, despite their existence, the antitrust rules have not been enforced in Italy so far. There is no doubt that both public RAI and private Mediaset exceed both the allowed audience and revenues shares. Despite its legal obligations, the Authority merely concluded that although “both RAI and Mediaset exceeded the threshold of 30 percent of the television market resources, ... such expansion was the result of a natural development of the companies concerned.”<sup>18</sup>

Thus, the Communications Regulatory Authority is able to correctly identify and describe serious problems of broadcasting system in Italy, such as:

- the breakdown of the shares of market among the various companies is very unbalanced. More than four fifths of the money paid to companies went to the two main players. RAI got 49.3% of resources, while Mediaset pocketed 36.7%<sup>19</sup>
- compared with other European countries there is a surplus in what is available on uncoded television<sup>20</sup>
- the two main operators control the most part of both supply and economic resources, while other uncoded television operators occupy marginal positions<sup>21</sup>
- transmission facilities alternative to terrestrial networks either do not exist (i.e. cable) or bear limited weight in what television offers (i.e. via satellite): lacking therefore is an adequate diffusion of those infrastructures necessary to provide the diversified, specialised and personalised television services<sup>22</sup>
- RAI and Mediaset, the two major operators on the Italian television market have followed similar operational lines in various ways and areas<sup>23</sup>

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<sup>17</sup> The Act on the Institution of the *Autorità per le Garanzie nelle Comunicazioni* and the regulations for telecommunications and radio and television broadcasting systems, Art. 2. Prohibition of Dominant Position, [http://www.agcom.it/eng/e\\_1\\_naz/l\\_249\\_97.htm](http://www.agcom.it/eng/e_1_naz/l_249_97.htm).

<sup>18</sup> Communications Regulatory Authority, ‘Regulation of the Media’ Report, <http://www.agcom.it>

<sup>19</sup> Communications Regulatory Authority, Annual Report on Activities and Work Programmes, III/4.2 The national market: TV and audiovisuals. The market dimensions and main components.

<sup>20</sup> Communications Regulatory Authority, Annual Report on Activities and Work Programmes, III/4.1 The national market: TV and audiovisuals. Some distinctive features.

<sup>21</sup> Communications Regulatory Authority, Annual Report on Activities and Work Programmes, III/4.1 The national market: TV and audiovisuals. Some distinctive features.

<sup>22</sup> Communications Regulatory Authority, Annual Report on Activities and Work Programmes, III/4.1 The national market: TV and audiovisuals. Some distinctive features.

<sup>23</sup> Communications Regulatory Authority, Annual Report on Activities and Work Programmes, III/4.3 The national market: TV and audiovisuals. Some elements characteristic of company activities.

However, the Authority completely fails to tackle the problems it identifies. The law was not enforced by the Authority. Neither RAI nor Mediaset were made to divest one or more of their channels to fulfil the legal requirements prohibiting the dominant position both from the perspective of audience and market revenues.

- **Political Culture**

The existing institutional regulatory arrangements do not fully explain why the Italian broadcasting system stands out as a worrying exception among other EU countries. Subordination of the Communications Regulatory Authority to the parliamentary majority is a fact, however, in most of the regulatory broadcasting systems, the government or the parliamentary majority has ultimately the last say in either composition or financing of the oversight body. However, in each country there is a set of unwritten rules of conduct in politics – political culture.<sup>24</sup>

Lack of developed political culture and weak respect for the law are two important factors allowing for the state of the Italian broadcasting system. Silvio Berlusconi and his coalition partners did not invent the current system. They just continued the tradition of manipulation and use of electronic media by the governing elites, which became more visible due to Berlusconi's dual position. A tradition of broadcasters' independence did not have a chance to develop in Italy. State broadcaster RAI first served the Christian Democrats, and later on its three channels were split among the three major political forces – governing Christian Democrats and Socialists and opposition Communists. RAI, ever since its post-war rebirth, has been part of Italy's unofficial spoils system. Whoever was running the country, ran also RAI. There was no space left for impartial, independent and non-partisan positions. Similarly, also now the public broadcaster's channels appear to have been split along party lines.

Similarly, perceived objectivity and allegiances of Mediaset channels vary. In Berlusconi's own words "the coverage of his main news bulletin, on Canale 5, has been fairly objective (as it has, though the station can hardly be expected to investigate the prime minister's own financial dealings, for example). He also admits that other of his own news bulletins (Rete 4) are more like fan clubs,

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<sup>24</sup> The British system has been praised for the broadcasters' impartiality, although the members of the Independent Television Commission (ITC) that regulates the commercial broadcasters are appointed by a government executive - the Secretary of State in the Department of Culture, Media and Sport.

and proud to be so.”<sup>25</sup> The situation is much more serious now than ever before only because it appears that Silvio Berlusconi conveniently chooses to forget that he is not just any prime minister - none of his predecessors also ran the other half of national television, the private one. Problem is the political culture that allows for a media tycoon to become a prime minister – moreover, without giving up his media interests. Nanni Moretti, a known leftist movie director plainly commented the situation: “it’s not normal that a certain gentleman owns three television stations, and the same gentleman is also the prime minister, and he also wants to control RAI.”<sup>26</sup>

The Italian left was in power from 1996 until 2000, but did nothing to change the broadcasting system. The new Act on Communications Regulatory Authority was drafted by the left, but the outcome is an institution merely observing the situation and unwilling and/or unable to really change the rules of the game and enforce the law. The left could have privatised parts of RAI, as the voters asked in a referendum and forced the Mediaset to divest its parts. This would lead to a disruption of the RAI-Mediaset duopoly and possible creation of a third group (currently represented only by one station - La7, which is very small comparing to RAI or Mediaset channels<sup>27</sup>). However, this alone would not suffice – as true independent environment for media needs to be created. The previous government did not want to risk and give the top regulatory jobs to people so independent as to create a hard-to-ignore precedent. And it is exactly precedents of this kind, which help to form political culture. One can only agree with the Economist statement that “some of the left's appointees were good, others less so. But all were political appointments.”<sup>28</sup>

Professor Mario Morcellini argues that the Italian governing elites made innumerable mistakes in the past in the mass media arena. ‘Italian political elites have shown especially in the communications area the most of its short-sightedness and incapacity to forecast future ... they managed to maintain the exceedingly interventionist vision for too long, controlling the media “almost live” instead of relying on political measures, which would be of a more advanced level (of other [EU] countries).’ Morcellini also supports the importance of the political culture argument saying that ‘in Italy the problem is that to make a bad impression does not mean that you are risking the electoral results. This means that we are in a country where the basic culture is still

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<sup>25</sup> The Prime Minister Objects, *The Economist*, 25 April 2002.

<sup>26</sup> Quoted in Marek Lehnert, *Władca pilotów* (Remote Control Ruler), *Newsweek Polska*, 13/2002, 31 March 2002.

<sup>27</sup> The audience share of La7 oscillates from around 1,5 to around 3,5 percent of the total.

<sup>28</sup> The Prime Minister Objects, *The Economist*, 25 April 2002.

problematic, and where one has to work on communications rights and on representation that the communications have to guarantee.’<sup>29</sup>

In a country with lacking political culture, powerful and credible monitoring mechanisms have proved to be very helpful. Unfortunately, there is a lack of suitable monitoring instruments in Italy. A distressing factor is that the lack of suitable monitoring instruments has been acknowledged by the Communications Regulatory Authority, which is legally obliged to carry out the monitoring and ensure principles of equal treatment and equal access of all parties to the media. Monitoring by the Communications Regulatory Authority should focus on three areas, one of them - political, cultural and social pluralism - having a human rights dimension.<sup>30</sup>

The Communications Regulatory Authority justified its failure to create a credible monitoring by claiming that ‘the main problem with monitoring remains that of professional and financial resources’ and ‘situation is certainly more complex than in other European countries due to the presence of twelve national networks and approximately six hundred local stations.’<sup>31</sup> However, in practice the major problem is not monitoring hundreds of local stations, but effectively monitoring the politically relevant broadcasting of six channels operated by the RAI-Mediaset duopoly, which monopolised the audience shares. MEMO’98, a media monitoring NGO in Slovakia, is an example of successful and credible monitoring of the political content of both public and private broadcasters according to a well-defined and rigorous methodology.<sup>32</sup> Italian Auditel is a reliable and credible monitoring company, however the focus of their activities is different. Auditel has a sole purpose of conducting an independent audit of the audience data of Italy’s 7 national channels, not verifying the objectivity and biases of the broadcasters.

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<sup>29</sup> Mario Morcellini, *L'irrazionalità della TV italiana* (Irrationality of Italian TV) An Interview by Dario Volpe, Italian Communications Sciences Portal: [http://www.scienzedellacomunicazione.com/tv\\_articolo\\_morcellini.asp](http://www.scienzedellacomunicazione.com/tv_articolo_morcellini.asp)

<sup>30</sup> Other three being: users protection, programming obligations of licensees, and advertising.

<sup>31</sup> Communications Regulatory Authority, Annual Report on Activities and Work Programmes, The Authority’s Activities of Television Broadcasting, III/4 The Monitoring of TV programs.

<sup>32</sup> MEMO’98 conducts qualitative and quantitative analysis of media coverage to see whether it correlates with the basic rules of balanced, un-biased and fair journalism. The monitoring measures time devoted to individual political parties and whether they were presented in positive, neutral or negative light. <http://www.memo98.sk>

## **PRIVATE MASS MEDIA AND FREEDOM OF EXPRESSION IN THE UNITED KINGDOM**

- **Brief Overview**

British broadcasting media have a completely different international standing comparing to the widely criticised Italian broadcasters. On the contrary, an international cult of British broadcasters, has been created by media academics and analysts praising their independence and impartiality. Two main problems of the Italian media system – lack of broadcasters' independence and high level of concentration – appear only rarely on the agenda in the UK.

There are five national terrestrial channels (with regional subdivisions): public BBC1 and BBC2 and privately operated ITV, Channel 4 and Channel 5. BBC started to broadcast in 1936 and has been financed exclusively from a licence fee (there's no advertising on BBC1 and BBC2), while three national commercial channels are funded through advertising. The BBC (British Broadcasting Corporation) is the UK's main public service broadcaster, run by a board of governors and funded by the licence fee. In addition to its two terrestrial channels, the corporation runs several digital services and a news channel, BBC News 24.

Channel 3, called also ITV (Independent Television) started to broadcast in 1955 and is a 'federation' of 15 regionally based television franchises. There are 14 geographic regions (there are two licences for London – one for weekday broadcasting and one for weekends). ITV launched its second channel in 1998. ITV2 is an entertainment channel aimed at a younger audience. ITV is dominated by two companies: Granada holding 7 regional franchises and Carlton holding 5 franchises, the Scottish Media Group (SMG) controls two Scottish ITV companies. Strict cross-ownership rules have so far prevented the creation of a single ITV company.

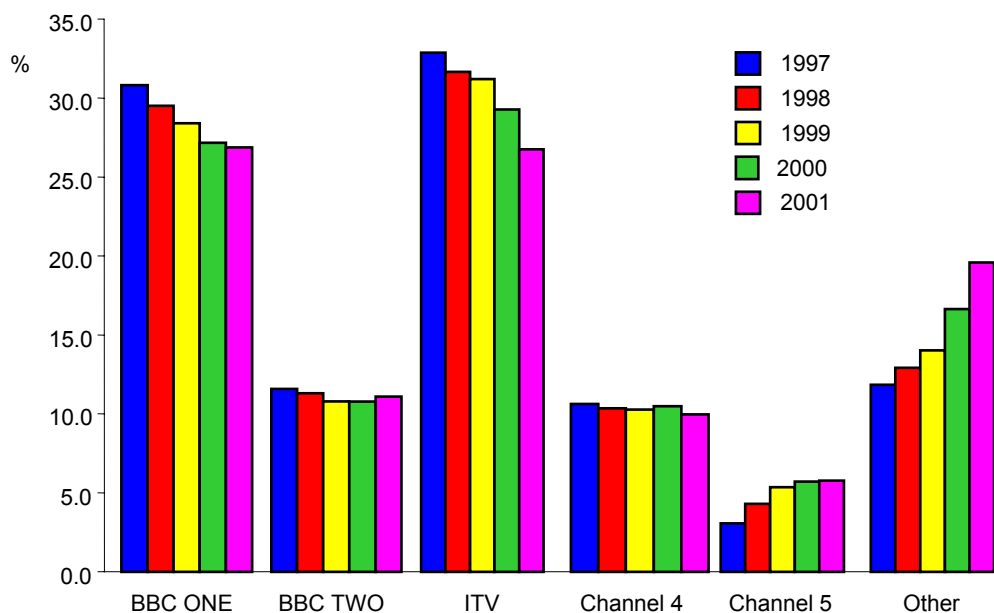
Channel 4, a minority interest service, was set up in 1982 to provide programmes with a distinctive character and which appeal to interests not catered for by ITV. Channel 5 began broadcasting in 1997 and now reaches about 80% of the population. Several hundred more channels are available on satellite, cable and digital. Satellite and cable services are funded mainly through subscriptions. The UK's largest supplier is BSkyB (British Sky Broadcasting owned by media tycoon Rupert Murdoch's News International), with over 5m subscribers. Digital television is expanding rapidly. It has been taken up by about a third of the population. Despite its rapid growth, one of two digital platforms - the loss-making terrestrial ITV Digital, a collaboration of Carlton and Granada -

suffered a spectacular failure, when it collapsed in May 2001 and went into liquidation. A new terrestrial digital platform Freeview formed by a consortium of BBC, BSkyB and transmitter Crown Castle won a public tender to provide the serviced after the demise of ITV Digital. Freeviews shall start operate in autumn 2002.

There is also a thriving independent production sector due to the requirements on independent production quotas set both for the public and private broadcasters. Since the 1990, both BBC and ITV, must commission a minimum of 25 % of programmes from independent producers. Channel 4, being rather a broadcaster than a programme maker, also helped to foster UK's large independent production industry.

In 2000-2001, combined average audience shares of BBC1 and BBC2 were nearly 40 per cent of the total TV audience. ITV's share of the television audience was a little under 29 per cent. Channel 4 had just over 10 per cent audience share and Channel 5 registered 5,7 per cent of the audience. BSkyB's flagship Sky TV had about 5 per cent of the audience.<sup>33</sup> In 2001, for the first time since the launch of the commercial television in the UK in 1955, BBC1's ratings overtook those of ITV1, the main commercial network broadcaster.<sup>34</sup>

*Audience share in all homes by channel, 1997-2001*



Source: Broadcasters' Audience Research Board (BARB)

<sup>33</sup> Michael Bromley, *The British Media Lanscape*, European Journalism Centre website <http://www.ejc.nl/jr/emland/uk.html>.

<sup>34</sup> *The Perils of Popularity*, The Economist, 10 January 2002.

The UK's commercial channels are licensed and regulated by the Independent Television Commission (ITC), while the Broadcasting Standards Commission (BSC) has responsibility for regulating the portrayal of violence and sexual conduct, and issues of taste and decency, as well as handling complaints of invasion of privacy and unfair treatment. A new single convergence regulator, the Office for Communications (OFCOM), shall become operational in 2003. The OFCOM will merge the functions and responsibilities of five currently independent regulatory and oversight bodies: the above mentioned BSC and ITC, as well as the Office for Telecommunications (Ofcom), the Radio Authority (RA), and the Radiocommunications Authority (RCA). It is still unclear to what extent will OFCOM's remit extend to BBC. BBC is ultimately responsible to the Parliament through its 12 publicly appointed governors.

- **Independence of Private Mass Media & Freedom of Expression**

British broadcasters are valued for their neutrality and impartiality, which stand in deep contrast to the tradition of a very partisan press. Main issues in the area of private mass media independence are the perceived unfair competition from the publicly funded BBC channels and accusations of intertwining of the BBC and the Labour Government.

BBC's licence fee, a tax set on every television set in the UK, yields around 2,5 billion GBP per year. While the advertising downturn batters commercial televisions, the BBC's financing is secure. As the BBC struggles to win viewers, its offerings are becoming less distinguishable from its commercial competitors.<sup>35</sup> Consequently, there appears to be an unresolved contradiction: if the BBC is producing popular programmes that can stand up to the commercial ITV, why does it need public money to make them? Serious, thoughtful programmes produced by BBC's public-service ethos still persist. Nonetheless, David Liddiment, ITV's Director of channels called in a controversial speech BBC's well-crafted and serious programmes to be "fig leaves preserving the decency of a nakedly commercial broadcaster."<sup>36</sup>

Complaints come also from other competitors. Commercial channel Sky News operates under what it sees as an unfair competition from BBC News 24.<sup>37</sup> Sky News became the UK's first rolling

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<sup>35</sup> Similarly to RAI, but to a much lesser extent. BBC managed to maintain its public benefit function and ethos much better than RAI, although number of entertainment programmes, talks shows and serials on BBC is rising.

<sup>36</sup> David Liddiment quoted in *The Perils of Popularity*, The Economist, 10 January 2002.

<sup>37</sup> A similar development occurred in Poland, where the Central Europe's first news channel, subscription-based tvn24 started to operate in 2001. The private channel accused the public TVP of unfair competition after it tried to re-launch

news channel in 1989. BBC started to offer in 1997 its publicly funded News 24 to the cable operators for free. Sky News operating on the subscription basis was forced to drop the prices by about 80 percent over the four years. ITN Newschannel was hit too and has struggled to survive on tiny cable revenues and thin advertising. Nick Pollard, head of the Sky News, argues that BBC has not fulfilled its initial promises of extending the audience rates for rolling news and operating its news channel at marginal costs. According to Pollard, the share of audience for rolling television news has not been extended, just carved into smaller pieces. Operation of News 24 has cost more than 240 million GBP so far. Moreover, Pollard claims that ‘News 24 has still not matched the popularity or quality of the Sky News ... and the ITC survey of viewers’ opinions rates it as more trustworthy and credible than any of its competitors.’<sup>38</sup>

The media in the UK have been traditionally regulated by who are called ‘the good and the great’ – truly independent and impartial personalities. However, the Labour Government is being accused of installing its cronies to the top regulatory and executive media positions. Gavyn Davies, new Chairman of the BBC, worked in the 1970s for two Labour prime ministers. His wife Sue Nye has run for years the private office of the Labour chancellor, Gordon Brown. Greg Dyke, the BBC’s director general is personally close to Tony Blair and used to give money to support his private office when in opposition. Commercial broadcasters argue that “the intertwining of the BBC and Labour is evidence of some sort of conspiracy.”<sup>39</sup> The head of the of the Independent Television Commission (ITC), which regulates them is Patricia Hodgson, former head of the BBC’s Policy and Planning unit.

- **Legislative Framework & Regulatory Institutional Arrangements**

The British media have been tied down by a mass of regulations on who can own whom and broadcast what. The commercial television is licensed and regulated by the Independent Television Commission (ITC). The ITC consists of a Chairman, Deputy Chairman and up to 10 Members including National Members for Scotland, Wales and Northern Ireland, all appointed by the Secretary of State for Culture, Media and Sport. The ITC is supported by a full-time staff with specialist regulatory and licensing expertise, and by a range of advisory committees. The ITC employs around 200 permanent staff organised into Groups to carry out its licensing and regulatory

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its regional-service channel TVP3 as a news channel offered for free to cable operators.

<sup>38</sup> Nick Pollard, *Beeb Makes Sky Blue*, The Observer, 19 May 2002.

<sup>39</sup> *The BBC’s Coup*, The Economist, 15 June 2002.



work. Programmes, Advertising & Sponsorship Group is responsible for monitoring the content of all ITC terrestrial, cable and satellite licensees' services. In addition, ITV, Channel 4, and Channel 5 are also monitored for adherence to the special provisions of their licences, particularly with regard to their quality and diversity.<sup>40</sup>

The ITC has a duty to ensure fair and effective competition in the provision of licensed TV programme services. Ownership limitations are based, on the whole, on audience share rather than on the number of licences held. The ITC is responsible for ensuring holdings are restricted to 15 per cent of audience share and for preventing joint ownership of two ITV licences in London.<sup>41</sup> Current legislation also prevents large newspaper groups controlling more than 20 percent of the newspaper market from buying into the British terrestrial television. This rule was designed to curb the ambitions of Rupert Murdoch's News International, which owns 32 per cent of the British newspaper market from buying into the UK's terrestrial television. The tasks of the ITC include: issuing licences to commercial television companies; setting standards for programme content, advertising, sponsorship and technical quality; monitoring broadcasters' output to ensure that it meets those standards and applying a range of penalties if it does not; and investigating complaints and regularly publishing findings.<sup>42</sup>

A new convergence regulator, the Office for Communications (OFCOM) shall supplant in 2003 five existing regulators covering broad area of broadcasting and telecommunications networks and the services delivered on them. The new Communications Bill was passed after an extended consultation period and a lot of controversy. The new legislation will significantly liberalise the ownership rules in broadcasting. It drops a rule preventing large newspaper groups (like Rupert Murdoch's News International) from buying Channel 5, but still bars them from owning a significant stake in the ITV. The new legislation also clears the way for the two biggest ITV companies, Carlton and Granada, to merge and create a single ITV company. It also allows for a joint ownership of ITV and Channel 5.

The new media policy is a major shift as it stops limiting the ambitions of one player - Rupert Murdoch's News International/BSkyB from buying into the terrestrial television channels. When

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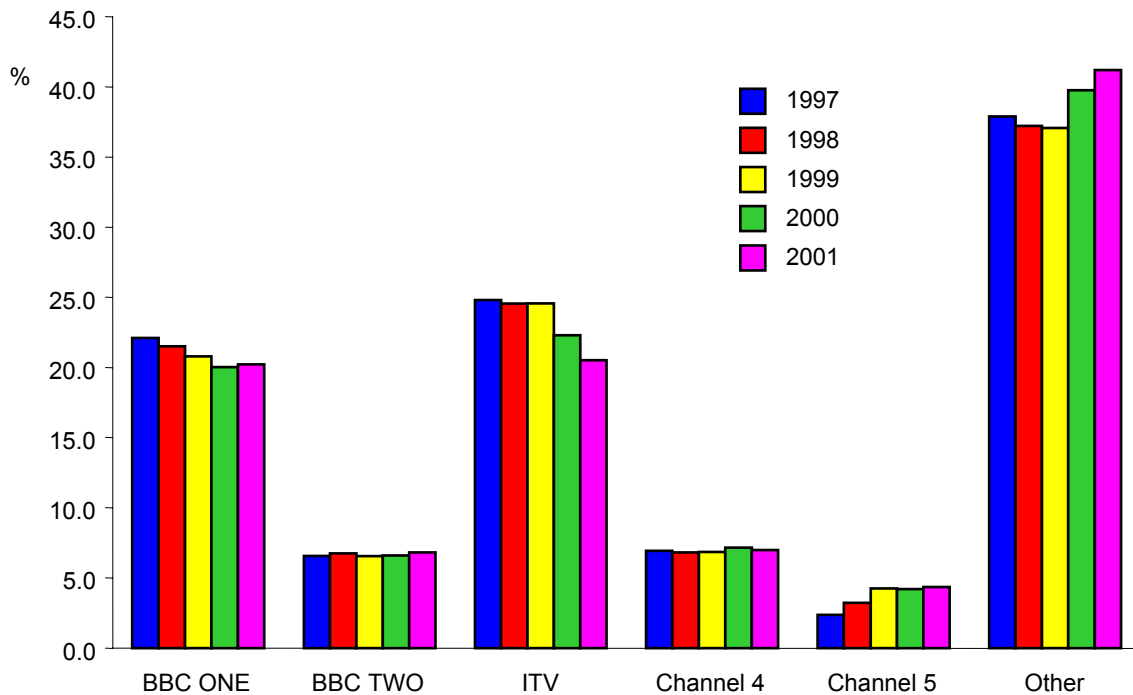
<sup>40</sup> Independent Television Commission (ITC), *The Structure of the ITC*, [http://www.itc.org.uk/about\\_the\\_itc/the\\_structure/index.asp](http://www.itc.org.uk/about_the_itc/the_structure/index.asp).

<sup>41</sup> Independent Television Commission (ITC), *How We Regulate Commercial Television: Competition and Ownership*, [http://www.itc.org.uk/about\\_the\\_itc/how\\_we\\_regulate/comp\\_ownership/index.asp](http://www.itc.org.uk/about_the_itc/how_we_regulate/comp_ownership/index.asp).

<sup>42</sup> Independent Television Commission (ITC), *What We Do*, [http://www.itc.org.uk/about\\_the\\_itc/what\\_we\\_do/index.asp](http://www.itc.org.uk/about_the_itc/what_we_do/index.asp)

looking at the overall audience share statistics, BSkyB, the UK's biggest pay-TV operator, does not appear to be a major player. However, there is a drift towards multi-channel television.<sup>43</sup> At the beginning of 2001, more than 5.5 million homes were receiving satellite broadcasts, which is 30 per cent more than year before. The audience rates in fast-growing multi-channel homes look different from overall data – giving more prominence to the Sky channels and other satellite channels.

*Audience share in multi-channel homes by channel, 1997-2001*



Source: Broadcasters' Audience Research Board (BARB)

Campaign for Press and Broadcasting Freedom criticised the new bill of being market-driven and claiming that “setting up a centralised Office of Communications (OFCOM), watering down public service broadcasting obligations and loosening ownership regulations, the Bill will sideline quality, accountability and diversity. It will also result in less distinctive, regional and local news, entertainment and cultural programmes as both press and broadcasting outlets become concentrated in fewer hands.”<sup>44</sup> Case for creation of a convergence regulator has become weaker also due to the failures of many convergence conglomerates to create synergies.

The Government proposed to deregulate, claiming that the British companies have to be allowed to grow, to find new opportunities to reduce costs and attract new investment, if they are to bring better products to consumers. Removal of the rule preventing joint ownership of a national ITV

<sup>43</sup> Cable, satellite and digital television provided from sources other than traditional terrestrial broadcasting.

<sup>44</sup> Campaign for Press and Broadcasting Freedom, *A Market-Driven Bill*, <http://keywords.dsvr.co.uk/freepress/body.phtml?doctype=&id=230>.

licence and the Channel 5 licence is justified by the Government on the grounds that the existence of the BBC and Channel 4, in addition to the commercial channels, will still ensure the existence of at least three separately controlled free-to-air public service television broadcasters, in addition to the expanding range of digital channels.<sup>45</sup>

Carlton and Granada would no longer be prevented from merging by the new media law. However, they would still be subject to a scrutiny by the Competition Commission, as they together sell 56 per cent of the UK's advertising. In August 2002, the two companies announced their joint approach and formation of a 'virtual enterprise' co-ordinating their programme scheduling and making joint approaches to advertisers. "Under current competition rules a full merger would be very difficult," a Carlton spokesman said.<sup>46</sup> Granada Chairman Charles Allen said that restructuring at ITV "logically and inevitably leads towards a single ITV company."<sup>47</sup> This conviction has been growing ever since much of the world's media have been swallowed up by seven giants global companies – AOL Time Warner, Disney, News Corporation, Viacom, Sony, Bertelsmann and Vivendi, while ITV, the UK's biggest media operation, has been kept split into two companies. By deregulating and allowing for the consolidation, the Government wants to secure competitiveness and formation of a global British-based media company. However, even a merged ITV would be smaller than Italy's Mediaset, not comparing to the seven main global players.

- **Political Culture**

The UK is one of the world's oldest democracies with a well-established system of institutions, procedures and unwritten rules. Ultimately, also the UK's constitution has been famously unwritten. There is a variety of reasons for which the political culture in the UK has been more sophisticated than in Italy. The qualitative nature of the political culture prevents from expressing the difference in an exact way – it is more the perceived ways of operation of certain governmental and independent institutions. A measurable expression of political culture are to certain extent the codes of practice or conduct for members of various public bodies. They represent an institutionalisation of political culture, which however cannot be forced upon any political system from outside, as it works only as a result of endogenous development within a political system, where all significant actors recognise its importance. Another measurable factor is the law

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<sup>45</sup> Department of Trade and Industry, Draft Communications Bill, *The Policy: Media Ownership*, [http://www.communicationsbill.gov.uk/policy\\_narrative/550810.html](http://www.communicationsbill.gov.uk/policy_narrative/550810.html).

<sup>46</sup> *Market Cheers ITV Company Tie-up*, BBC News Online, 19 August 2002.

<sup>47</sup> *Buying Time*, The Economist, 2 May 2002.

enforcement, which is much higher in countries with developed political culture, while in countries with lower political culture tends to be more 'flexible' usually due to both technical capacity of the law enforcement agencies and political influence of the governing elites.

The ITC has a rigorous internal Code of Practice, which reflects the guidelines on best practice for members of public bodies, and which sets out their responsibilities including their relationship with Parliament and also includes a policy on conflict of interests. The Code of Practice states that the ITC members will "observe the highest standards of propriety involving impartiality, integrity and objectivity in relation to their statutory duties; be accountable to Parliament, users of services, individual citizens and staff for the activities of the ITC concerned."<sup>48</sup> The ITC members are appointed by the Secretary of State in the Department of Culture, Media and Sport. Thus, British government has nominally more powers to control the media than the Italian Government, as in Italy the members of the regulator are elected by the Parliament. Apart from the internal code of practice, the ITC has a set of codes and guidance notes for the commercial broadcasters it regulates. These includes precise guidelines on programmes, advertising and sponsorship, economic regulation and competition publications, technical performance, digital television, and subtitling, signing and audio description.

A Berlusconi-scenario of media duopoly under influence of a single person is hardly thinkable in the UK. There are strict rules preventing one private company from monopolising the whole private media sector. These rules are an expression of political culture that understands the importance of media independence and its legal enforcement. Almost any political analyst would agree that in the UK, political culture embedded in the public opinion would not allow for a media tycoon to become also Prime Minister and practically be in control of the public broadcasters too. This is a highly speculative argument supported only by indirect evidence provided by functioning of the political system (both elites and general public) that positively values long-term independence of broadcasters.

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<sup>48</sup> Code of Practice for the ITC Members, Independent Television Commission (ITC), [http://www.itc.org.uk/about\\_the\\_itc/the\\_structure/members\\_directors/code\\_of\\_practice.asp](http://www.itc.org.uk/about_the_itc/the_structure/members_directors/code_of_practice.asp).

## CONCLUSION AND RECOMMENDATIONS

There is an almost universal agreement among political and social scientists that media play a vital and defining role in democracy everywhere it exists. However, their role and function has not been settled or precisely defined yet. The media in a democratic system must be “credible and reliable lest they lose their influence and authority.”<sup>49</sup> Simultaneously, it has not been clear how to achieve this ideal situation and whether it is possible at all. Media are very vulnerable to manipulation for a number of reasons. Therefore, media are not inevitably an agent of democracy. Their role might be both beneficial and detrimental to the cause of democracy.

This paper analysed the media policies in Italy and the United Kingdom. Such a comparison can bring valuable insight into success and failure of media policies also for other countries. The comparison shows that there is a range of problems and different issue areas in both media systems. A necessary prerequisite of independent and impartial broadcasting media are effective institutional arrangements governing the structure and role of regulatory bodies, which need to be independent from the Government. Political culture is a crucial factor when analysing the media freedom. Ultimately, all regulatory bodies fall under the influence of the Government or parliamentary majority. It is the unwritten rules of conducts that prevent them from installing their cronies in the oversight bodies or from directly manipulating the media.

An analysis of Italian and British media policies brings valuable insight for assessing success and failure of media policies in Central and Eastern Europe. Most of the institutional arrangements in the post-communist countries were shaped according to various Western models. However, these ‘policy transfers’ did not fully take into account different political culture. One system satisfactorily working in certain country, does not have to necessarily be a success in other country, but can fail to achieve the desired effects. Example of the Italian media system, which fail to guarantee diversity and impartiality is an example of failure of both institutional structures and political culture. It might be particular interesting to consider for media policy analysts working in Central and Eastern Europe, where political culture ‘allows’ the governing elites frequently much more than would have normally been in most of the Western European countries.

## RECOMMENDATIONS

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<sup>49</sup> Everette E. Dennis and Robert W. Snyder, *Introduction*, in Everette E. Dennis and Robert W. Snyder, eds., *Media and Democracy* (New Brunswick and London: Transaction Publishers, 1998), p. xv.

This comparative paper presents a set of tentative recommendations designed with a goal of improving the drawbacks of the media systems discussed in the present paper.

1. **Monitoring Institution:** There is a lack of and need for a credible monitoring institution based on well-defined and rigorous methodology and free of any political bias and/or leanings in Italy. This could be a specialist NGO (MEMO'98 type) affiliated with and initiated by a well-respected and politically un-biased human rights institution, non-partisan journalists' association or possibly university. It is especially crucial that the institution's independence and objectivity be not compromised by any political biases or suspicions of biases. There is a lot to learn from the experience of the monitoring NGOs in the post-communist new democracies, as well as international media freedom NGOs. Work of such monitoring institution shall have also impact on political culture and public awareness of the media independence and impartiality.
2. **Regulatory Authority:** The Italian Communications Regulatory Authority failed to tackle the issues of media concentration and maintenance of diversity and plurality. A disadvantage of market-driven convergence regulator is that its focus is too broad and not specifically oriented on broadcasting. Thus, the human rights dimension tends to become secondary to the economic and technological issues. Requiring changes in the institutional arrangement would be unproductive, therefore it is necessary to work within the current institutional framework on improving the Italian Communications Regulatory Authority's focus on freedom of expression and anti-concentration measures. Initiation of co-operation and exchange of experience with other regulatory bodies in the EU might be beneficial. Similarly, UK's new convergence regulator OFCOM might tend to neglect its tasks in the field of media freedom favouring technological and economic issues. Overall, the case for convergence regulators became much weaker, due to the failure of the convergence conglomerate to create real synergies.
3. **European Union Broadcasting Oversight Authority:** Increasingly worthy of discussion and attention is the opinion calling for the establishment of a European level authority. Consolidation of the international media corporations to a great extent escapes any form of control on the part of individual states. Also, the Italian case show that even an EU member state can have a very unsatisfactory human rights record in dealing with the media. Hence an impartial and independent regulatory centre different from the European Commission,

albeit linked to the level of the community institutions could deal both with issues at EU-level, as well as with cases that national regulatory bodies fail to deal with. Such a body could also work on streamlining the EU member states different standards of media freedom into a common EU policy on media independence to guarantee certain human rights standards also in the context of the EU enlargement.

- 4. Respect for Law:** In a situation when even existing legal norms on media ownership and dominant position are not observed, there is an urgent need to strengthen law enforcement in Italy. A public awareness campaign stressing the illegality of the media duopoly should try to foster the importance of the respect of law and pressurise respective institutions into action. Another, strictly legal tool to improve the law enforcement record is the litigation.