

July 2003



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Communications Act Gets Royal Assent

83/03

Major reform of the way the communications industry works and is regulated has been given the green light by Parliament.

The Communications Act – which will revamp the regulatory framework for the industry and introduce greater flexibility to the market – has today received Royal Assent and become law.

The Act has been the joint responsibility of the Department for Culture Media and Sport and the Department of Trade and Industry.

Media Secretary Tessa Jowell said:

"The Communications Bill was introduced eight months ago with the aim of creating the most dynamic and competitive communications industry in the world, while ensuring that citizens and consumers are safeguarded. My thanks goes out to all those who have contributed to the debate during that time and before it.

"I believe that in its final version, the Act will deliver on its central aim – to bring the interests of us all as citizens and consumers to the fore, while increasing investment and maintaining high standards.

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"But this is only the first step in a far longer process. Ofcom must now deliver a new regulatory system that will be light touch and unobtrusive wherever possible, but decisive and robust where necessary. I have every confidence they have the people, tools and know-how to do this.

"And I hope the communications industry will take advantage of the considerable opportunities that the deregulation enshrined in this Act offers."

Trade and Industry Secretary Patricia Hewitt said:

"This Act creates a modern regulatory framework for the UK's internationally successful, dynamic and competitive communications sector in which businesses can thrive, consumers benefit and citizens' interests are protected.

"The Act delivers significant changes to the regulatory structure striking the right balance between protecting the interests of consumers and citizens and keeping burdens on industry to a minimum. It will help keep Britain at the forefront of communications.

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"I'm glad that a positive approach from both Houses has enabled us to secure Royal Assent in good time for the European implementation deadline of 25 July benefiting consumers and industry alike. The informed and productive quality of debate in pre-legislative scrutiny and during passage of the Bill through Parliament will deliver an Act that promotes competition, innovation and success for UK businesses delivering world-class services for citizens and consumers."

The key principles behind the Act are:

- Ensuring access to a choice of high quality services.
- Ensuring that public service principles remain at the heart of British broadcasting.
- Deregulation to promote competitiveness and investment.
- Self-regulation wherever appropriate, backed up by tough measures to protect standards, plurality and diversity.

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The key points of the Act are:

- Transferral of functions to a single powerful regulator - the Office of Communications (Ofcom) - replacing the existing five regulators (the Independent Television Commission, Radio Authority, Office of Telecommunications, Broadcasting Standards Commission, Radiocommunications Agency).
- Introduction of a new, more coherent structure for commercial broadcasting regulation in the digital age, allowing greater freedom to public service broadcasters to regulate themselves, and protecting the rights of both consumers and citizens.

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- Reform of the rules on media ownership. There will be significant deregulation to promote competition and investment, and a few core rules will be retained to protect diversity and plurality. In particular a "plurality" test for media mergers will further safeguard these public interests.
- Removal of the requirement for licensing of telecommunications systems - removing about 400 licences, and replacing them with a new regulatory regime for electronic communications networks, services and associated facilities in line with EC Directives. These provisions will take effect on 25 July.
- Making provision for Ofcom to introduce spectrum trading, leading to speedier access for new services and more efficient use.

Notes for Editors

1. Supporting documents are available on a dedicated website: <http://www.communicationsbill.gov.uk/>.

2. For public enquiries call either the DTI (now BERR) on 020 7215 5000 or the DCMS on 020 721 6200. Or see the departmental websites: <http://www.berr.gov.uk> and www.culture.gov.uk/broadcasting

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ARTICLE BY TESSA JOWELL FOR FT CREATIVE BUSINESS

La reyne le veult. Those Norman French words of Royal Assent usher in the Communications Act 2003. A comprehensive recasting of the regulation of the entire media industry.

During its journey from initial white paper to Act, there have been significant changes made to make a good Bill better. We are all indebted to everyone – public, industry and parliament - who has played a role in making those changes. Especially the Parliamentary Scrutiny Committee.

And as a result of the consultation and compromise over the last two years, it enjoys a broad consensus in the industry and among the public.

But the Act still very clearly preserves our original basic principles: liberalisation to promote competition and powers to uphold the highest content standards.

And for the first time, we have legislation to enshrine the importance of, and define, public service broadcasting – perhaps the most distinctive part of British broadcasting ecology.

OFCOM's general duties will be crucial to how it operates and they have been one of the most debated areas of the Act. In fact the final wording of OFCOM's principal duty to promote the interests of citizens and consumers was only finally agreed 19 hours before Royal Assent. We have taken so much time over the general duties because they needed to be right, which means being clearly articulated to give certainty, clarity and direction to OFCOM and its stakeholders. They are after all, the lifeblood and essence of what OFCOM is about.

I make no apologies for saying it again, but OFCOM's regulation will be proportionate and targeted, although that is not a synonym for laissez faire. What the new regulatory structure, set out in three tiers, does is recognise that no two broadcasters are alike. Rather it recognises the importance of diversity in public service broadcasting. It allows the different broadcasters to think, breathe and get on with their daily work without undue interference.

The three tiers of regulation provide a clear structure for broadcasters and lay out some basic ground rules. The first tier is the bread and butter stuff – standards of content, promotion of equal opportunities, that we expect everyone to meet. The second tier sets out quantitative measures for public service broadcasters, for example quotas for original, regional and independent production and high quality news and current affairs. This enables broadcasters to be held clearly to account for these undertakings, ensuring citizens and consumers get a fair deal, and the BBC will be regulated by OFCOM at tiers one and two. The third and final tier focuses on qualitative measures and includes a requirement for each broadcaster to publish an annual statement or programme policy which will be linked to a review of their position by OFCOM.

So far so good. However, during the course of debate it emerged that many informed voices felt this wasn't enough. So in the case of big mergers a new plurality test will protect the public interest in big mergers and takeovers. Although it was added towards the end of the Parliamentary stages, I believe a plurality test that allows ministerial intervention, on advice from OFCOM, the OFT and the Competition Commission where public interest concerns are raised, only serves to strengthen the Act.

The structure of the Act, and of OFCOM, makes this legislation pretty future-proof. It is deliberately flexible, able to adapt rules to the inevitable changes in the market to come, and able to liberalise further.

OFCOM will be unlike any other media regulator. Unlike the American FCC, it is not purely concerned with markets. It has a vital role to play in protecting the standards and safeguards that British consumers take for granted. It will cover the telecoms industry, oversee the spectrum trading arrangements and have a vital role in promoting the move to digital broadcasting and media literacy. In other words, it will have a significant impact both on the media industry and on the citizens of Britain.

I don't expect or want OFCOM to interfere in the operations of the market unless there is a clear public interest. But as far as the preservation of high standards is

concerned, they have a clear qualitative and quantitative role to play in keeping public service broadcasters' feet to the fire on quotas on, for example, independent and regional production.

OFCOM now takes centre stage. Because OFCOM is the guarantor that it really is possible to have your cake and eat it. You really can liberalise regulation, stop unnecessary Government interference in the industry and at the same time safeguard standards. Big changes are undoubtedly coming, and the regulator needs to be tooled up to deal with them. It has the people in place to do that. None of them will have an easy time in the years ahead, but our media will all be better for them being there.

So we now have a framework that the whole industry can rely on and work within as it prepares to shape itself to the newly globalised media market. But Patricia Hewitt and I see the Act as the first phase in a greater project – the recasting of regulation to meet the new needs of a world where media consumption changes its patterns regularly, and where industry is in a state of almost permanent revolution.

Phase two of this project is now beginning. The review of the BBC charter is at the heart of every debate about the future of PSB, and therefore the future of British media. The OFCOM review of the PSB ecology will play into the debate about renewal.

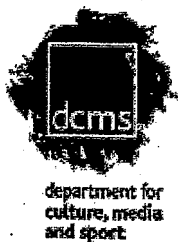
But even that must be seen in the bigger context of the push to analogue switch off. That is the next great challenge for all of us.

Tessa.Jowell@culture.gsi.gov.uk

Nov 2002

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Communications Bill Published

The Government today set out its final plans for a new regulatory framework for the media and communications industries.

The Communications Bill, for which Culture Secretary, Tessa Jowell and Trade and Industry Secretary, Patricia Hewitt, are jointly responsible, will revamp the regulatory framework, bringing it up to-date, and introducing greater flexibility to respond to the technological and market changes driving modern media and communications.

A draft of the Bill was published in May 2002. Since then it has been the subject of an extensive public consultation process and has undergone pre-legislative scrutiny by a Parliamentary Committee chaired by Lord Puttnam.

Tessa Jowell and Patricia Hewitt have stressed that pre-legislative scrutiny has led to a vastly improved Bill.

The key principles behind the Bill, which aims to create the most dynamic and competitive communications industry in the world, are:

- ensuring universal access to a choice of high quality services;
- deregulation to promote competitiveness and investment;
- self-regulation wherever appropriate, backed up by tough measures to protect plurality and diversity;
- ensuring that public service principles remain at the heart of British broadcasting.

The key proposals in the Bill are:

- Transfer functions to a single powerful regulator - the Office of Communications (Ofcom) – replacing the existing five regulators (the Independent Television Commission, Radio Authority, Office of Telecommunications, Broadcasting Standards Commission, Radiocommunications Agency);
- introduce a new, more coherent structure for broadcasting regulation in the digital age, allowing greater freedom to public service broadcasters to regulate themselves.
- give Ofcom powers concurrent with the Office of Fair Trading to apply competition rules in the Communications Sector;
- require Ofcom to establish and maintain a 'Content Board' that would ensure that the public's interest in the nature and quality of TV and radio programmes is strongly represented within Ofcom's structure;
- establish a Consumer Panel to advise Ofcom and other people and bodies where appropriate, on matters, including ones of major policy, relating to electronic communications;

- remove the requirement for licensing of telecommunications systems, so removing about 400 licences, and replace it with a new regulatory regime for electronic communications networks, services and associated facilities in line with EC Directives;
- make provision to allow trading of radio spectrum, leading to its more efficient use;
- reform the rules on media ownership. There would be significant deregulation to promote competition and investment, but a few core rules would be retained to protect diversity and plurality.

Changes to the Bill since its publication in draft form include:

- the lifting of the restriction on religious bodies holding digital sound programme service licence - terrestrial digital radio;
- giving Ofcom greater clarity of purpose with a refined set of General Duties;
- confirming in the Bill the long-standing commitment to Ofcom having offices in all the devolved nations;
- provisions, held in reserve, for implementation if necessary, to ensure public service channels are carried on all platforms.

And, as already announced,

- enabling Ofcom to fine the BBC for breaches of tier one and tier two obligations;
- amending the proposals for ownership of local radio to ensure there are at least two commercial radio operators, in addition to the BBC, in every area with three or more stations.

Tessa Jowell, said:

"This is a highly deregulatory Bill. But at every stage of deregulation, broadcasting content will be protected.

"This Bill went through an almost unparalleled process of scrutiny and consultation leading up to its publication today. This has been democratic debate at its very best and has played an essential role in shaping its final form.

"Where we have been persuaded an alternative approach would enable us to achieve our objectives better, we have amended our proposals. The work of Lord Putnam's Committee was particularly valuable, as reflected in our decision to accept 120 of their 148 recommendations.

"As part of the Bill, the present ban on political advertising on television and radio is renewed and clarified. The Government believes, as did the Neill Committee, that this is an important plank in protecting the impartiality of broadcasting and democratic debate. Because of a judgement in the European Court of Human Rights concerning Switzerland, the Government cannot make a statement of compatibility under the Human Rights Act in relation to this ban, but believes that there remains a strong case that the UK ban is compatible and therefore wishes Parliament to consider the Bill."

Patricia Hewitt said:

"Britain is already one of the world's leaders in the communications industry. This Bill will give companies an even better environment to develop their businesses in a sector of the economy which already accounts for 300,000 jobs and £12 billion of investment a year.

"It will liberalise the market, removing unnecessary regulatory burdens and cutting red tape, but at the same time will retain key safeguards that will protect the diversity and plurality of our media.

"In drafting the bill, and throughout the process of pre-legislative consultation, the interests of the

consumer have been paramount. With the publication of the Communications Bill, we hope to create market that thrives on competition to provide the best in information and entertainment for the UK."

Notes for Editors

1. Copies of the Communications Bill are available direct from the Stationery Office on 0845 7023 474 and from the Parliament website at www.parliament.the-stationery-office.co.uk/pa/pabills.htm

2. Supporting documents are available on a dedicated website:
http://www.opsi.gov.uk/acts/acts2003/ukpga_20030021_en_1.

3. The present ban on political advertising prevents all advertising of a political nature on radio or TV, except for party political broadcasts. The Government's policy is to continue this ban, and it will defend it in Court if necessary where it believes strong arguments can be made in its defence on Human Rights grounds. However a recent ECHR judgement involving the Swiss authorities means that the Government cannot make a statement of compatibility about the Bill to parliament.

4. The Neill Committee (the Committee on Standards in Public Life) examined the issue of broadcast political advertising in their report on The Funding of Political Parties in the United Kingdom (Cm4413 July 1999) and recommended that the ban remain.

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TRANSCRIPT

Programme(s)	Today Programme Radio 4
Date & time	Tuesday 29th April 2003 0734
Subject / interviewee	<i>The Communications Bill – Professor Michael Tracey, Baroness Jay, Norma Fowler, Lord MacNally & Tessa Jowell</i>
Prepared by:	<i>David Griffiths</i>
Contact numbers:	<i>020 7276 1080 – Pager.07659 137 572 – 24hrs, every day</i>

James Naughtie: *It is now twenty six minutes to eight and let's stay with broadcasting policy going to Parliament because there is going to be some trouble in the Lords that is clear, over the Communications Bill which changes the ownership rules of broadcasting among many other things. Its provisions would for example allow foreign ownership of ITV. Critics say that it opens the door for a satellite broadcaster and Mr Rupert Murdoch's is usually the name mentioned to take over Channel 5. Now the Conservative front bench is sympathetic to most of the changes though not all but there is strong back bench opposition on both sides and from the Liberal Democrat leadership to these ownership proposals. They complain that the Bill was steam rolled through the Commons using the government's majority and Culture Secretary Tessa Jowell and we will discuss it in a moment. But first Roger Harrabin reports on the complaints, particularly on the argument that the Bill is going to turn British television potentially in to a reflection of its American counterpart.*

Roger Harrabin: *Fox News, the new sound of American broadcasting.*

Fox News Presenter: *After 9/11 the world changed dramatically and now we are beginning to understand just which countries will fight against evil and which ones will enable it. That is very...*

RH: *Solidly on message with the Bush agenda. Its owner Rupert Murdoch says Fox is an antidote to the dominant left wing journalism in the USA. Its critics say it has led a down market charge that has turned news in to showbiz when Americans need more information not less. Michael Tracey, Professor of Journalism at Colorado University says that with some notable exceptions well known in Britain, the standard of American TV overall is plummeting. He blames the decline on Ronald Reagan's deregulation of television. He can't understand why the British government wants to deregulate TV here by allowing Americans to buy ITV and Mr Murdoch to buy Channel 5.*

Professor Michael Tracey (Colorado University): *There are many people in the United States who are deeply worried about the effects of broadcasting on America as a culture, as a society, as a democracy. And I think there are many people who think that increasingly it is not longer a functioning democracy maybe in large part because of the way in which the medium of television is used by the market. And so the idea that you would want to invite the people who have damaged American broadcasting and therefore damaged American society such as Time Warner, AOL, such as Disney, such as Murdoch, the idea you want them in to the UK to do the same thing is madness, it is madness of a very high order. So I don't know why Blair is doing it, I mean what I do know is when the Minister stands up in Parliament and says we can have a dynamic market system and we can have public service values, I wonder what she was smoking that morning to be honest.*

RH: *The government's intention is to attract American know-how and investment to British TV but Professor Tracey warns that deregulation hasn't raised broadcast standards anywhere in the world. And the Labour Peer Baroness Jay who has worked for American TV companies, believes that it will lead to ITV getting swamped by low grade output made for the US market.*

Baroness Jay: *I think it would be a question of a lot of that output being really re-exported by American production companies at marginal costs. And I suspect that those who feel that American ownership would mean greater investment I don't think there is necessarily a correlation between ownership and investment.*

RH: *Don't worry the government is saying, we can make rules to keep quality high. Worry says Professor Tracey.*

The Flintstones Theme Tune

RH: *The deregulated American stations run rings around the regulators Professor Tracey says. One broadcaster claimed the Flintstones as an educational children's programme because it is set in the Stone Age. But it is not just issues of TV content that will concern the Lords. The Tory back bencher Norman Fowler can't believe that his own Party is defying commercial logic by backing a plan to let Americans buy our TV stations when British firms can't buy theirs. He is angry that these issues were never properly debated by MPs.*

Norman Fowler: *I think there is something like over a hundred clauses in the Communications Bill which has been given no scrutiny whatsoever, I think that frankly is disgraceful.*

RH: *The most contentious clause in the Bill according to the Lib Dems front bench spokesman Lord MacNally, is the one allowing Rupert Murdoch to buy Channel 5 when he already strikes fear in to political leaders with his ownership of BskyB, The Times, the Sunday Times, The Sun and the News of the World.*

Lord MacNally (Liberal Democrat): *That is a concentration of media power that I cannot believe can be allowed. Nobody knows why the government has made this grotesque concession. I think the government has got a very, very tough fight on its hand.*

RH: *The bill as a whole has broad support for its attempt to simplify rules in communications across the board. The government will now have to decide whether to risk delaying the progress of the 403 clauses for the sake of a few.*

JN: *Roger Harrabin reporting, twenty two minutes to eight and Tessa Jowell the Culture Secretary is with us in the studio, good morning.*

Tessa Jowell: *Good morning.*

JN: *Let me ask the, the sort of obvious question here. Why is it so important for the government to fight for the right of Mr Murdoch to buy Channel 5 as well as everything else he has got?*

TJ: *Well this is not about Rupert Murdoch and let's be absolutely clear about that.*

JN: *He thinks it is.*

TJ: *Well these proposals are proprietor neutral, the other potential beneficiaries by lifting the restrictions in relation to the ownership of Channel 5, the Daily Mail and General Trust, the Trinity Mirror Group, both newspaper groups with substantial market shares that are shut out by the present rule. The objective is a very simple one, it is to maximise the investment that is available to British programming, liberalising the ownership regime but securing tough content control to ensure that people up and down the country continue to see in their homes, the high quality programming that is part of the British broadcasting tradition.*

JN: *Let me just press you on, on the Rupert Murdoch point. Everyone knows that he wants a terrestrial station, he has got a very big satellite station, he owns you know, several national newspapers, The Sun, The Times, the Sunday Times, the News of the World, everyone knows. And his people have been lobbying this government as they lobbied the last government for it, that he wants to get his hands on a terrestrial station for his commercial reasons. Now for you to say this isn't about Mr Murdoch is disingenuous in the extreme.*

TJ: *Well I am afraid Jim, there is a conspiracy theory which is running...*

JN: *It is not a conspiracy, it is as real as...*

TJ: *...many journalists have written stories to this effect but it is a, but it is a conspiracy theory without any substance at all. The proposed changes...*

JN: *You don't think he wants Channel 5?*

TJ: *...well I don't know whether he wants Channel 5.*

JN: *Surely it is your job to know if he wants it or not?*

TJ: *Well he may well want Channel 5, I have had no discussion with him about whether or not he wants to buy Channel 5.*

JN: *Has the Prime Minister?*

TJ: I don't believe the Prime Minister has either.

JN: *He sees him quite often.*

TJ: Well of course he sees him quite often but this is not legislation which is about Rupert Murdoch. It is about doing two things, it is about updating and liberalising our ownership rules but at the same time instituting very tough content controls in relation to original production, independent production...

JN: *Well...*

TJ: ...regional production, to ensure that people at home continue to see high quality programming.

JN: *You say liberalise the regime. You, you hear there a view from the United States which is widely shared, that what happened after the deregulation of the whole system in the United States, different system but similar kind of approach to the one you are taking now, in the eighties, was a plunge in quality. That is a fact they say. Do you accept that?*

TJ: Well the, the US regime you are right to, to reflect is different from ours. There are...

JN: *No but on the quality point, the deregulation put quality down.*

TJ: ...yeah but they have no quality controls. We by contrast, have very tough quality controls which are written in to the licenses of broadcasters and for the first time ever appear on the face of primary legislation with additional powers for the Secretary of State in the event that quality is threatened to toughen those quality controls. And I would say and I mean I, I listened with, with great interest to Roger Harrabin's package and to Tom MacNally's contribution about how this legislation has allegedly been steam rolled through the Commons and all the rest of it...

JN: *And Norman Fowler made the point as well, a former Cabinet Minister...*

TJ: Well yes but let me explain...

JN: *...who knows what he is talking about.*

TJ: ...let me explain why there was no Commons debate on the foreign ownership restrictions, there was no Commons debate for a very simple reason...

JN: *You (indistinct).*

TJ: ...The Liberals, no, the Liberals tabled amendments in Committee and then didn't turn up in the morning to debate them. So it is the Liberal Democrats who are objecting now so vociferously who denied the House of Commons the right of a debate on what I think is a very important part of the Bill and I regret that.

JN: *If you are defeated in the Lords, will you try to reverse it or will you accept it?*

TJ: Look, we are beginning the Committee stage in the Lords today and I believe that this Bill is a good Bill. It is probably the most scrutinised piece of legislation this Parliament. Not only a White Paper but subsequent consultation on media ownership...

JN: *It is certainly going to be scrutinised in the Lords at great length.*

TJ: ...and then, and then, but a committee, a Prelegislative Scrutiny, Scrutiny Committee of both Houses have considered it and at every stage we have listened to and responded to the concerns and proposals that have been made. It is a better Bill now than when it started and I hope very much that it will pass smoothly through the House of Lords.

JN: *Well no doubt it is a subject that will be debated on this programme as elsewhere over the coming weeks. Tessa Jowell, thank you very much for being with us.*

TJ: Thank you very much.

End