

WEDNESDAY 6 FEBRUARY 2008

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Present

Bonham-Carter of Yarnbury, B  
Fowler, L (Chairman)  
Howe of Idlicote, B  
Inglewood, L  
King of Bridgwater, L  
Maxton, L  
McIntosh of Hudnall, B  
Scott of Needham Market, B

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Witnesses: **Professor Tony Prosser**, Professor of Public Law, University of Bristol, **Professor Tom Gibbons**, Halliwells Professor of Law, University of Manchester, and **Professor Lorna Woods**, Professor of Law, University of Essex, examined.

**Q1943 Chairman:** Good morning. You know that we are looking at concentration of the media. We are looking at what impact that has and what remedies, if remedies are necessary, we might propose to protect the public interest. Public interest is one of the things we may come on to and how one defines that. I wonder if I could ask a more general question first and take it up from where we were on our last session. We had Alastair Campbell and particularly Christopher Meyer with us. Christopher Meyer was saying then that the system of separate media regulators – Ofcom, Press Complaints Commission, BBC Trust, Advertising Standards Authority – was a typical British fudge. You might add the Secretary of State because the Secretary of State obviously has a role as well. He was basically saying that he did not think that was an architecture that can last; it is going to need some kind of rationalisation. Would that be your view?

**Professor Prosser:** It is deceptively easy to say that we could rationalise everything and have a simpler system. I think it becomes much more complicated when you think of the different purposes of regulation; for example, the Competition Commission has a very clear remit now,

since the reforms of competition law over the last few years, to consider essentially economic competition based issues. Ofcom has a mixed remit. The press is very different, given its history, and of course there would be major political difficulties in bring the press into a more state-dominated form of regulation. I suspect that what we have to accept is a certain untidiness, simply because of the complexity.

**Professor Gibbons:** I agree with that and I think one has to be aware of the culture that has developed over the years in these different regulatory bodies and the expectations of practice that people in different parts of the media operate under. There is a danger with overarching rationalisation that you hide various interests behind a major institution and you end up with a debate about the purposes of regulation and the refinements that are needed for different parts of the media industry broadly hidden behind the institution. In some ways, I think we might have seen that with Ofcom in the way that competition and content has been hidden behind the façade of Ofcom, rather than having, as it were, two separate regulators dealing with the same contents with economic issues. Imagine that rationalisation taking place across the whole industry. I think it would have a negative effect overall.

**Professor Woods:** I agree. I would want to add a little more detail. When we are talking about the media sector, I think there is some scope for looking at perhaps non-traditional forms of media. I was involved in a Commission study looking at co-regulation and self-regulation in the media sector and it was very complex. I think there are perhaps some arbitrary divisions when you are getting organic mechanisms from industry. That may need to be looked at but I agree especially with the point that you cannot really just mix up economic issues and diversity and pluralism issues in one pot. The UN Special Rapporteur on Freedom of Expression some years ago did a joint declaration and said that in regulating things people should not lose sight of the differences. That was with emphasis on the internet

and saying that is very different. Having said that, I do not think you can just label something “internet” either. I do not think that is a helpful label. There are different types.

**Q1944 Chairman:** We will come on to some of these points in a moment. What about the Secretary of State? In some of the merger decisions that are taking place, we are going to find not only does it prolong the whole process but is the Secretary of State the right person to be deciding upon something which obviously has very strong political connotations?

**Professor Prosser:** There are two things that need to be distinguished here. It seems to me that the Secretary of State has no role in the investigation of an issue. That, in a sense, is the way in which competition law has moved over the last ten years, to separate out the investigation of issues, which are based on competition issues, from public interest considerations. It seems to me that in the end there is an important role for the Minister because he or she will be able to take an overall look at the public interest and take into account non-competition based concerns, but that is distinct from being involved in the investigation itself. I think those two have to be kept very separate.

**Professor Gibbons:** I am not so convinced because I think that, as you say, because the media are so involved in politics generally, there is a danger that an objective view will not be taken. I guess that in most cases, with the advice from the competition authorities and civil servants, one will end up with an objective result, objective in the sense of taking account of the evidence in an appropriate way, but I think that increasingly these days we are seeing more and more the need to distance political decision-making of this kind from more objective investigation. I would be inclined to say no and that the Minister, at the very least, ought to be expected to follow the recommendation of the relevant regulator, and so in the case of the pluralism test, follow the recommendations of, say, Ofcom.

**Professor Woods:** I think I agree with Professor Gibbons’ view. There is an issue of independence. I would have some qualms about saying that the Competition Commission is

the final voice on the pluralism question though. I think there are two issues there: one, if we are talking about competition concerns, then obviously it has the expertise; if we are talking about diversity, then I am not sure I would not prefer the Secretary of State over the Competition Commission, but in principle there should be independence.

**Q1945 Chairman:** We will come to some of those things. To begin with, could I put what we are going to talk about under the umbrella or the context of European Union law. See if I am right in trying to summarise the position. Subsidiarity applies in the media area. There is no requirement for a separate media law inside the United Kingdom. As far as EU members are concerned, there should be a free market in the media as everywhere else, but it is up to the individual nation what restrictions they place on non-European Union ownership, and quite a lot do place restrictions. Notably countries like France do that. We used to do that ourselves but, as I remember from the 2003 Communications Act, I think that was then changed then with the effect that for example, even though there were no reciprocal arrangements, a United States company can now take over, for example, ITV, whereas if we went to the United States, as we did, there is no chance at all of taking over any of those companies. Is that roughly right as a description?

**Professor Woods:** The EU has certainly taken a view that issues like media pluralism, control of media ownership, are currently matters for the Member States. There is a rumbling issue as to whether there should be an ownership directive. It comes up sporadically. The European Parliament in particular is very concerned about the concentration of media ownership in Europe and says that something should be done. It is questionable whether the European Union has competence to act. Having said that, media ownership is not entirely outside European Union law as the Media Regulation can cover media mergers, providing it meets the threshold test or it is significant enough for European law, although there is a safeguard clause to allow Member States to act in the interests of media pluralism. There

was a case in the Nineties where the European Commission cleared a newspaper merger, but then the UK authorities said: no, with the interests of media pluralism in the UK, it is not acceptable.

**Q1946 Chairman:** Does the system or the aim of a free market – in other words if I was a chairman of a British company I could go out and buy a television company in Germany or a newspaper in France – actually work?

*Professor Woods:* There has been some consolidation across Europe. In fact, the European Commission seems quite favourable to pan-European giants, if I can call them that; for instance, the idea of competing on a global marketplace. For example, Kirch went into the pay TV market in Italy and that seemed to be quite acceptable. The Commission seems much less keen on consolidation within a particular Member State.

**Q1947 Chairman:** I suppose the point I am getting at is: although the principle and the aims may be clear, in practice are there barriers to actually taking over a media company even in another European Union state?

*Professor Woods:* There probably still are in terms of remnants of the old media regulation system. There was a case just before Christmas involving Italy and it actually just involved Italian companies, but the concern was that it could equally affect a company from another Member State. That was to do with a failure to award spectra actually to broadcast. The Court in the late Eighties and Nineties has stuck down national monopolies so as to allow other competitors in. In practice it seems to be that the buying of licences or newspapers has been within the same Member State. You are getting mergers at a pan-European level but the actual franchising seems to be taking place as a national ecology.

**Q1948 Chairman:** I was reading a piece by David Montgomery who is going to give evidence to us later. He is obviously trying to create some sort of European group. One of the journalists of the paper which was taken over was quoted as saying, “You cannot read our newspaper; you do not speak German; you speak business talk. We might as well be writing in Chinese for all you can understand”. I just wondered whether it was that sort of reaction that defeated all the best intent of an open market.

**Professor Woods:** I am guessing here because I tend to look at the cases and the decisions that the Commission actually make. In a way, you see the ones that triumph and the ones that do not but I would suspect that there probably are strong national cultures.

**Q1949 Lord Inglewood:** This is probably for you, Professor Woods. You said in your previous remarks that you were unsure about whether or not there was a competence at European level for some sort of non-competition media regulation to be introduced if that was what was wished. Could you elaborate a bit further, please?

**Professor Woods:** The basic principle is that if the European Union is to act, it has to peg it on to a particular provision, and quite often that is the internal market. I am not sure that a media merger regulation would get in the way of cross-border flows of television services or whatever. You could argue that they have competition competence, but the problem there is that presumably, if you look at what the European Parliament is saying, what they actually want is a media pluralism directive. That is where it is questionable whether the EU has competence because it only has framing policy in issues such as culture, so it cannot harmonise.

**Q1950 Lord Inglewood:** So probably, if anything were attempted and a serious debate raised, it would end up at the European Court of Justice?

**Professor Woods:** Probably.

**Q1951 Lord Inglewood:** Would Article 235 have any bearing on this, do you think? Could you argue that, do you think?

**Professor Woods:** I have not thought about 235. It is arguable but to get that through you would need all the consent of the Member States in the first place.

**Lord Inglewood:** I think we have gone slightly off-piste on this one!

**Q1952 Chairman:** Professor Gibbons, did you want to add anything to the questions on Europe?

**Professor Gibbons:** No. I agree with Professor Woods both on the competence point and also on the point about culture that she made. I think that is where you have not seen a movement of cross-owning in Europe and the idea that the pan-European market, which was one of the original objectives behind the Television without Frontiers Directive, has not really materialised and it is because of language and culture, I think. You also have to bear in mind that there are domestic regulatory regimes, often reflected in licensing, so that when you are buying into a company, you are buying into a regulatory regime as well. As Professor Woods said, it often reflects different cultural requirements. That may be the reason why we do not have interest from, say, the United States in buying ITV because they would be buying an ITV licence with all the understanding of public service obligations and our culture that that requires.

**Q1953 Chairman:** Culture is a lovely phrase. What does it mean? It can mean nationalism or simply a reluctance to change.

**Professor Gibbons:** I was thinking more in terms of media values, audience expectations, the sorts of things that viewers are likely to have, the kinds of programming that they find attractive. I was not trying to elevate it into something else.

*Professor Prosser:* I am in complete agreement very much with my colleagues. On the final point, of course, linguistic concerns outside the UK are a particularly strong point of culture and are absolutely central to the World Trade Organization negotiations that produced the cultural exception in relation to broadcasting. So culture does cover a multitude of different things.

**Q1954 Lord King of Bridgwater:** Can I turn to one point Professor Gibbons made? In the earlier comments you said that you thought that the recommendation of the investigations should be binding on the Secretary of State. Is that right?

*Professor Gibbons:* Yes, the recommendation of Ofcom with respect to pluralism.

**Q1955 Lord King of Bridgwater:** That should be binding on the Secretary of State so that he has no discretion over that at all and this is your way to get politics out of it?

*Professor Gibbons:* I think we might put in “normally” somewhere to allow for the possibility that there could be a major public interest at stake with a major political dimension. I think that to create a distance between the politics and the investigation into the practice of pluralism one would want to go with the expert.

**Q1956 Lord King of Bridgwater:** I was wondering which Secretary of State is going to carry that legislation through, recommending he would be voted out on it, but that is by the way. In this issue about the public interest tests with newspaper mergers, do you think the arrangement and the considerations that apply are sufficient to protect the diversity and quality of news?

*Professor Gibbons:* Not entirely; the provisions are I think broadly defensive and broadly precautionary. What they do is seek to ensure that the status quo is not damaged by the merger or the proposed merger, but if you were to say whether that was adequate or ask me

that I would say: no, because it does not deal with the quality of news, the setting of the agenda, the breadth of issues that are covered in the news. It does not provide for any positive way of improving news quality. I do not think we should perhaps expect it to do that. Maybe for that reason then the notion of sufficiency is misleading because it implies that what it does is adequate.

**Professor Prosser:** I do not have anything to add. Again, we are very much in the difficulties of politics here, are we not, because the sort of proposals that Professor Gibbons mentioned I suspect would face very formidable political difficulties in implementation. That is the problem.

**Q1957 Lord King of Bridgwater:** How do you assess the way you measure the sufficiency of plurality?

**Professor Gibbons:** I do not think you can do it other than by doing something like what the Competition Commission did recently with the BSkyB ITV case, which was to talk to the people on the ground and talk to the journalists and get a sense of the extent to which they feel that they are being interfered with. This kind of regulation does not tackle the real issue at stake, which is the diversity of content. It circles around finding surrogates for testing the diversity of content. One way it does that is to ask: are journalists being interfered with by proprietors or by the structure of the industry, the finances and the resources and so on? In some ways that leaves the question at one stage removed because you have to ask yourself: are journalists the kinds of people who can take on this responsibility? In large part, I think they are, with some perhaps modifications that we might discuss later on. For that reason also I do not think you can create a statutory test that goes much further than identify a number of issues, which then have to be investigated in discussion with the people who are doing the job, the journalists.

**Q1958 Lord King of Bridgwater:** It is not just whether proprietors are interfering with journalists but it is whether the proprietors are all concentrated in one particular mindset or approach and that you can get plurality by a plurality of proprietors who may interfere like mad with the journalists but that might not matter so much.

*Professor Gibbons:* Indeed, yes.

**Q1959 Lord King of Bridgwater:** There is an interesting thought, reflecting on this. We have had evidence from people sitting where you are sitting now, the Chairman and the Director-General of the BBC, being concerned that there was what they called a soft left bias among the journalists who worked at the BBC. In that case, you can see, and obviously Gavyn Davies is on record, that if he had stayed on as Chairman, he would probably have tried to alter that balance in some way, which he obviously thought was necessary for plurality of view coming out of the BBC. Would you like to comment on that?

*Professor Gibbons:* In an ideal world I think we would want to have proprietors who were willing to have a debate within their organisation about the purposes of journalism and offer the journalists considerable scope to do what they think is journalistically appropriate. Some proprietors perhaps do that more than others.

**Q1960 Chairman:** Some witnesses have told us that there is a need for an objective public interest principle to underlie regulatory intervention. Could you design such a thing?

*Professor Gibbons:* I am not sure whether that will not come. I think some attempts have been made to try to quantify what the public interest in plurality is. There were some attempts in America not so long ago to try to create an index of pluralism. Really it identifies again a number of surrogates and an inference is made from numbers of owners or numbers of adverts and so on. It is very difficult to identify quite what is an adequate degree of pluralism. In all the debates about media ownership in the last 10 to 20 years, it has been very difficult to

pin it down. It comes down to something like having two, three or four players in the market, which is a rather vague sort of idea in some ways. It is difficult to find an objective justification for that. I think that pluralism is very much about a political sense of what is a healthy democratic society and what diversity of viewpoint is available in that society. It is a matter of judgment. It cannot be put into a test very clearly. All that one can do, I think, is try to make the tests based on sufficiency a little bit more articulated, maybe identify the fact that we are dealing with content essentially, point to sources, point to outlets as well, and then construct a test around the idea that there should not be a reduction in the coverage of viewpoints that reflect the views of the particular market, whether it is broadcasting or the press market.

**Q1961 Lord King of Bridgwater:** Do you think there is a tendency for plurality still to focus on what I call the old media and not take sufficient account of all the other areas? I think one of the interesting things that this Committee has been impressed with is the realisation of how many people obviously have a particular view of news provision; they get their news in quite different ways from anybody who was looking for plurality ten years ago and completely different arrangements exist in so many areas. Do you think it does take account of the new arrangements, the new possibilities?

**Professor Gibbons:** The test in itself does. It is open to the authorities to take those into account. I do not think there would be any need to mention those specifically, as long as the authorities were aware of different forms of news availability. It is still the case that internet news is a small part of total news availability and really serves to complement standard news organisations' offerings. Indeed, much of it is offered by standard news organisations. I think that one would expect the authorities, in applying this test, to take that into account, and indeed I think the Competition Commission did do that in the recent Sky case, but it came to the conclusion that was not weighty.

**Q1962 Lord Maxton:** Increasingly, broadcasters and newspapers are using the internet. Although the actual news content on the internet as such on Yahoo or Google may be quite small, it is a platform that increases things, is it not? In a sense, the biggest media merger that appears to be about to take place, which is between Microsoft and Yahoo, Microsoft buying Yahoo, we cannot control in any way whatsoever. Now you have got essentially a system provider and the access platform coming together in a way, and neither of them so far have attempted to interfere politically at all, that perhaps has the potential there for enormous power, does it not?

**Professor Gibbons:** That makes it all the more important to ensure that there are complementary sources of news reflected in public service broadcasting, either broadcasting or through the internet, and also efforts to preserve the existing domestic structure because I think the existing domestic structure, whether it involves accessing the internet or taking broadcasting of various kinds, will be very significant. That is the way that people on the ground experience news, experience plurality, and that is where the internet should be. I can see maybe a long way down the line, if all broadcasting were to disappear and we were all capturing our news as we wanted from the internet, then there might be a diminution in the amount of news that many of us will receive, but I cannot really see that happening in the foreseeable future.

**Lord Maxton:** You and I disagree on that. I think that will happen relatively quickly in the sense that not necessarily news but broadcasting as we know it will cease to exist; it will be narrow-casting and I think it will essentially be down the platform of the internet; report broadcasting will come, controlled by the remote control through the television, yes, but it is controlling either a computer built into the television that is built into a computer in another room.

**Q1963 Chairman:** Let us get out of futurology. We can keep it in mind. The important lesson you were drawing, as I understand it, from what Lord Maxton was saying was that in fact it rather underlines the importance of public service broadcasting at a national level?

**Professor Gibbons:** I think very much so.

**Q1964 Chairman:** I notice, Professor Prosser, that you agree with that? You are nodding your head.

**Professor Prosser:** I was nodding my head very strongly at that. It seems to me that people have very different expectations of information over the internet and information from traditional broadcasting. That seems to me to be a very good thing. We have the internet, subject primarily to competition-based controls, such as they are, providing freedom of expression rather well, so to speak. Anything can be on the internet. As I tell my students, you should not believe it without checking there is some form of quality control. We have public service broadcasting, which is subject to editorial standards, some forms of quality control that may be breached on occasions but nevertheless which goes some way to preserve some sort of trust in the public sphere that we can expect that the information has been subject to some form of checking and that there is some form of impartiality and treatment of opposing views required. It seems to me to be totally desirable to have two very different spheres for different purposes.

**Q1965 Chairman:** But they are very different?

**Professor Prosser:** They are very different indeed.

**Professor Woods:** I just want to ask the question: where is all the content on the internet coming from? It is all very well talking about the distribution platforms but who is providing the content? At the moment, it seems to me, that it is heavily reliant on existing media content providers. News gathering itself is a very expensive enterprise if you are talking

about overseas correspondents and all that, rather than happy little stories about pigs escaping from Tamworth, or whatever. There is still a link there and the internet to some extent is dependent; in fact some of the news organisations have brought intellect property claims about Google and some search engines taking headlines and photographs.

**Chairman:** And there are battles being waged at the moment on this very point.

**Q1966 Baroness McIntosh of Hudnall:** I wanted to come back to the public interest question but it may be that it is better wrapped into later points. I will state it. Professor Gibbons I think made the point that there is a political element in the ultimate in deciding how the public interest is constructed. There is a disposition I think generally at the moment to think that everything would be better if politics were not involved in politics, or particularly of politicians were not involved in politics. In reality, it felt to me as though what you were saying was that the construction of a public interest test, as it were, is fundamentally about values and therefore about what is set within a political context as being the prevailing values at the time. Those will change because democracy delivers different sets of values when it delivers different governments. Do you think in that context, firstly, that you would stick by one or other view that it would be better to get the Secretary of State out of this process and, secondly, if you agree that that is the case, can we ask you again: is it possible to develop a way of talking about the public interest, let us say, which preserves a sufficiency of objectivity for people to understand what is being attempted but actually acknowledges the fact that in the end somebody has to make a judgment?

**Professor Gibbons:** Very broadly, it is a matter of process. The basic ground rules here ultimately are political and the politicians have to set those rules. I do not think you can quantify then what is appropriate to generate plurality; it is a matter of trying to work out in a very fuzzy kind of way what range of opinion you think is desirable to be voiced and the viewpoints. You do not want to give a voice to every viewpoint and treat it equally because

that would give disproportionate weight to perhaps rather extreme viewpoints, but maybe extreme viewpoints ought to be heard from time to time. The media might sometimes have a role in having special study weekends, like Channel 4 used to have some years ago, of the particular ideologies. That would be fine. How one constructs the balance is for the politicians and it is for them to come to a judgment about whether five players or six players or two players is sufficient. Having come to that judgment, I then think that when the rules are applied, the politicians should stand back because, having applied the rules – and of course that creates a burden on making the rules reasonably intelligible, understandable and predictable because the industry obviously like predictability – I think the expert regulator taking evidence about these matters, in so far as it can, should be taking the primary role. I would hope that I can be consistent in that.

**Q1967 Baroness Scott of Needham Market:** To follow that, the creation of the rules means within a legislative framework. Is it ever possible to have a set of rules which moves as fast as the sector does, or would it not always be the case that you were applying rules that were out of date or not consistent with the economic environment or the business environment?

**Professor Gibbons:** In some ways I think it is not so much of rule; it is rather perhaps of principle or of a standard, and so identifying a set of relevant criteria and then applying those in a different context. If you were to say: we do need media to reflect the whole range of issues, viewpoints and positions in a particular market, how that is done will be dependent on how the market changes and what new kinds of media there are. You can still apply the standard in a general way in that sense.

**Q1968 Baroness Howe of Idlicote:** Going back to the public interest test again, my memory of the background is that there was quite a lot of debate and the actual way that it was framed in the end was a bit of a compromise anyhow. Applying this to the regulators, really do you

think that both Ofcom and the Competition Commission are indeed the right sort of organisations, regulators, to make this sort of judgment, not least given that Ofcom, though more broadly based as I think one of you said, nevertheless is mainly economic and technical geared and the content side would not get much of a look in?

**Professor Prosser:** The Competition Commission I think, as I mentioned earlier, is very much an economic-based regulator. That is its speciality. That has been the big change in competition law over the last ten years, that we have moved away from a general public interest test to a competition-based test in competition law generally with these very limited opportunities for the Secretary of State to raise public interest issues. The Competition Commission, it seems to me, is not the best body to decide on issues of plurality, given that plurality is not essentially an economic issue; it involves some economic elements but it is primarily an issue involving citizenship, for instance social principles, one might say. This is why I saw a role for the Minister at the end of the process. Ofcom is in a rather different position, given that it has dual responsibilities relating to consumer protection and protecting us as citizens. It seems to me that Ofcom would be a better qualified body to examine the plurality issues. It has a good record in terms of openness, in terms of making clear what it is doing, and so on. The difficulty with Ofcom is a familiar one of how it balances its two remits because they can very easily come into conflict between the rights of the consumers and the interests of citizens.

**Q1969 Baroness Howe of Idlicote:** As you will know, and indeed you might like to comment on this, they got into a bit of a muddle right at the beginning by trying to blend citizens and consumers together. Is not this always going to be quite a problem for them in sorting out these sorts of tests?

**Professor Prosser:** I think it is always going to be a problem where you have a combined regulator of that kind because a lot of their work will clearly be economics based; for example

the telecoms side. What is important, though, I think, is to realise that in each of the issues that it deals with there will be two ways of viewing things: the interests of consumers and the interests of citizens. In the end, they are not the same thing. This is something which has come out strongly in the Review of Public Service Broadcasting, for example. There is a conflict there. How we deal with it, I am not sure.

**Q1970 Baroness Howe of Idlicote:** I wondered what the other two of you thought about this. Ofcom have had a very important role and have done a lot of extremely good things, in my view anyhow, but we may be moving to a time when they should give rather greater prominence to the contents side of their work. They could do, I would have thought, even within that framework.

**Professor Gibbons:** I very much agree with that. The Content Board seems to have been lost in some ways. As far as I can tell, it has a clear role in the adjudication of content issues, but its contribution to the broader debate about policies within Ofcom do not seem to be very obvious. I take it there are some influences. If you look at the Public Service Broadcasting Review generally, Ofcom seems very ill at ease in talking about citizenship issues; it does not have any debate within itself based upon non-economic considerations. I am sure there are people in the organisation who would want to express those views but they are not very obvious. I think I would have to agree with Professor Prosser: if those kinds of issues are not very prominent in Ofcom, it does raise questions about whether Ofcom is perhaps at the moment the best organisation to deal with these plurality questions ultimately. However, if the content remit were to be strengthened within Ofcom and it were to develop this debate within itself, I would feel fairly confident.

**Q1971 Chairman:** Where would that leave the Competition Commission?

**Professor Gibbons:** Again, on the issues of plurality, I am not so sure the Competition Commission are all that ideally competent. Having said that, I was very impressed with the way that they handled the plurality issues in the recent investigation. There was a sense, I thought, that they were gathering information about plurality without quite feeling it. It was interesting at one stage that they made the point about plurality being a matter of democratic interest, as if that were something odd. I thought that was quite telling really. Having said that, they gathered evidence from various experts and from people in the industry and so on and they tried to make a determination about plurality which I thought was probably defensible, with one qualification that we might discuss later. They could do it but I would much rather see Ofcom deal with this.

**Q1972 Chairman:** I suppose the question I am asking is this. If I was trying to take over a company, having both these big bodies tramping over the ground, can it not be rationalised so you get it into one?

**Professor Gibbons:** The problem is that sometimes the pluralism issues conflict with the competition issues.

**Q1973 Chairman:** And you think you need both?

**Professor Gibbons:** I think somebody has to create a trump card, as it were, and it has to be within the basic legislative framework. The politicians have to say: this is the dominant consideration.

**Q1974 Baroness Howe of Idlicote:** Going back for a minute to Ofcom, and perhaps we could hear from Professor Woods too, one of the interesting things to me is that the Consumer Panel, because it was rather more independent, seemed to be coming out in its report with one

or two of the citizenship aspects of giving advice. I wondered again whether rather more pressure needs to be put on Ofcom to look at this whole area again.

**Professor Woods:** I think there is a problem with the Act in the sense that you have the two duties specified one after the other in section 3, or whatever, but then that is more or less it for citizenship. I know there is a couple of references but the way in which the consumer is to be protected is rather better delineated throughout the Act. Then you also have other definitions like “members of the public”. How is a member of the public different from a citizen? I think Ofcom is not helped in that regard. Certainly it is left to its own devices in making a choice about which version, the consumer or the citizen, to prioritise in the event of conflict. I am rather uneasy about that. The Consumer Panel is limited in what it can comment on under the Act but I could be wrong. My sense is that it is limited by the terms of the statute.

**Q1975 Baroness Howe of Idlicote:** But it publishes its report?

**Professor Woods:** Yes.

**Q1976 Lord Maxton:** Has not the Content Board however recently done work on advertising on television in relation to food, fast foods and children and so on between the 9 o'clock watershed and so on? They have produced some reports on that, so they have not done nothing. I do not necessarily agree with what they said but leave that aside; they have done something. Turning to BSkyB, that comes into competition obviously. The argument is that BSkyB deliberately bought those shares in order to stop Virgin basically from merging with ITV or taking over ITV, I do not know which. Virgin is, even now, still not happy although they think that it is better than nothing. They are still not that happy with this need for a small percentage. Do you agree? Do you think they should have been told to get rid of all of it?

**Professor Prosser:** I think there were two issues here. If we are looking purely at the competition-based test, which is the one on which the decision was made, it seems to me that the reduction below 7.5 per cent deals with those issues. What I found a bit less convincing in the Competition Commission's report was on the issue of plurality. If I remember rightly, the three points that it used in deciding that there was not likely to be a problem of plurality, for example in news provision, were: firstly, that the editorial culture was strong enough in ITV to prevent a shareholder putting pressure on; secondly, that ITN had an independent board and would not be influenced and there is a 40 per cent shareholding by ITV in it; and, thirdly, that news is covered anyway by demanding standards concerned with impartiality, et cetera. My worry about the first two is that there is no obvious means of monitoring what happens after the decision, and that I think is where we have a potential problem. In one sense, it is speculation. On the final one, it seems to me to be a confusion because, as I think Ofcom evidence to this Committee pointed out, the rules on impartiality and so on are concerned with individual programmes primarily. The issue on plurality is a different one; it is the ability to set agendas by dominant shareholders, for example. I think that was a point that was missed.

**Q1977 Lord Maxton:** But Virgin would have become the dominant shareholder, so in fact it could have become almost the sole shareholder in the case of a merger. In terms of some aspects of that, although it is a Virgin name and everybody thinks it is Richard Branson, Richard Branson has a tiny share. As far as we are aware, and you may know better than us, Virgin is not a British company; it is not British owned, is it?

**Professor Prosser:** I do not know the answer to that. I suspect that you are correct on it.

**Q1978 Lord Maxton:** In fact BSkyB could be seen as more of a British company than Virgin?

**Professor Prosser:** Yes. Does this not perhaps show the point that was made earlier by Professor Gibbons about the importance of a qualitative element to these questions, that you cannot lay down rules and think that that is enough because precisely the issues that you have raised here are the ones that would be investigated, surely, by a competition authority or by a body like Ofcom? What is the history of those involved in Virgin in, for example, putting pressure on editors? What is the history of Sky in relation to that? Those would be precisely the sorts of issues that a competition body or another regulatory body should investigate.

**Lord King of Bridgwater:** Could we clarify? Who owns Virgin? Is not ntl one of the owners?

**Lord Maxton:** ntl has been bought over and changed in ownership of shareholders.

**Q1979 Lord King of Bridgwater:** Does anyone on the panel know what the ownership is of Virgin Group?

**Professor Prosser:** I think ntl is American now.

**Chairman:** We can check this.

**Q1980 Baroness Scott of Needham Market:** I want to come back to the role of the Secretary of State. In general terms, I think one can characterise your response by saying that you think it is important to keep too much political interference out of the process; the job of a government department is to set a framework. Then, Professor Gibbons, you used the expression about the Secretary of State playing the trump card. What I want to do is to go through some of the bits of process and say at what point should he be playing the trump card or his cards. If we start with Ofcom, it has its statutory duty to promote the interests of the citizens but it does not have the power to initiate its own public interest investigations. First of all: do you think it should have or is it right that they rely on the Secretary of State to decide whether that should be taken forward?

**Professor Prosser:** My view is that it should have this power. I think that again in the rest of competition law and in other areas of regulation the shift has been much more towards saying that independent regulators should have autonomy to initiate investigations themselves. We see this with the OFT for example. It seems to me that as long as you provide discretion at the end for the Minister and the Minister has publicly to justify how he uses that discretion, the early stage of deciding whether to investigate seems to be something which could be left to the independent regulator. That regulator will know the market better than the Minister, one hopes, or the civil servants, because it is the job of the regulator to keep the market under supervision. It would seem to me that that would be very desirable.

**Q1981 Baroness Scott of Needham Market:** Would you all feel the same way?

**Professor Woods:** I think it is odd that Ofcom does not have that power at the moment to do that. I wonder how we deal with a decision not to investigate then if we are leaving review right to the end.

**Professor Prosser:** A decision by Ofcom not to initiate and investigate would be subject to the usual procedures for challenge by the Judicial Review Board.

**Q1982 Baroness Scott of Needham Market:** Would you think in that case – that the Secretary of State would have another trump card, which would be to say: you decided not to investigate it but I think you should? Would it work that way round too?

**Professor Prosser:** Like a call-in in the planning system? Yes, I think that would be an interesting proposal which I had not thought about before. It could be desirable.

**Professor Gibbons:** Of course it would always be open to competitors and indeed members of the public to make a complaint or ask for an investigation. I would see Ofcom's initiative as being a backstop possibility if complaints were not coming out of the market or elsewhere.

**Q1983 Baroness Scott of Needham Market:** Would it be your view that really Ofcom would have to have that power because the remit of the Competition Commission is too narrow? Is that narrowness an element?

*Professor Prosser:* Yes.

**Q1984 Baroness Scott of Needham Market:** If Ofcom raised a concern, then automatically referring it to the Competition Commission, would that in your view be helpful or not because they do not have the remit to deal with the broad issues?

*Professor Prosser:* I think that would be helpful also. At that second stage of deciding, having done a preliminary investigation, whether or not it should go to the Competition Commission again is something that Ofcom as a regulatory body would be well placed to do. It seems to me that the public interest issues would come in at the end in deciding whether or not to accept Competition Commission proposals, but earlier at the stage of investigation that is again precisely something which independent regulatory bodies should be good at.

**Q1985 Baroness Scott of Needham Market:** At that end stage, should the Secretary of State be bound to accept the use of the regulatory authorities, in this case at the moment the Competition Commission, or is it right that they have this discretion that they can use as their trump card?

*Professor Prosser:* This is where I think we may differ somewhat. My view is that there should be a remaining discretion for the Minister, partly because of the formidable political difficulties of removing that. It is just not on the agenda in this context as opposed to ordinary competition law. Secondly, however, it seems to me that, given the importance for a democratic society of these issues, they could well raise considerations that are a bit broader than we could expect an independent regulatory body, particularly a competition commission type regulatory body, to take on board. The important qualification to what I have said is that

of course the Minister's decision should be fully reasoned; it will be subject to judicial review, so it is not a matter of the Minister simply taking a decision which completely disregards anything that has been said earlier. It seems to me the role of the regulator is to inform, advise and propose and not take the final decision.

**Professor Woods:** I have concerns with plurality issues being determined in the final instance by the Competition Commission, merely because with its focus it has a very narrow view. I suppose the public interest is different in different contexts, and also the level of threat we are prepared to accept. The standard position in European competition law and now the Competition Act is that power in itself is not bad; it is the abuse. So we are waiting for an abuse to happen almost in a competition assessment. I am not sure I am so happy to wait for somebody to abuse their power in a media context before we feel there is a problem. I think there is a lower level of acceptable risk to plurality in that context. For that reason I think I am not happy to see plurality issues being the job of the Competition Commission. I think in that context the Secretary of State can take in broader issues. I do have concerns about, I suppose, independence and what Professor Prosser has said about fully reasoned decisions maybe carrying some weight. I am slightly uneasy.

**Q1986 Baroness McIntosh of Hudnall:** Can we perhaps look at that by example because we have an example in front of us now of a very recent decision that was taken by the Secretary of State on advice from the Competition Commission; Ofcom were also involved. There is a remedy that has been proposed by the Secretary of State which may or may not please any of the parties involved but it was taken by the Secretary of State. If you take that example, is that for you a good example of how these various regulatory pressures work? Is it textbook? Is it faulty in some way? I know we have already discussed this but just in terms of the procedure, the processes, how does it rate?

**Professor Prosser:** We are talking here about ITV and BSkyB?

**Q1987 Baroness McIntosh of Hudnall:** Yes. I should have said that.

**Professor Prosser:** It is a very unusual case. Remember that the Secretary of State found that there were no plurality issues involved, as did the Competition Commission, given those protections that it believed existed. In a sense, it was very similar to an ordinary merger case concerned with a non-media institution. That seemed to me the sort of case where there would be no problem in saying the Competition Commission can take the final decision and decide on remedies because the issue was one of maintaining competitive markets. Had there been plurality issues involved and had this been accepted by the investigatory bodies, then I think we would have moved into the territory which we have just discussed where it seems to me that the Minister's role would be important and where you would need to have a responsible Minister taking the final decision on an informed and public basis.

**Q1988 Baroness Scott of Needham Market:** Could I ask your colleagues because you are the ones who are slightly more sceptical about the role of the Secretary of State? If we had the situation that you have all agreed that you would like where Ofcom could initiate investigations, it could become more commonplace that they would find on their public interest test that something was not all right and the competition authorities would find on their economic framework that it was. If you do not have role for the Secretary of State, who would arbitrate between the two views?

**Professor Gibbons:** If we had that position, I think it would have to be built into the legislation somehow that one consideration dominated the other. Other things being equal, I would tend to go toward the plurality test being dominant. It is interesting that we have not really had the relationship between the two properly tested, as Professor Prosser said. One could almost imagine a convention beginning to develop that the Minister would have to show really good reasons why he or she would depart from the recommendation of a regulator. In some ways, it is easier for that kind of expectation to start to develop when

you have had a negative decision such as we have had – there was no plurality problem – because for all that, the reasoning was very close. There were good reasons offered for why the Minister decided to accept the recommendation that there was no plurality problem and one could see that carrying through into future decisions. I think we might in any event be getting to a situation where the political manoeuvrability is going to be limited by developing expectations that even these kinds of what ought to be political decisions have to be fully rational.

**Q1989 Baroness McIntosh of Hudnall:** I had something chasing through my mind while you were talking there, which was about some evidence that Ofcom gave to us when they were before us a few weeks ago. Ed Richards, speaking about this issue, expressed some surprise to us that the plurality issue did not seem to have been accepted as being relevant in relation to the BSkyB thing. I think that surprise was probably not limited to him; that there were a lot of people looking in on that issue who probably took a similar view. Were you surprised that plurality was not deemed to be an issue there?

**Professor Gibbons:** I was initially; then, when I looked at it more closely, I thought that the reasoning seemed quite strong. However, I said earlier that I have one reservation; that is, I think that the Competition Commission did not really have a sense of the long term and the kinds of resources that might be put into news organisation. Related to that is the issue of the viewers' or the end users' experience – the sense of trust. Because, no matter what might be said about this, I think there will be an underlying suspicion that, if BSkyB were to have that kind of interest in ITV, can we really trust ITV to be the kind of organisation that it was? There may be no rational basis for that, but I think that trust is quite an important element of the relationship between the journalist and the readership and audience. The Competition Commission took a rather formal view of measuring that trust, I thought. With that

reservation, it was perhaps a little odd that it did not, on balance, find there was more of a risk.

**Q1990 Lord Maxton:** Do you think if they had not done that and the Virgin takeover of ITV had gone ahead, Sky would have insisted on that being referred to the Competition Commission?

*Professor Gibbons:* I do not know.

**Q1991 Lord Maxton:** Surely that raises even greater issues of control, plurality and all the rest of it? Would there not have been an equal case for that to have gone to the Competition Commission and to Ofcom? Do you think it would have happened? I know that you are guessing.

*Professor Gibbons:* I am guessing, but it should work both ways.

**Q1992 Lord Maxton:** That is what academics are for, is it not?

*Professor Gibbons:* Yes, indeed.

**Q1993 Chairman:** There is perhaps a danger in our building a whole structure on one case, is there not? This is not the only case that we have had over the years, under different Governments as well. The dilemma remains. We have received a lot of evidence on politicians wooing proprietors, owners, and on the face of it there does seem to be a dilemma – I would not put it more strongly – in having the politicians who are wooing proprietors also deciding, in the end, about what the final disposition will be of a proposal to merge. Is that not the essential dilemma on the independence point you are putting?

*Professor Gibbons:* Yes.

**Q1994 Baroness Scott of Needham Market:** There is a final question on that which is that, having made the decision, there is the question of remedy. At the moment, if there is not a plurality issue then it is straightforward: it is a competition issue. If there is a plurality issue, however, it is the secretary of state. Is that a situation that you think is right, or is it one of the reasons why you thought Ofcom should also have an ability to launch an investigation?

**Professor Prosser:** On the remedies issue it seems to me that there is no reason why you should not leave the remedies decision to Ofcom. The minister's role in my view is to take the final public interest decision of substance. The minister will not have a particular role, it seems to me, where you have the details of the remedies, because the body that is closer to the market – the regulator – will be better able to decide on remedies, particularly given that that is the body that should be responsible for monitoring observance of the remedies as well. I think that we could therefore leave that for the regulator.

**Q1995 Chairman:** I do not know if things have changed but, certainly when I was in the Cabinet, this did not come to Cabinet because it was a decision for the secretary of state, sitting in a quasi-judicial position. Is that still the position?

**Professor Prosser:** In general competition law, no; it is for the competition authorities. That was one of the changes made by the Competition Act and the Enterprise Act. In this area, because of the public interest considerations, it is still for the minister.

**Q1996 Chairman:** In effect what it means is that one secretary of state actually makes a decision, at the end of the day.

**Professor Prosser:** Yes.

**Q1997 Chairman:** But you are saying, "That's fine. It can be subject to judicial review".

**Professor Prosser:** That is one potential means of accountability.

**Q1998 Chairman:** It is not much of a safeguard, is it – judicial review? It is simply a matter of opinion, in a way. I am not quite sure how he could be challenged on judicial review successfully.

*Professor Prosser:* Judicial review has developed extensively recently. Certainly I can imagine a court asking the secretary of state to justify his reasons publicly as part of that process. It seems to me here that, as we are dealing with issues that are value-based, it will be very hard to say that there is a simple rule that can provide the outcome. If we are talking about values, it is for the minister. The important thing is that the minister has to justify those values publicly, and that is the sort of process that I would envisage.

**Q1999 Chairman:** At the moment the position is...?

*Professor Prosser:* The position at the moment is that judicial review would apply to a remedies decision, I think. It has not been used because we have not had opportunities to see it, given that we only have this one decision. The substance of the ITV/BSkyB decision is likely to be appealed to the Competition Appeal Tribunal, given the nature of the decision anyway. We will therefore have scrutiny of the substance there.

**Q2000 Baroness McIntosh of Hudnall:** May I ask this, and it is purely out of my own ignorance – given that we were talking about remedies. If it had been established that there was a plurality issue at stake here and the secretary of state therefore had been the person determining the remedy, what other remedies might he have had available to him than that which in the end was applied in any event?

*Professor Prosser:* Further behavioural remedies, promises by ---

**Q2001 Baroness McIntosh of Hudnall:** Promises not to buy any more shares?

**Professor Prosser:** Not to buy any more shares, or promises of editorial independence. Promises of that kind were used, not very effectively I think, under the old newspaper mergers regime. My colleague knows more about the history than I do.

**Professor Gibbons:** These kinds of behavioural undertakings are common in, say, regional newspaper merger decisions. That would be the way to deal with it, to try to retain the editorial framework that previously existed.

**Q2002 Lord Maxton:** It seems to me that, yes, the regulators have dealt with the shareholding of BSkyB into ITV but they have not dealt, and seem to be unable to deal with, the other dispute between Virgin and BSkyB over BSkyB not allowing Virgin to show and not paying enough for Sky News and the other main Sky channels. In a sense that has been much more damaging to Virgin than the BSkyB shareholding. Why have they failed to deal with that? Could not Ofcom have said, “You must sell Sky News, et cetera, to Virgin”?

**Professor Prosser:** I am trying to remind myself of the powers that Ofcom would have in that situation under the Act. I would need to check up what it could do. I am not sure what the progress of that case is at the moment. I know that there were bitter disputes between the parties and heavy criticism by Sky of Ofcom, but I am not sure whether we have yet had a decision or not.<sup>1</sup>

**Professor Woods:** There are also European rules on ‘must carry’. If you were turning a channel into a ‘must carry’ channel, like the BBC channels are ‘must carry’, it has to be justified within European law as being proportionate, and there are requirements that it has to be a channel that the majority of the population receive. There are therefore limitations there.

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<sup>1</sup> *Note by Witness:* Ofcom is currently conducting a review of the Pay TV market including these issues. The outcome will determine whether it needs to exercise its Competition Act powers, which could include issuing directions to end an infringement of the Act.

**Q2003 Lord Maxton:** There is a competition element to it, in the sense that anybody who has Virgin media only has access to one, basic, 24-hour British news service, and that is the BBC; whereas if you have any other platform, including Freeview, you have access to at least two, if not three.

*Professor Woods:* Certainly, looking at this from an Article 82 perspective, there are questions now about whether refusal to supply constitutes an abuse of a dominant position; but then you have to go down the whole assessment of, “Have we got a dominant position?”. I suppose that, given the pay-TV market is generally regarded as separate from free TV, there could be an argument along those lines.

**Chairman:** I would like to bring in Lady Bonham-Carter on diversity of news.

**Q2004 Baroness Bonham-Carter of Yarnbury:** Both Professor Gibbons and Professor Prosser have suggested that they think the regulatory regime does not actually tackle diversity of quality of content in a totally satisfactory way. We kept being told that the fact that we have as many different national newspaper titles, owned by seven different groups, means that there is not a cause for concern here. However, do you accept that plurality of ownership ensures adequate diversity of content?

*Professor Gibbons:* I am not sure that it does, but I am not sure that I have a solution as to what we can do about it.

**Q2005 Baroness Bonham-Carter of Yarnbury:** Perhaps it is the right question!

*Professor Gibbons:* Yes. The problem is that diverse owners have a lot in common in appealing to readerships and audiences, and there will naturally be a lot of common ground. To create news organisations to cater for minorities or outlying points of view generally will not be commercially successful. Therefore, I think that the only way one can deal with that kind of diversity of content is probably through some sort of public provision, and that is

where, again, public service broadcasting provides an important complement. Other possibilities, I suppose, would be to try to generate a broader debate, perhaps within journalism, about what news is, what coverage of topical issues is, and what should be done, even within the constraints of a commercial organisation – but this is becoming very ideal, I realise. I suppose the other possibility may be to have some kind of tax incentive for certain kinds of, effectively, public provision, just as we have offered public incentives, say, on some of the spectrum. We might think in those terms, therefore. I do not have a thought-out plan.

**Q2006 Baroness Bonham-Carter of Yarnbury:** You are not aware of mechanisms, therefore, that are employed in other jurisdictions that actually tackle this?

*Professor Gibbons:* There is one, but I do not know whether Professor Woods would like to talk about it – the German one.

*Professor Woods:* This is German broadcast media. For dominant channels, they have to carry windows for independent third-party productions. This is going one step beyond somebody being independent and telling you somebody else's view, but actually allowing them to put that view themselves.

**Q2007 Baroness Bonham-Carter of Yarnbury:** That is television; that is not printed?

*Professor Woods:* That is not the printed press; that is broadcast TV and only applies to the dominant providers. Also, it has not been particularly successful, because they have not really had a stringent structural control. They have a very concentrated market in Germany. If you read commentaries on the German situation, they get by apparently by a strong public service – I think it is *Der Bund verpflichtet(?)* – in the basic service, with the pay-TV mopping up other things. They have a very big language group; so that they have the benefit of being able to support quite a wide pay-TV market.

**Q2008 Baroness Bonham-Carter of Yarnbury:** Andrew Neil suggested to us that, as well as a diversity of ownership, what was important was a diverse way of running newspapers; so that you have the Scott Trust, Mirror Group and family-run enterprises, and so on. I do not know if you would agree with that and, if so, if there is a way in which our regulatory regime could be used to encourage this.

**Professor Gibbons:** I think that the diversity of structure, in the way that Andrew Neil was describing, is perhaps not in itself that important. If the structure is reflecting different kinds of journalism, then that is significant. What we might want to do, therefore, is try to encourage, not completely highbrow journalism but the kind of journalism that does try to report as objectively and is as well-informed as possible. It may be that different structures will lend themselves to that kind of reporting more than others. I think that one issue related to structure is the whole issue of transparency. We do not really know very much about who owns or has effective control of newspapers. Yes, there are sometimes proprietors who are better known than others; but, in terms of who has influence, often it is not very clear, and what that influence represents in terms of perspective is not very clear. There might be something to be said for making it much more transparent that a paper or a point of view represents a particular viewpoint. I seem to recall that some years ago there was a survey of newspaper readership which revealed that the readers did not appreciate exactly what the paper stood for. That seemed a little bit worrying to me. This ties into the whole issue of media literacy: trying to educate readerships and audiences into understanding what the media are doing and what they represent. As I said, I would like to see that in the context of a broader debate about journalism. However, I think that structure itself will not be very significant.

**Q2009 Baroness Bonham-Carter of Yarnbury:** What you say there brings me on to a point I wanted to pick up on the back of something that Professor Prosser said earlier on when we

were talking about the multi-platform media world we live in. You said, “I tell my students not to believe what they read”.

*Professor Prosser:* On the internet.

**Q2010 Baroness Bonham-Carter of Yarnbury:** Indeed, I do the same with my researchers. However, there are a lot of people out there who do not have you to tell them not to believe everything they see on the internet. Increasingly, for a lot of people, young people, that is their source of information. I thought that your dismissal of the idea that regulation has to extend into this area was maybe a little optimistic.

*Professor Prosser:* I find it very difficult to see how impartiality regulation could work on the internet, for a start because of its international character. Regulating international media of that kind is very difficult. It seems to me that all we can do is to try to support an alternative, which would be a strong system of public service broadcasting, which does have the necessary filters.

**Q2011 Lord Maxton:** I hope that you told your students not to believe everything they hear on the BBC.

*Professor Prosser:* I certainly do that as well.

**Q2012 Baroness Bonham-Carter of Yarnbury:** It is carrying on from what Professor Gibbons says. It is about education and people’s use of it.

*Professor Prosser:* Yes. A related point perhaps is that it again seems to me to be healthy to have a broadcasting sector which includes a strong public service element that is heavily regulated, and a press sector which is not regulated in that sense. Again, I think that people do have different expectations from their newspaper, from the BBC or Channel 4 news, or whatever. Again, that seems very healthy in a democracy.

**Q2013 Lord Maxton:** It can also be dangerous. I know where the *Daily Mail* is coming from. I do not know where the BBC is coming from.

**Professor Prosser:** I can appreciate that point, but we do have some regulatory controls which attempt to deal with that issue.

**Q2014 Chairman:** I will ask one last question. The regulatory authorities – I think we dealt with it but we did it just in passing, and so that I can confirm it – do you think they should have new *post hoc* powers to intervene if they judge that the public interest criteria become threatened or compromised after the merger has taken place?

**Professor Prosser:** I think that I would have to look at the circumstances involved there. If we were talking about monitoring the undertakings that were made at the time of the merger, that is a very familiar situation. It is something that is done by the competition authorities all the time. We are talking here, I assume, only about broadcasting. I do not see how it could work in relation to the press. We could probably build it into the current system in relation to public service broadcasters, for ensuring that the public service remit was met, by amending the particular public service remit. I think that is the only way I could see it working outside the particular question of monitoring undertakings.

**Professor Woods:** I assume that if a deal has been given the go-ahead on certain conditions, then the powers already exist, if those conditions are not being complied with, to take action. I am not a pure competition lawyer.

**Q2015 Chairman:** I think that is the question. Do they exist?

**Professor Woods:** I think they do.

**Professor Prosser:** In competition law, yes.

**Q2016 Chairman:** But how long do those powers go on for?

**Professor Prosser:** That will depend on the undertaking and the condition that has been imposed.

**Chairman:** That has been a very interesting and important session. We have covered quite a lot of ground and we would like to think about some of the evidence that you have given. If there are other points which come out of the evidence, perhaps we could come back to you by writing and add to it. Thank you very much for coming today.