Media ownership and concentration

(Summary)

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How we evaluate our freedom of expression and freedom of information? If you don't know where the information comes from or how it is influenced you can't evaluate its relevance and value. Consequently, without even recognizing you will be led by disinformation and influenced by somebody's threat, bias or solicitation.

One of main issues to be researched under the project on "Creation of free and independent media" will be media ownership and concentration. Study of media ownership concentration should be carried out within the framework of international and domestic legal regulations and practices, and the following research methodologies need to be applied:

Purpose of the study

By researching media ownership and concentration, and the issue of influencing the media in Mongolia, we will be able to propose legal regulations for optimal ratio of media concentration, thus ensuring fair and transparent media environment that is desired for good governance and strengthening of democracy in the country.

Scope of the study

Most important here is choosing correctly objects for comparative study.

For media ownership concentration we should compare countries by their advancement in the media market, say, by classifying them into highly and mediocre developed markets, and emerging media market.

For instance, there are highly profitable media markets such as England, France and Spain. On the other hand, there are markets with small audience where media is financed by direct user fee, advertisement or direct financing, such as New Zealand. Here we immediate relation of the ownership concentration with the mode of financing.

Since media ownership and concentration issue exist in one or the other way in every country, we need to research international standards and regulations for limiting monopoly in media markets.

In some countries media monopoly is restricted through general antimonopoly laws that we need to examine as well.

We need to determine the origins and scope of legal regulations of Mongolia pertaining to media ownership and concentration as well as existing practices.

International laws and practices should be researched in relation to:

1. Terminology and definitions
2. International standards and recommendations
3. Case studies:

   - Australia (considered as a country with heavy media ownership concentration)

   - France (example of developed media market)

   - European Union (specifics of regulations introduced by the European Union and Europarliament)

   - Germany (seemingly lesser regulations, but foreign ownership is debated actively)

   - USA (example of globalizing media)

   - Netherlands, Italy, England (variable regulations, but clear differences and common features are easily identifiable in respect to market share, size of audience, measures for support of transparency, regulation of competition and ownership of multiple means of media)

   - Based on comparative case study recommendations will be produced for creating favorable conditions for free and independent media in Mongolia

Sources for the research work included among others existing laws and regulation, concepts adopted in Mongolia, as well as studies carried out by media NGO (Press Institute of Mongolia, Maxima, Globe International). Foreign practices comparative study was done using Internet sources:http://en.wikipedia.org/wiki/Concentration_of_media_ownership, http://lirne.net/resources/netknowledge/meier.pdf,

http://www.javnost-thepublic.org/article/2010/3/1/

Mongolian laws and other legal acts that might be relevant to media ownership and concentration issue:

- Constitution of Mongolia
- Freedom of the press law
- Communications law
- Radio frequency law
- Law about special permit for business activities
- Competition law
- Decree No.21 of the State Great Hural (Parliament) on concept approval (2000)
- Annex of the decree No.40 of the Communications Regulatory Committee (2009)
- Strategy for 2009-2012 of the Communications Regulatory Committee
- Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights (1974)
- World Intellectual Property Organization Copyright Treaty (1996-2002)

Analysis of above legal documents provide us with following conclusion regarding Mongolian media:

- Ownership or prohibition of ownership, nor requirements for transparency of the ownership are not regulated at all,

- Communications law does not provide clear authority of the regulatory body, conditions for fair competition and media standards are vague,

- Laws don't have clear provisions on how to control dominating service tariffs applied the media market,

- Competition law provides definition of market concentration, but it is not clear how to apply this definition in regard to media ownership concentration,

- Functions and responsibilities of Communications Regulatory Committee, and Fair competition and Consumer Authority overlap,

- It is commendable that Revised Concept of National Security of Mongolia and related recommendations call for ensuring transparency of media ownership. The more important therefore is to create measures and criteria for media ownership transparency based on reliable media market studies.

Study of foreign countries legislation

1. France

In Media Law of 1986 provides mandatory provision for transparency of ownership:

- If the media outlet is owned by individuals owners full names shall be publicized

- If media outlet is owned by company owner company name, address, legal status, lawyers names and names of three major employers shall be publicized

- For both above cases names of editor-in-chief and editors shall be publicized

- For both above cases list of publications/media carried out by the owner and list of all media in which the owner has shares shall be publicized

Company financial books shall be open to the public.

Shares and other capital owned, as well as changes in them shall be reported to regulatory bodies.

According to 1994 Radio and Television law individuals or legal subjects are restricted to ownership up to 49% of shares of the company holding TV license. For the same subjects ownership in the second media is restricted to 15% of shares, and for the third media – 5%. At the same time maximum size of the audience served (regional and local) is 6 million. And for the cable TV, maximum audience served at national or regional level is up to 8 million subscribers.

Foreign ownership regulations. There is 20% foreign ownership limit in French language electronic or print media company shares/voting rights.

2. Germany

German Federal Court considered concentration of media as a threat to freedom of information and suggested to adopt media ownership legislation. Nonetheless, federal states were not enthusiastic about this suggestion.

In accordance with 1966 Convention between the States on Radio and Television, Committee on Oversight of Media Ownership Concentration was created that is authorized to issue and control broadcasting licenses (including oversight of the content). The Committee has the right to withdraw licenses in case of breach of the Federal Law.

Federal Cartel is vested with the authority to oversee unlawful use of dominating position in the media market.

3. Italy

According to the Media Law of 1981, Chapter One, media outlets (with more than 5 full time journalists) are obligated to register with the Register for Communication Operators as well as provide annually financial reports to the Communications Authority.

Media Law of 1981 provides also limits for market share (20% subscription for national audience, and 50% for regional sales).

Media Law of 1987 stipulated that if the media outlet becomes a monopoly, the Parliament has the right to invalidate the company's shares (prior notice is provided that the company may correct the situation in 6-12 months period).

4. Netherlands

According to Company Law every company is obliged to publicize (in newspapers) every major change in the ownership of its shares. Major change is considered when shares reach 5, 10, 25, 50 and 66% respectively.

Media Law of 1990 provides that media outlet that owns broadcasting with 60% of total audience, at the same time can not own print media that reaches more than 25% of total readership.

5. Great Britain

If media publications local sales are under 20% (this is determined by public interest test) they are entitled to 3 radio licenses. If local publications sales are 20-25% they are entitled to one FM radio station and one AM radio station.

6. USA

Clause on Prohibition of simultaneous ownership of newspaper/radio (1975)

If the particular state where the newspaper is published falls under the broadcasting coverage area it is prohibited to own simultaneously full time radio and TV channel and a newspaper.

Prohibition of simultaneous ownership of newspaper/radio (1970)

In a given market it is allowed to own one radio station and one TV channel at the same time. In large markets depending on the size of market shares of the media outlet one legal subject is entitled to additional radio stations.

7. Australia

It is prohibited to own TV license if the market share exceeds 75% of total population of Australia. Also, in the given license area one individual can not own more than one license. Foreign national are not allowed to serve in the top management of the licensee, and foreign investment share should not exceed 20% of the total shares.

<u>Terminology and Definitions</u>

First of all the term "media ownership" is found quite frequently. But, since the ownership refers to the radio frequencies that are owned by the state authorities, this aspect was left out as insignificant. Instead, for the sake of improving legal environment for media, we concentrated on licensing individuals and legal subjects based on conditions and ownership principles.

For modern press the issue of media ownership and market share have emerged as an important aspect of media market and of society. Media ownership concentration in one or the other way leads to following consequences:

- Domination of particular interest rather than public interest, such as interests of sponsors, advertisers or of the government, and rule of this interest over powerful media market.

- If, for instance, narrow interest will have control over 300 million American citizens, there is no use to call it "publicly owned radio frequency".

- Monopoly over the media market will eliminate competition, deprive innovation and creativity, and also give rise to prices.

It is important therefore to deliver to the media market diversified information via multiple ownership. Media monopoly always creates criticism whether those monopolies and oligopolies who control national media markets can be inclusive and representative of public interest.

On the other hand, media ownership concentration regulation issue has always faced political opposition, even within the European Union. Therefore research and attempts of legal regulations of this issue has been always difficult.

Transparency is viewed sometimes as a task to achieve plurality of opinion, and sometimes as a tool for the same goal.

In order to have informed decision, the consumer of media information always wants to know as much as possible about the information producer and supplier, including general information and interests of media owners.

The need for intervention into the media market for the public good should be justified by the need for evaluation of concentration of power. Without knowing who owns and rules over the media outlet one can not regulate one or multiple companies.

In general, degree and scope of transparency greatly depend on the political will of those in government.

In many countries it is demanded that the publishing company name be printed in the newspaper, but it does not really mean transparency, since the name of the company alone could not provide genuine interests behind the publication. One needs quite a bit of effort to reveal that interest. In some countries there is a requirement to publicize circulation and the size of audience that media outlet serves.

Due to emergence of dissemination of digitalized information (Internet, digital broadcasting and other networks) the licensing requirement as such may not live long. Even the definition of “channel” is disappearing and changing radically

If we assume that ownership transparency is a way to evaluate the power, a method to influence that power structure, we can not reveal real interests by simply imposing transparency requirements. We need actively seek relevant information and use many ways to obtain such data. Research could be one of ways and could involve scientific study or simply collection of data. As a result we would get data base, registries, statistics, comparative analysis etc. It should be noted here that European Union when drafting its recommendations had the pre-requisite for all member countries that media ownership evaluation and control capacities need to be in place within the boundaries of member countries.

Most European countries have regulatory bodies that in certain ways created limits in order to support competition and/or to favor plurality of opinion in the broadcasting sector. To name few, Belgium, Germany, France and Italy (new agencies for overseeing telecom companies are about to be created), Norway (in the process of forming media plurality agency), Portugal (Alta Autoritade), Great Britain (strong agencies). Most countries of Eastern and Central Europe have Broadcasting Committees that control distribution of frequency licenses. Print media is regulated mostly through non-government structures (France, Great Britain).

Conclusions and Recommendations

On improving relevant laws and regulations of Mongolia:

1. Even though the term “concentration” was already defined in the Law of Mongolia on Competition, there is a certain need to provide legal provision that defines ownership concentration by providing eligible size of market share for media outlet.

2. Transparency and plurality of opinion as key factors for free access of information, it should be required legally that ownership information be publicized when acquiring media licenses.

3. Regulatory authorities of Communications Regulatory Committee, Fair Competition and Consumer Rights agencies need to be clarified and coordinated.

4. Market share limitations should be imposed selectively in accordance with the market maturity, audience, geographic location of the media in questions. For this purpose Communications Regulatory Committee should create certain standards to limit and regulate ownership concentration.

5. Foreign ownership, despite being a “delicate matter”, should be considered as serious issue of national security and therefore considered carefully in many countries, and in some of them are strictly prohibited of heavily limited. For Mongolia, we think that immediate prohibition can not

be imposed until market studies including size of the audience, market share of the media outlet etc. carried out properly.

6. By improving the legal environment we should not rely on imposing restrictions, but rather by defining proper rules and regulations and creating effective oversight mechanisms. This way we can assure transparency of ownership.

7. By creating independent law on media ownership we can avoid passive reliance on Competition Law. On the other hand, when this law will not be able to deal with certain cases of media ownership concentration, then as the practice advises the general Competition Law would apply.

8. Media ownership concentration issue can be regulated around four key components: Size of Audience, Net Profit, Market Share and Multiple ownership in a given region of the country.

9. It is commendable that Revised Concept of National Security of Mongolia and related recommendations call for ensuring transparency of media ownership. The more important therefore is to create measures and criteria for media ownership transparency based on reliable media market studies. Media ownership transparency issue along with the foreign ownership and related consequences could provide basis for legal limitations if considered as threat to national security. But the main ground of regulations should be licensing requirements.