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Paper No. 11
BROADCAST REGULATIONS: INSTRUMENT FOR CHANGE OR CONTROL
By Jocelyn Hay, Chairman, Voice of the Listener & Viewer

My sincerest thanks to CBA and AMIC and to the EMPI Business School for their hospitality.

I am honored to be here. It is not often that those representing the consumer and the citizen have the opportunity to put their views directly to such an influential group on such an important subject.

Broadcasting is immensely important. Radio and TV are the main source of news and information for people all over the world. The manner in which it is regulated is therefore of immense importance to everyone of us - economically as consumers, and in fulfilling our social, cultural and democratic needs as citizens.

Broadcasters have many ways of serving the public interest, but surely the provision of impartial news and information must be the most important.

India is the world's largest democracy and because of the diversity of its peoples, its history and its development, India is experiencing the current revolution and rapid change in broadcasting perhaps more acutely than any other country. It is particularly important therefore that India regulates that instrument for change in the public interest.

But before I go any further, I should explain a little about the Voice of the Listener and Viewer, (VLV) its aims and the way it tries to represent the citizen and consumer interest in broadcasting.

VLV is an independent, not for profit organisation which is funded by its members. VLV has no outside funding, no political, sectarian or commercial ties and it is governed democratically by an elected committee of management. VLV's concerns are with the structures, funding, issues, and institutions that underpin the broadcasting system and especially with the principle of public service in broadcasting. VLV does not deal with complaints about individual programmes or issues of moral conscience.

VLV's membership consists of 2,000 individuals, plus more than 50 academic institutions and over 20 organisations most of which are registered charities which between them represent nearly one million people. VLV makes responses to government and other consultations, runs conferences, produces a quarterly news Bulletin and briefings on current broadcasting developments, and operates at a UK, European and Commonwealth level, particularly with Australia, Canada, New Zealand. VLV was instrumental in bringing into being Euralva- the European Association of Listeners' and Viewers' Associations.
You know better than I - the reason, theme for this conference is the immense and rapid change in broadcasting caused by the explosion of new channels, especially cable and satellite. New companies commercial companies have been financed and set up by international, multimedia companies, often outside national frontiers and beyond the control of national governments, which broadcast mainly American content; and with the power to persuade and influence national culture and democracy.

Now there will be even greater change with the development of digital and convergence in broadcasting, telecoms and Internet technology and software with even greater long term significance and with huge potential for the more efficient use of spectrum and production costs, interactivity and e-commerce. But also the ability to control the conditions of access, both for the broadcasters who want to show their programmes and for the viewers who want to access their programmes and services, through key gateways, as we heard from Kiren Karnik yesterday.

Because of the rapid growth of new channels some say there is no need to regulate and some say it is no longer possible. But both are wrong. Quantity is no substitute for quality. Viewers want choice of programmes not channels. New regulation will be needed to ensure that but also some existing regulation can be dropped as obsolete.

Regulation will be needed to ensure fair competition at all levels to prevent dominance by powerful monopolies and economic groups. It is needed to prevent abuse of new technology and exploitation of individuals and the information about them that new operators will be able to gather. Regulation will also be needed at regional level eg Europe and Asia, and at world/international level there will be a need to obtain special treatment for audio visual content under agreements such as WTO, GATT, and MAI because TV and radio programmes are information goods, which because of cultural, social and democratic factors - cannot be treated as material goods - for example the radio and TV sets through which we see the programmes. Nations, especially the smaller nations must be allowed to support their own industries and cultures.

Broadcasting is far too important to be left solely to politicians and entrepreneurs. Or - dare I say it - broadcasters. There must be a partnership between all three and with listeners and viewers, to ensure the public interest is served.

Wise, far-sighted, sensible regulation - the minimum not the maximum necessary - is needed to set the framework for growth and the development of new technology and services to enable each country to reap economic and social rewards.
That has to start with the acceptance that the old monopolies have been broken for ever, transfrontier broadcasting is here, governments can no longer prevent news reaching their people from other outside sources. But, in a world of rapid change, it is even more important for people to know what is going on, to have access to different sources of reliable information.

This means that the public service broadcasters have a unique and vitally important role to play. They have a duty to put the public interest above all else. Commercial broadcasters also have a role to play and can bring welcome extra choice and innovation but they are also driven by commercial imperatives and the need to put the interests of advertisers and sponsors above that of audiences if they are to survive. Commercial broadcasters therefore do not share the same freedom as public sector broadcasters.

In Europe, the importance of the role of pab has been recognised by the European Parliament, the Council of Europe, and the European Commission, all are actively engaged in a review of public service broadcasting (pab) in the new digital age and so is the European Commission. The European Council of Ministers added a protocol to Amsterdam Treaty on financing pab which allows countries to make their own rules so long as it does not interfere with competition in the Internal European market. The Council of Europe passed two important resolutions defining the mission of pab and ministers of all EU MS signed the Resolution which bind their governments to supporting pab.

The Resolutions and the Protocol pave the way for harmonisation at European level where it will be necessary to facilitate the growth of new technology – eg in developing interoperability between systems and platforms, open standards in electronic programme guides (EPG), and ensuring fair competition across borders without infringing the rights of member states to make their own laws on content to safeguard their cultural interests and norms.

The Resolutions recognise the individual’s right to freedom of expression – one of the key elements in the UN Declaration of Human Rights to which all Commonwealth countries are signatories, but the European Declaration also states that freedom of expression also includes freedom to receive information and ideas. And this where pab has its key role to play. The Resolution sets out 9 key points in its definition of P88 which are very close to definition given yesterday by Javard Mottaghj:

1. Provide, through their programming a reference point for all members of the public, and a factor for social cohesion and integration of all individuals, groups and communities, rejecting any cultural, sexual, religious, racial or social segregation

2. Provide a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed.

3. Broadcast impartial and independent news, information and comment

4. Develop pluralistic innovative and varied programming which meets high ethical and quality standards and not sacrifice the pursuit of quality to market forces

5. Develop and structure programme schedules and services of interest to a wide public while also being attractive to the needs of minority groups

6. Reflect the different philosophical ideas and religious beliefs in society with the aim of strengthening mutual understanding and tolerance, and promoting community relations in pluralistic and multicultural societies

7. Contribute actively through their programming to a greater appreciation and dissemination of the diversity of national and European cultural heritage

8. Ensure that the programmes offered contain a significant proportion of original productions, especially feature films, drama and other creative works, and to have regard to the need to use independent producers and cooperate with the cinema sector

9 Extend the choice available to viewers and listeners by also offering programme services which are not normally provided by commercial broadcasters.
None of the countries which signed it yet fulfills all the criteria of the resolution but that is the goal to which many – including VLV – are working.

Fulfilling these ideals will need bold and courageous action by politicians and governments willing to place trust in new institutions, regulatory structures and people, and to resist pressure from commercial broadcasters and powerful multi-media companies able to influence voters against governments through their press and television interests.

I believe the process is now inevitable. Perhaps it can be delayed for a few years but not indefinitely and ultimately governments as well as broadcasters and viewers will benefit.

But only if the right regulation is in place. A transfer from one monopoly, that of state control to another, that of the tyranny of a totally free market where the most powerful will dominate will not solve the problem.

The Council of Europe Resolution goes on to state (1) that funding must be fair and transparent. Competition should be for audiences, not for funding if it is to produce quality. Ideally that funding should come from different sources for the different broadcasters, as was again suggested yesterday, this does not necessarily mean going back to the old licence fee. There are many other sources of funding than advertising and sponsorship.

(2) The Resolution also states that Governments should establish independent regulatory boards to distance them from government, and then set them a clear remit, rules and regulations and then delegate to them the power to exert penalising sanctions if the broadcasters do not comply with these rules.

The Governors or members of governing boards and councils should be appointed by an independent process and those boards in turn should appoint the senior broadcasting executives of the public broadcasters, and issue licences to commercial companies.

Some member states of the European Union have instituted this practice, but many, including the UK, have not yet achieved all the ideals yet. The Governors of the BBC, and the Council members of the ITC, RA, BSC, OFT and OFTEL are all appointed by British government, (the Councils do appoint their own executives) and although that the balance was not always right, by and large the people appointed – all very distinguished and prominent in their own right, have generally acted independently once in office and served the public interest well, by standing up strongly against the government.
Most of these appointments last for 3 or 5 years and in a democracy there is always one check on bad practice which is that if you abuse the system you set your successor a precedent for doing the same thing.

There are other checks and balances. The BBC and ITC have advisory boards, with rotating memberships – again prominent people whose duty it is to canvass and represent public opinion.

Each commercial broadcaster has to apply for its licence and go through a competitive procedure and once that licence is awarded the company has to comply with the terms of that licence. I will suffer tough financial and other penalties if it does not comply with its licence conditions both in programme quality and range.

The BBC has its Royal Charter and licence conditions. These are not so prescriptive and detailed as the ITV licences because of its public mission but reinforced in recent years by other mechanisms.

The BBC has advisory councils, both general and specialist and in each region. The BBC Governors hold public seminars involving prominent people from all walks of life. I have already attended two governors’ seminars this year plus two other BBC presentations on different programme genres. Also the BBC conducted a public consultation last year on its new digital and on-line services. It holds public ‘Meet the BBC’ meetings all over the country in which members of the public can question BBC executives and most importantly three years ago the BBC instituted a series of annual ‘promises and pledges’ in regard to its programmes and services. These are reviewed annually and reported on by the governors in the annual report which is placed before Parliament.

The BBC also has programmes in which listeners and viewers can register their views and sometimes question BBC executives on air.

Neither the system nor the broadcasters are perfect yet but these are steps on the right road.

The commercial regulators, ITC and RA, OFTEL and Broadcasting Standards Commission also hold public consultations and so does the UK Government. VLV responds to all these consultations and makes submissions on its own initiative from time to time on topical broadcasting developments and I think we can claim that the quality of those responses and submissions has forced the Government and the Broadcasters and regulators to take the Voice of the Listener and Viewer very seriously. We also invite key broadcasting executives and Government Ministers to speak at our public conferences and this often provides the only opportunity for members of the public to question them directly on their policies and performance.

In an independent forum
Public involvement is very important. So I say to the broadcasters – and government – do not be afraid. An open process gives enormous strength to both broadcasters and government and helps to legitimise the actions of government and build a passionate defence for the broadcasters from the audience.

Distancing the regulation from government, and using an independent regulator not only helps to legitimise the actions of government, it also takes a lot of criticism off government ministers when they have to make unpopular decisions.

Two recent cases in the UK: The ITV commercial network recently decided it must move its main evening news bulletin from 10:00pm to 6pm to enable it to compete with satellite and cable channels by showing films uninterrupted in peak time. ITV had been wanting to do this for years but was always stopped because it was a very unpopular move. But this time ITC decided to allow the move and then took all the blame. The government and the Minister were able to criticise the action and avoid blame. Also when in 1990 new licences were issued for commercial channels, the ITC awarded them, and Mrs Thatcher was shocked by the result. It helped to demonstrate that the regulator was independent.

So I would urge government and broadcasters to be bold and courageous and to recognise that current revolution has implications for the way we regulate. The public interest will best be served by enabling legislation that liberates where possible but when necessary also imposes positive programme requirements in regard to quality and range of programmes and original production on all broadcasters.

Above all by recognising that the public interest should be paramount in broadcasting and that all broadcasters have a duty to represent the public interest. In return for their special responsibility the public service broadcasters must be given reasonable financial security and independent editorial control over programme content and scheduling. The public broadcasters must also in their turn be prepared to be far more transparent, open and accountable in their dealings with the public.

Public service broadcasting is an ethos, not a series of particular programmes however worthy they might be. It is a total approach to the philosophy of broadcasting and the motivation of programme makers.