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Paper No. 32
FOLLOW U.S. TO PROTECT YOUR OWN INTEREST, 
FOLLOW EUROPE TO PROTECT YOURSELF FROM U.S.

AMIC 9TH ANNUAL CONFERENCE
THE DIGITAL MILLENNIUM: OPPORTUNITIES FOR ASIAN MEDIA
June 29 – July 1, 2000, Singapore
Follow US to Protect Your Own Interest, Follow Europe to Protect Yourself From US
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Follow the US to promote and protect your own interest and follow the European Union to protect yourself from the US. This is the advice I give to those who have anything to do with media policy in the rest of the world. A critical look at the history of media is sufficient to support this point. One has to just look at how the Europe dominated media scene till the First World War, through the news agency cartel and how the AP fought Reuters with the active help of US Government to break free from the cartel. It is also interesting to look at how the US handled the development of radio during the First World War and between the two World Wars. The Navy and the RCA contributing to its development and ultimately leading to establishment of FCC which has been promoting and protecting US interests since then. One should look at the question of technical standards in broadcasting and particularly of HDTV in this light.

Like Reuters, BBC also emerged and grew as an imperial institution and became perhaps the most efficient propaganda organisation in the world. The US launched Voice of America, Radio Free Europe and Radio Liberty to do that job. Private US media also towed the US Government line in most cases except at the later stages of Vietnam War. In the Gulf War, selected CNN clips were distributed to television stations, which did not have supply of visuals from war zone and had no arrangement with CNN by the USIS. Thus the ownership of media in private hands was in no way a handicap for the US Government. In fact, it added to the credibility and thus was more effective in times of crisis.

The FCC, however, made sure that those reaching significant US audience were under the US law and Rupert Murdoch had to become a US citizen, as late as September 1985, to own significant broadcasting interest in US market. After the end of Cold War and disintegration of Soviet Union through joint efforts of Pentagon and FCC and hard bargaining at negotiations leading to WTO commitments on liberalising communication sector, the digital millenium has been unleashed on the world.

In the digital millenium the broadcasting industry, the telecommunication industry and the image processing part of the computer industry (the Internet / World Wide Web) are rapidly converging towards a single multimedia market. Thus, the frontiers of media are
redefining themselves. A new wave of mergers and strategic alliances among major corporations and companies is challenging media policy makers around the world, particularly so in Asia.

However, let us first look at what the US is doing in this regard. On August 12, 1999, William E. Kennard, Chairman of FCC, delivered to the US Congress a draft strategic plan for the future, entitled “A New FCC for the 21st Century.” With this plan, the FCC is meeting the challenge of reinventing itself to keep pace with the rapidly changing communications industry landscape. In the words of Chairman Kennard, the plan envisions that in five years U.S. communications markets will be characterized predominantly by vigorous competition that will greatly reduce the need for direct regulation. The FCC as we know it today will be very different both in structure and mission. As a result, the FCC must wisely manage the transition “from an industry regulator to a market facilitator”.

Historically, the FCC has been organized along the traditional lines of wire, wireless, satellite, broadcast and cable communications. This traditional structure no longer makes sense in an era when the lines dividing many communications service providers are blurring. Technology has made it possible for TV operators to supply voice telephony, telecommunications companies can supply video images, and the Internet can deliver both basic voice telephony and moving pictures. The new vision is to restructure the FCC along the functional lines of enforcement, consumer information, licensing, competition policy, and international communications. These functional areas will replace the current industry-specific Bureaus and be completed in five years. The FCC is in the process of developing a plan to allocate and assign up to 200 Megahertz of spectrum for a broad range of new services, such as expanded wireless communications services, advanced mobile communications services, and new spectrum-efficient private land mobile systems.

Chairman FCC calls Access, Broadband and Competition as ABC of his agenda. The FCC has created a new Enforcement Bureau. About which the Chairman in his remarks before the Competitive Carrier Summit 2000 Conference on Current U.S. Telecom Policy says, “No longer does industry see us as an agency that simply writes rules. No longer do they see just a rulemaking body that occasionally does enforcement work. Enforcement is now central to our mission -- to virtually everything we do.” The Enforcement Bureau is moving beyond the formal litigation process and solving problems with creative, flexible solutions. “When someone contacts us about a problem, the Bureau is going to respond proactively. It will look into alternatives to formal litigation and work with firms informally to help settle issues. A lot of times, informal talks between staff and parties can do wonders, facilitating a private solution, avoiding the need for investigation and litigation. And in some cases, the Enforcement Bureau is going to offer companies initial staff views about a particular problem -- views that might help them resolve a dispute quickly.” This is something our regulators or future regulators should keep in mind.

In the Telecommunications Act of 1996, the US Congress directed the FCC to evaluate its ownership rules every two years. The first such review was released on 30 May 2000.
On this occasion Chairman Kennard said, “the media marketplace has become increasingly dynamic and competitive, with an expanding number of information outlets and media platforms (i.e., the internet and satellite)” and “over the last 18 months, the FCC has provided significant regulatory relief to the broadcast industry and the industry is still in the process of responding to this new regulatory environment. Although the marketplace is still in flux, we do know that the regulatory changes have allowed broadcasters in large markets to respond to competitive dynamics, without sacrificing our long-cherished diversity and competition principles.”

The Washington Post reported the next day that FCC was seriously considering relaxing its 25 year old ban against one company owning a newspaper and broadcast outlet in the same market. “The agency's five commissioners, however, remain sharply divided over how dramatic a change to make to the rule, with sources saying that the two Republicans are leaning toward a complete repeal while the three Democrats favor modest modifications.”

Two other things, which are significant to mention here from the US: the V-chip and the E-rate. On 1 January 2000, the “V-Chip” became required equipment in virtually all television sets sold in the U.S. The V-Chip permits parents to program their television sets to block out violent, sexual or other programming they don't want their children to see. According to FCC Chairman the E-rate program has committed $3.65 billion to over 50,000 schools and libraries in first two years connecting one million public school classrooms to modern telecommunications networks. It also reduces the "digital divide" between the information haves and have-nots in the US society. “Fully 70% of the Year Two funding has gone to schools from the lowest income areas, and portions of those funds will reach 70% of the schools under the Bureau of Indian Affairs. The program has connected nearly 13,000 community libraries. Private and Catholic school connections also are impressive: 35,000 and 45,000 classrooms, respectively. This program is a down-payment on our kids at the beginning of the century that will reap a return on our investment for the rest of this century. It combines two powerful forces - knowledge and the ambitions of our youth - that can continue to fuel the engine of our increasingly high-tech economy.”

Now let us look at Europe. As in most European responses to technologically led change since 1945, the policy and market lead in this technological convergence has been taken by United States corporations, academics and government. However, the UK was closer to the Anglo-Saxon cousin than the rest of European Union. European telecommunications markets were liberalised on 1 January 1998 belatedly following the 1984 example set by the United Kingdom and the United States. It was quite close to WTO agreement on the basic telecommunications that was to come into force on 27 February 1998. However, this agreement specifically excludes broadcasting.

In Europe telecommunication networks remained a vertically integrated industry, primarily Government owned until last decade mainly due to high sunk costs, strategic importance and perceived monopolistic nature of market. Cable systems, most widely developed in Benelux, Scandinavia and Germany were originally an alternative
distribution platform for terrestrial channels. The recent upgrading of cable systems and the building of fibre-optics networks has enabled cable operators to offer telephony and Internet access; telecom networks will also be able to carry video.

Historically, the basic rationale for regulating media ownership and control has been protection of media pluralism. Simply because the methods of communication are changing does not mean that the character of media itself is altering too. There will continue to be the concern about free speech and editorial independence, together with demands of quality and accountability.\textsuperscript{19}

However, de-regulation of traditional constraints on media and cross-media ownership has become a general trend, clearly being driven along by powerful industrial concerns with pluralism taking a back seat.\textsuperscript{20} The cross-ownership of television and newspapers has become desirable in the UK as it would equip UK companies ‘to compete more effectively abroad’\textsuperscript{21}. Deregulation of media ownership in Germany, Italy and UK can be taken as ‘classic illustrations of degree of political power exercised by powerful media corporations in capitalist democracies’.\textsuperscript{22}

The process of convergence made possible many joint ventures between different operators in the value chain – production, packaging and delivery. And most such alliances have been approved by the Merger Task Force at the European Commission. Reason for this is the desire of Europe not to be left behind in the digital millenium as has been put forth candidly by Jan Mojto (Austria), Chairman of the European Association of Commercial Televisions, “I think that we need, as I have said, big European groups to provide the backbone of a network of many creative audiovisual companies. Competition law should not prevent the introduction of digital broadcasting infrastructures but should guarantee open and non-discriminatory access to these networks. I think the consumer is not interested in having a choice between different technologies; the consumer wants only to choose between content. I believe that we need a coherent audiovisual policy which is clear and predictable, and that confidence in market forces and not protectionism are the future.”\textsuperscript{23} He was addressing European Audiovisual Conference in Birmingham, in April 1998 as a member of High Level Group on Audiovisual Policy. “Only a strong audiovisual industry can re-enforce cultural identity and create jobs in Europe, which are our two main objectives,” he said.

Another member of this EU group, Michael Kuhn (UK), President of Polygram Filmed Entertainment said in the same conference, “The Hollywood film business is a huge worldwide business that Europe can get a share of, and must get a share of, if it is to ensure that two or three of the six or seven media giants that will rule the new digital world are European companies.” Speaking before them, Prof. Albert Scharf, President of the European Broadcasting Union said, “Future audiovisual policy within the framework of the EU has to serve the Member States’ apparent strong wish to reserve their competence to define their public service remit and to organise and finance its implementation and performance under the given national circumstances.”

Commissioner Marcelino Oreja while recognising that the audiovisual industry has immense economic, cultural and social significance, said, “It stands at the threshold of a
period of rapid development and growth due in great part to the advent of digital broadcasting. Europe and European companies have much to gain from the tremendous "windows of opportunity" that are opening up." He pointed out, "However, there is a high degree of diversity in practices in the various Member States; North and South, small and large countries; countries with links outside Europe and those without; those which favour dubbing and those which use sub-titling; those where public service broadcasting is highly regarded and those where it is less so; those which import significant proportions of programming from other Member States and those which don't; those which are deregulating and those which are re-regulating; etc. European audiovisual policy can most effectively play a catalytic role, in a way that complements national policies and brings the specific added-value of the European dimension to the overall policy framework." 24 One can but appreciate similarities with Asia in diversity and the potential.

The German case is particularly interesting where state media laws govern the licensing and supervision of private radio and television. These responsibilities are carried out by committees which similar to broadcasting councils in public broadcasting, are supposed to represent relevant groups in the society. In addition to diversity, economic factors have to be taken into account in granting licenses to broadcast radio and TV programmes by cable or on terrestrial frequencies. Thus those bidders, who agree to particular locations and promise to create new jobs in the region where they wish to broadcast, often have better chances of getting broadcasting channels and frequencies. 25

The German Inter-State Agreement on Broadcasting (incorporating the first amendments of 24 June 1994) in Section 5 provides: (1) In order to present the diversity of German-speaking regions and of Europe as a whole and to promote European film and television productions, television broadcaster shall reserve the greater part of total time scheduled for transmission of feature films, television plays, series, documentaries and comparable productions for European works in accordance with European law. (2) A significant proportion of full television programmes shall be own, commissioned and joint productions from the German-speaking regions and Europe as a whole. The same shall apply to specialised television programmes to the extent that their main focus allows. 26

Thus, European broadcasters have to create to compete. BBC invests 850 million pounds a year in original programming, more than what goes in the whole European film industry. ITV and Channel 4 invest 680 and 180 million pounds respectively. 27 The total expenditure of the German TV industry in 1995 was DM 20 billion which is three times the amount in 1984 when private broadcasting started. The percentage of total programme expenditures made up by in-house and commissioned productions is increasing. The amount spent on fiction productions, which totaled about DM 30 million in 1985, climbed to DM 2.5 billion 10 years later. The total amount spent on in-house and commissioned production in 1997 was estimated to be DM 3.5 billion. 28

What do the Asian countries should do? There can be no single formula as diversity is much greater than Europe. Systems of Governance differ, so do sizes of economy and population. Every country has to look at the strengths and weaknesses and decide what is
the best for it. However, some pointers are clear from the above discussion. Applying cross-media ownership restriction on indigenous media is an obsolete concept. As Asian media are weak compared to European and US based corporations, there is no point in not allowing cross media ownership as such ownership means synergy, which may strengthen Asian companies to grow stronger and compete in the wider world.

There are countries in Asia where private ownership of media does not exist. Should it be allowed? There is no harm. Private media are generally more credible and in no way harm the national interest in time of crisis. In this era of diversity of media keeping all media under the control or ownership of government is not wise. There is also no harm in converting government owned media into public service media, by handing over it to a public corporation. But such transition should be done efficiently, otherwise there is no harm in continuing such media units as government departments. In an environment of diversity even such departments would increase diversity and competition.

Should the Asian countries allow foreign investment in media? After the WTO it is only matter of time till this option is available. It is better to be pragmatic here depending on the circumstances. Some countries can do without it. Some have no resources for the development of media. As licensing is the trend, there is no harm in issuing license to foreign investors for a reasonable period, with a strong regulator like FCC monitoring with the powers of fine and cancellation of license, renewable only if the regulator is satisfied. Such licenses could be given subject to the conditions of local production of programs and employment generation.

The general policy should be to strengthen the existing media in Asia, irrespective of whether it belongs to public or private sector. There should also be scope for new comers to increase diversity and competition. There is need for co-operation among Asian countries and our policy should follow the European way of preferences. Asian heritage is in no way inferior to Europe, of which the US is just an extension. Can't we think of some Asian media corporations competing globally with other giants? Will we leave the field of media in this millenium for Europe and US to compete on our territories?

2 See Kent Cooper and the AP for graphic details, including how the Reuters used to distort US news supplied to it by AP, when it was delivered in Philippines.
4 Radio Corporation of America
5 The Federal Communications Commission (FCC) is an independent United States government agency, directly responsible to Congress. The FCC was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, television, wire, satellite and cable. The FCC's jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions.
8 Subhas Chandra Bose used to call it the Bluff and Bluster Corporation of London during the Second World War.
not think the Internet explosion would have been possible without the decisions over the last twenty-five years to deregulate customers' premises equipment, such as telephones, or to leave services beyond "basic" telephone services, what we call enhanced services, unregulated. Similarly, I do not think the Internet would have developed in the way that it has without the divestiture in 1984, because without the divestiture, the competitive long distance networks would not have been laid. Finally, our decision to leave the Internet itself unregulated allowed the Internet to be open and unfettered, and contributed greatly to its vibrancy today.

11 FCC covering letter to President Clinton with FCC Performance report 1999
12 FCC press release dated 12 August 1999
13 The speech on 19 January 2000, see above.
14 In these remarks on The FCC's New Enforcement Ethics, he went on say, “We must be firm in the face of violations, fast in resolving disputes, and flexible in its approach to problem solving. Several firms have approached the new Bureau. They have come forward to voluntarily disclose serious rule violations. They did this because they knew the Bureau would find out about the violations and that the consequences would be more severe. Clearly, the enforcement message is getting through. Our field offices will be involved in enforcement. The FCC has 25 field offices around the country. They are conducting on-site investigations, helping us enforce competition at the local level. We must decide cases quickly, decisively and clearly. We will manage the case docket aggressively. And we're going to work with you to solve disputes as rapidly as possible. In these markets, where changes happen at lightning speeds, we can't allow important decisions to languish on a docket somewhere. We can't issue long and confusing decisions that raise more questions than they answer. In the world where you compete everyday, justice delayed is justice denied. If you have a problem, contact us. And please do so before filing a formal complaint.

16 The Washington Post, 31 May 2000 page E01. "The cross-ownership ban was put in place in 1975 in an effort by the FCC to ensure there would be multiple sources of local news. Several companies have won permission to own a newspaper and TV station in the same market, including Tribune Co., which owns the Chicago Tribune and WGN, and Cox Enterprises Inc., which owns the Atlanta Journal-Constitution and WSB. But other companies sold or swapped to comply with the rule, including The Washington Post Co., which traded Gannett Co. its station in Washington for a station in Detroit. Those who argue in favor of repealing the rule say it has been made obsolete by the changes in the media landscape over the past quarter-century, with the development of cable television, the satellite industry and the Internet. The newspaper and broadcast companies are pushing hard for a change to the rule to clear the way for further industry consolidation: Leading the charge is Tribune Co., which recently announced that it would purchase Times Mirror Co., giving it joint ownership of TV stations and newspapers in Los Angeles, New York and Hartford. Tribune also owns a television station and a newspaper (the Fort Lauderdale Sun-Sentinel) in the Miami market but has been granted a waiver by the FCC while the agency determines how to change the cross-ownership rule."

17 FCC press release of 11 January 2000: "The V-Chip is not a substitute for parents," said Commissioner Gloria Tristani, Chair of the FCC's V-Chip Task Force. "It's a modern tool that will help parents do their job in a modern world." A recent study by the Kaiser Family Foundation found that children spend far more time with television than any other medium, and that the vast majority of that time is unsupervised. "The V-Chip is essentially a long-range 'remote control' that lets parents block programming that they do not want their children to see, even when they can't be there to turn it off themselves," Tristani said.


23 European Audiovisual Conference (Birmingham, 6-8 April 1998)

24 European Audiovisual Conference (Birmingham, 6-8 April 1998), European Audiovisual Conference Home Page


26 Iner Nationes (1996) Inter-State Agreement on Broadcasting, Code Nr. 760 OG 100 p21


28 Jan Mojto (see above) in European Audiovisual Conference (Birmingham, 6-8 April 1998), European Audiovisual Conference Home Page