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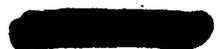
BPD 1/12/25

To	Secretary of State	cc	Patricia Hewitt	
From			Kim Howells	
File Ref			Sue Street	Bill Bush
Date	20 February 2002		Andrew Ramsay	Ruth Mackenzie
			Diana Kahn (o/r)	

RESTRICTED - POLICY

MEDIA OWNERSHIP BRIEFING PACK

1. You have been provided with much information from different sources on various aspects of this policy area. In preparation for the meetings you are to have over the coming week, and for your discussion of the issue with the Prime Minister, I have drawn all the key material together here for ease of reference.
2. The key document is the latest draft of the letter to the Prime Minister (Annex A). This consists of a political summary, with annexes that set out our proposals, our arguments, the necessary background and strategic implications. Some proposals are still uncertain, and these remain square-bracketed, in bold. We are to discuss them on Tuesday.
3. The other annexes to this note recap the detailed background to our proposals. We have provided further briefing on the arguments for removal of the foreign ownership rules (at Annex E). I have also added some further illustrations of the sort of complaints that might be raised about particular local areas, and provided lines of response (in Annex F).
4. You will have seen all the other information before, in some form. A table of contents is provided overleaf.



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RESTRICTED - POLICY

DRAFT LETTER TO THE PRIME MINISTER

MEDIA OWNERSHIP RULES

The Communications Bill, when it is published in draft in April, will contain our proposals for the reform of media ownership rules. The consultation exercise on this issue has now ended, and having considered the responses, we are writing to outline the steps we are proposing to take. We are to meet in the near future to discuss the detail, which must if possible be decided by mid-March if a draft Bill is to be published on time. In essence, our proposals are deregulatory, but suggest the retention of certain limits on consolidation, to make sure the media retain the range of different voices and views that make democracy work. The possible effects of the changes we suggest are summarised in annex 3. The letter and annexes are copied to Sir Richard Wilson.

We recommend that you accept the detailed proposals in annex 2. These include:

1. Television – allowing, subject to competition rules, a single ITV while protecting regional production; keeping the nominated news provider requirement (the “ITN” rule)
2. Newspapers – introducing a less onerous and simpler regime to be applied post-acquisition only in cases where there is significant concern on competition or plurality grounds. Criminal sanctions would be removed.
3. Radio – remove all restrictions except Competition law on ownership of national commercial stations; allow local consolidation down to a floor of three operators (four if the BBC local service were included).
4. Foreign ownership – remove all restrictions
5. Cross media ownership – remove most media-specific rules, leaving it to Competition rules to prevent undue dominance; restricting owners of national newspapers from acquiring significant TV assets; replacing existing rules on local paper/local radio cross-ownership with a simple protection to prevent a dominant local

paper owning a dominant local radio station.

6. Review of regulation – making all regulations subject to an automatic review by Ofcom no less than every three years.

Political Summary

We believe that the case for deregulation is powerful. There has been an explosion of media choice in recent years giving people a wide range of sources of news, information, entertainment and other services. Meanwhile the existing rules have hampered some companies from expanding and developing while others find themselves much freer. These anomalies are not good for investment, jobs or diversity of products for the consumer.

However we also believe that the media are different from other industries, which means that Competition law alone is insufficient. They are a uniquely powerful force in democracy and debate and there is a long history of some media owners using national newspapers in particular to promote their views. We need a significant degree of plurality of ownership for democracy to work, and competition law can't guarantee this for us. Our line is therefore to regulate ownership on top of competition law, but only where absolutely necessary - imposing a simple set of barriers to excessive concentration.

We are therefore proposing substantial deregulation both within each media sector (radio, TV, local newspapers, and national newspapers) and also between them, subject to retaining reduced but still significant controls on cross-ownership of national newspapers and major terrestrial TV channels.

Our proposed changes are listed in annex 2

Potential winners and losers are listed in annex 4

The overall package is a major deregulation of the industry. We would expect significant consolidation to then take place, subject to normal competition regulation and our remaining media controls.

Political pressure will be significant:

(i) Scrapping Foreign Ownership rules – There are three logical options, to keep controls as they are, to allow foreign ownership on a reciprocal basis, or to allow foreign ownership on the same basis as other industries.

We believe the case for scrapping the rules is strong. Why should Bertelsmann, Kirch, Vivendi or Berlusconi be able to be active here when AOL/Time Warner, Viacom, Disney and News Corporation are constrained? We will be accused of “giving in to Murdoch”, but in fact there will still be major controls on his activity because his dominant position in national newspapers will trigger the Competition Authorities, and because we are keeping significant controls preventing owners of newspapers from buying terrestrial TV. There is a further, wider point: We will also seek in the Communications Bill to impose duties on Sky (as with all broadcast platforms) to carry Public Service Broadcast channels. We are also allowing the BBC to develop a strong digital and online presence. So overall our package offers Sky/News International/News Corp some movement, but also some challenges. Viewing all our changes together we can be confident that we are acting fairly and rationally, and in a way that is proprietor-neutral and which does not allow any large company to become over-mighty.

(ii) Scrapping Cross-Media Rules – as you can see from annex 3 our proposals would make it possible for large cross-media companies to consolidate rapidly. It would mean for example, that in many towns and cities the Daily Mail and General Trust could own a high-selling national daily, a significant local newspaper, a local commercial radio station, one or more national radio stations, own digital TV and radio channels, and have minority interests in ITN and in the regional ITV licence. It could mean that News International and Sky (not one company, but linked in most people’s minds) could also expand, perhaps into local press and into commercial national and local radio.

The Draft Bill is intended for publication at the end of April, a week before the local elections, when the issue of local voice will be prominent. Many MPs may find the potential for consolidation somewhat threatening. Our defence would be that local voice would still be dynamic. There would be a minimum of four local voices in most places (the rural fringes can support fewer commercial players anyway), many of the media potentially being taken over have little debate in their formats (especially true of commercial radio), and we would retain content and format controls on TV and radio. We are also persuaded of

the argument that local papers do not have editorial lines imposed on them even when owned by opinionated national proprietors.

We are also considering the potential for encouraging the introduction of good corporate governance. The incentive to the companies would be that adoption and implementation of a code would become a material factor in judging whether local "voice" was at risk when mergers were being considered.

(iii) Allowing consolidation of local media – some MPs may feel nervous at the prospect of national and especially local newspapers owning local commercial radio stations. However, such consolidation may help keep local papers afloat and improve quality via more investment, we will impose a statutory floor to maintain a minimum number of local "voices", and we will retain radio and TV licence conditions that impose balance and impartiality on output.

(iv) Allegations that we are still too regulatory – most companies, especially the major players constrained by Competition rules (News International, Trinity Mirror, Daily Mail and General Trust, Carlton and Granada) will say that we have not gone far enough. However, we can point to a package that contains substantial deregulation and to a regime that requires review of all remaining regulation at three-year intervals. They will be balanced by many who will say that we have gone too far.

The process of scrutiny and consultation of the Draft Bill allows opportunities to change if we believe it right and necessary, but we think it right to offer Parliament a draft which is truly deregulatory while protecting the democratic essentials. We would welcome an early discussion with you to complete the final decisions so that we can publish the Draft Bill by the end of April,

(signed, both SoSs)

List of Annexes

1. Our principles and arguments
2. Summary of our proposals
3. The possible effects
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-
6. Who owns what now
 7. Industry trends
 8. The existing rules on cross-media ownership
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Annex 1: The principles we use and the argument supporting our proposals

Principles:

- To accept that the media are different from other industries because of their intrinsic importance in setting the terms of national and local debate
- To accept that the increase in the range of active media voices allows the removal of unwieldy and unnecessary regulation
- To deregulate where possible to promote investment and quality
- To rely on competition law wherever possible
- To protect plurality and diversity in any area where there is a justified concern that competition law may be insufficient
- To regard ownership of national newspapers and terrestrial television licences as the most sensitive in establishing the national agenda for debate
- To reduce regulations within media sectors as much as possible, but to retain some cross-media ownership restrictions where there is danger of excessive concentration of market power
- To seek improvements in content and format regulation where possible, and to improve corporate governance to inhibit abuse by owners

Argument

There is a difficult balance to be struck in this area between the interests of democracy and those of a competitive market. There are passionately held views on either side of the debate which are sure to be aired inside and outside Parliament when the Bill is published. However, many of the existing regulations have no economic justification, were arrived at for reasons of political expediency alone, and neither protect debate nor assist business.

The proposals we are putting forward are deregulatory. They aim to allow businesses the chance to invest and innovate, and bring cheaper and better services to the consumer. The end result should be a system of simple, coherent and predictable rules, with the flexibility for further reform at relatively regular intervals. However we believe that the media are different from other markets. Owners do use their assets to promote their views as well as make profits, and in any event the protection of democracy means that we should be measured in our relaxation of regulation. Ground given up too hastily will be hard to recover, whereas over-caution can be remedied by our proposals to review all regulation at three-year intervals. Therefore we propose to retain rules that work to safeguard democratic and political freedoms, by maintaining a plurality of ownership that can preserve a culture of debate and dissent in local and national media. This plurality cannot be guaranteed by competition law alone.

Proceeding with Deregulation

It is our view that we do need to allow companies to develop and build their businesses, that the growth in media is of itself increasing plurality and diversity, and that we can deregulate extensively while keeping in place sufficient rules to protect democratic debate.

There is no doubt that the two main vehicles for debate and discussion are the national press and terrestrial television. Even though most people say they take their news from TV the newspapers are much more opinionated and routinely set the TV agenda. We therefore intend to more cautious about extending cross-ownership in these areas.

~~Such deregulation as we do allow will inevitably create a hostile reaction. Newspaper owners, particularly News International, Trinity Mirror and the Daily Mail and General Trust, will say that it is too little. Everyone else will say it is too much, and that we are caving in to aggressive press barons. The fact that neither of these is correct will not stop them being asserted and we can expect to have difficulty in both Houses.~~

We are also proposing some deregulation of ownership rules at a local level. We consider that it is possible to provide the essential protection needed for proper debate while allowing some consolidation. This could lead to an increase in the number of local papers with an interest in local radio stations. While we believe that debate will still be sufficiently protected we should also be aware that many MPs will have strong views to the contrary.

Consultation on the Draft Bill will be extensive, and we will particularly want to ensure that views are sought in Scotland, Wales and Northern Ireland. Although communications issues are reserved each of the three markets has special features which will require separate scrutiny.

Given the extent of the proposed deregulation, it is important that some cross-media ownership rules are retained, to prevent the sort of concentration of influence that democracy will not bear and that competition law will not preclude, both at national and local level. In particular, we suggest that cross-media rules must take account of the particularly pervasive and often owner-led editorial influence of newspapers, by impinging on the extent to which newspapers proprietors can extend their influence through other media, either at local or national level.

However, in individual media markets (television, radio and the press) we propose to place very few limits on ownership. We will rely on content regulation to maintain diversity. Minimal ownership restrictions (or 'plurality tests' in the case of newspaper mergers) will be supplemented by competition law to provide an adequate degree of plurality within each market. The BBC and Channel 4 will continue to provide an additional guarantee of diversity.

ANNEX 2: OUR PROPOSALS

Summary

1. TV

- Remove 15% rule
- Remove restriction on joint-ownership of London licences
- Keep nominated news provider, with additional licence conditions to ensure adequate financing
- Raise ownership rules on nominated news provider from 20 to 40%, with an additional limit of 40% on combined ITV licensee ownership
- Remove all restrictions on ITV/C5 joint ownership
- Power to vary licence on change of ownership to be strengthened to protect regional emphasis
- Regional production guaranteed by tier 2 requirements

2. Newspapers

- a less onerous regime that is applied post-acquisition only to cases of significant concern on competition or plurality grounds. The Competition Commission will make recommendations to the Secretary of State on this basis.
- OFCOM to have a duty to undertake and consider effective tests of local opinion. This would require them to undertake consultation through citizens' juries or equivalent.

3. Radio

- At least 3 owners of local services in each local area, plus the BBC
- No restrictions on ownership of national services
- At least 2 owners of multiplexes in areas where they overlap
- OFCOM to be able to vary licence conditions on change of ownership to ensure local character of service is preserved

4. Foreign ownership

- All restrictions to be removed

5. Cross-media ownership

Existing pattern of rules to be retained, but stripped down to those rules we feel are essential

Rules that merely stipulate public interest tests to be removed

Rule on national TV/national radio ownership to be scrapped

20% rule retained for national newspaper/TV ownership

20% rule to be removed for national newspaper/radio ownership. Replaced with a rule preventing national newspapers owning radio stations in any area with less than 3 separate commercial owners in addition to the BBC.

Rules on local newspaper/local radio ownership to be replaced by a rule preventing local newspapers with more than 50% of the market owning a local radio station in the same area if there are less than 3 separate commercial owners in addition to the BBC.

Rules on ITV companies' ownership of local newspaper markets [altered to allow them no more than 50% of a market where they hold the licence OR kept at 20%].

Removal of rule banning joint ownership of ITV regional licence/local radio licence for the same area - new rule to prevent such joint ownership where there are less than 3 separate commercial owners in addition to the BBC.

6. Review of ownership rules

All rules to be subject to automatic review by OFCOM no less than every 3 years
OFCOM to make recommendations to the SofS, who can amend rules by secondary legislation

Detailed Proposals

1. Television

Within the television market, we propose to deregulate and rely on competition law to provide a plurality of commercial providers in addition to Channel 4 and the BBC. Diversity will be retained through content regulation, and we will continue to make special arrangements for the provision of an independent news service to ITV.

We propose:

- to remove the rule that imposes a limit of 15% on any company's share of the TV audience; and
- to remove the rule that prohibits joint ownership of the two London ITV licences.

These two changes are now widely expected, having been proposed in both the Communications White Paper and the more recent consultation paper. Their effect will be to allow the possibility of a single ITV company, at a point when the competition authorities are satisfied that such a company will not unduly dominate the advertising market. ITV is made up of 14 regional licences, and each licence will retain requirements for original production, independent production and UK regional production and programming. Single ownership will not dilute the regional emphasis. Requirements will also be retained for due accuracy and impartiality in the reporting of news and any political or industrial controversy.

- to remove the rule that prevents joint ownership of GMTV and Channel 5.

Many in the industry wrongly interpret this rule as a ban on the joint ownership of any ITV licence and Channel 5. There is no such prohibition and we do not advocate imposing one, but would rather remove the existing rule, which has only a limited actual effect. The BBC, Channel 4 and existing commercial competitors in digital and cable markets will make sure there continues to be a diversity of content and a plurality of views available from television.

- to keep the nominated news provider system for ITV;
- to give Ofcom greater powers to intervene to ensure the news provider is adequately financed, to ensure that the news is of a high standard; and
- to raise the existing 20% limit on ownership to be raised to 40%, allowing a minimum of three owners, but that a 40% cap is put on the share that may be owned collectively by the ITV companies themselves, to make sure the news retains its editorial independence.

We believe that these changes will ensure that an independent news service of high quality is maintained, and deal with the problem of the steady decline in resources available to ITN under the present rules (its budget has fallen from £80m to £36m pa)

At some point in the future it may be that the need for a nominated news provider on ITV will disappear, as competition widens in the market for high quality news. As we said in the White Paper, we will therefore include a sunset provision in the Bill, to allow the news

provider system to disappear at this point, on the advice of OFCOM.

2. Radio

Most commercial radio is local radio, and whilst we plan to allow consolidation within the market as a whole, to allow the companies involved to grow, rules will be kept to ensure that listeners retain a choice of local voices.

We propose:

That there be no restriction (other than Competition Law) on the joint ownership of the three national radio licences, nor on ownership of national digital radio services.

- National services (Classic FM, Virgin and talkSPORT) account for only 8% of listeners, will continue to be clearly demarcated (one is required to be non-pop and one predominantly speech) and contain little editorial content. We consider, on balance, that it may not be necessary to keep them in separate hands.
- At the local level, that OFCOM set up a system to ensure that in every area there are at least 2 (3?) owners of local analogue radio services and two (3?) owners of local digital radio services in addition to the BBC.
- We also suggest that where local digital radio multiplexes overlap there should be at least 2 (3?) multiplex owners in addition to the BBC.

These rules should allow a degree of consolidation that allows large radio companies to provide a diverse range of music services, whilst making sure that at least three distinct local 'voices' exist.

Plurality in radio ownership is more important at the local level. The majority of airtime tends to be devoted to music, but it is local news, opinion and features that often provide the basic character and appeal of a station. Licences will continue to require all radio stations to report news with due accuracy and impartiality, and prevent local radio stations giving undue prominence to any particular opinion in areas of political or industrial controversy. When a local licence changes hands, the regulator will be allowed to vary the format controls that are applied, to ensure that the local nature of the service is preserved.

3. Newspapers

[*DTI contribution to follow* - a less onerous regime that is applied post-acquisition only to cases of significant concern on competition or plurality grounds. The Competition Commission will make recommendations to the Secretary of State on this basis.]

OFCOM should have a duty to undertake and consider effective tests of local opinion. This would require them to undertake real consultation, through citizens' juries or equivalent.]

4. Cross-media ownership

It is important that some cross-media ownership rules are retained, to establish and prevent the sort of concentration of influence that democracy will not bear and that competition law will not preclude, both at national and local level. In particular, we suggest that cross-media rules must take account of the particularly pervasive and often owner-led editorial influence of national newspapers, by impinging on the extent to which proprietors can extend their influence into national television. We also want to make sure that there is a plurality of outlets for opinion across the local media in any area.

We propose:

- No one controlling more than 20% of the national newspaper market may hold any licence for Ch 3 or Ch5.
- No one controlling more than 20% of the national newspaper market may hold more than a 20% stake in any Ch 3, or C5 service.
- A company may not own more than a 20% share such a service if more than 20% of its stock is in turn owned by a national newspaper proprietor with more than 20% of the market.
- No national newspaper proprietor may own a local radio station that covers an area where there are fewer than 3 separately-owned providers of local radio in addition to the BBC.
- No owner of a local newspaper with more than a 50% share of local circulation in the coverage area of a local radio station] may own that station if there are fewer than 3 separately-owned providers of local radio in addition to the BBC in the same area.
- No one owning the regional Channel 3 licence in the coverage area of a local radio station may own that station, [if there are fewer than 3 separately-owned providers of local radio in addition to the BBC in the same area.]
- No one owning a regional Channel 3 licence may own [more than 40%? or more than 20% (the existing rule)?] of any local newspaper market in the same area.

The changes from the current system are that:

- The ban on newspaper or TV owners holding national radio licences will be removed. The 3 existing national radio licences are not sufficiently important to public discourse to justify the preservation of this rule.
- The ban on national newspaper companies [or ITV companies?] holding local radio licences will be relaxed, to apply only in areas where there are very few (less than 3) services. The complicated rules on local newspaper/local radio cross-ownership will be simplified to the same effect - dominant local newspapers will only be allowed to buy where they are one of at least 3 separate owners. This will allow newspaper and TV companies to make significant savings through the cross-ownership of radio services with joint news-gathering facilities in large markets. Format controls on local radio services, and the music-driven nature of such services, should ensure that they retain a distinct character under any ownership, but these rules will prevent any one company dominating all the outlets for local news in areas where few such outlets exist.

[The restriction on the share of local newspaper markets that ITV companies can own will be relaxed, to allow them to own up to 50% of local markets. This could bring them savings in allowing significant opportunities to share newsrooms, for example, but would prevent one voice coming to completely dominate both main sources of local news, by ensuring competition in the newspaper market.]

The three existing rules that together make any purchase of any broadcasting service by any newspaper proprietor subject to a public interest test will be removed. The scope of these tests is not clear; they discourage newspaper owners from attempting

levels of consolidation that would not necessarily dilute plurality; and they distort the market by encouraging existing owners who wish to sell to accept bids from non-newspaper owners who will not have to wait to pass a public interest test (a parallel may be drawn with the recent purchase of the Express newspapers by a non-newspaper owner who was not subject to any test under the special newspaper regime).

4. Review of ownership rules

One of the problems with the existing media ownership rules is that they are alterable only by primary legislation. We want to introduce more flexibility. One way of doing this would be to allow acquisitions that exceeded any ownership limits, as long as they passed some form of plurality test. This idea is not popular in the industry, where it is regarded as too unpredictable. A far more popular suggestion for flexibility is that ownership rules should be subject to review, and possible reform, at regular intervals.

We propose

- that all rules should be reviewed by OFCOM no less than every three years
- That OFCOM should report its findings to the Secretary of State for Culture, Media and Sport, who would be given powers to amend or remove rules by secondary legislation.

A shorter review period of two years was considered but that was felt to be too likely to result in the instability of permanent lobbying for change. The proposal for the use of secondary legislation may cause concern in Parliamentary circles, where it is sometimes suggested that such changes are so important that they should be made only through primary legislation.

5. General disqualifications on ownership

We wish to deregulate by removing general prohibitions on ownership by any particular group where there are likely to be no adverse effects.

Certain individuals and bodies have in the past been disqualified from holding any broadcasting licence.

[We propose

- to remove the disqualification on foreign ownership.

The existing rule is inconsistent, in applying only to non-EEA companies, and is difficult to apply, given that it depends on a subjective judgement on whether foreign interests 'control' a given company. Non-EEA companies should bring welcome inward investment, whilst requirements will remain for original production, independent production and UK regional production and programming.

- to remove disqualifications on local authorities (subject to regulatory safeguards preventing any politically-orientated abuse of this freedom, or damage to the competitive environment) and advertising agencies (provided the competition

authorities are content).

- to retain the prohibition on ownership by political organisations.
- to remove the anomaly that prevents religious organisations owning local digital radio licences when they can own local analogue stations. However we will retain the prohibition on religious ownership of any national broadcasting licence or any licence to control a multiplex.

There is not enough national spectrum available to allow for adequate freedom of expression of all religious views, and a religious organisation should not be given the power to control, through a multiplex, which other organisations may broadcast what type of services through that multiplex. In general, the established Churches share some of these concerns about religious ownership, but the more evangelical wing of the Church have instigated a widespread campaign for the removal of all prohibitions, and we have received some 9,000 letters in support of this view.

ANNEX 3: THE POSSIBLE EFFECTS OF THESE CHANGES

The changes we are proposing would encourage inward investment and would allow significant growth in the size of UK TV and radio companies, to allow them to compete more effectively internationally. The rules that remain would maintain the restrictions that prevent a large newspaper group or its subsidiary from controlling a terrestrial television station, and should ensure that no company comes to dominate the local debate in any area.

Some of the possible effects of the reforms could be:

Single ownership of ITV and Channel 5 (as and when the competition authorities allow it).

3 or 4 separate owners of ITN, with ITV companies together owning no more than 40%.

[DTI contribution to follow - The exclusion of most local newspapers from the special merger regime, and the inclusion of any non-newspaper owners making a significant acquisition.]

Further consolidation in local newspaper markets, where papers could be joint-owned with local radio stations (as long as two or three radio owners existed in addition to the BBC) [and ITV regional licences (where less than [20% or 40%] of the newspaper market was owned).]

2 or 3 big radio groups, which might be owned by TV or newspaper companies.

At least 2 separately owned local commercial radio stations in each local area, in addition to the BBC. Where there are fewer than 3 local commercial radio stations, none could be owned by any national newspaper group, [an ITV company] or by any local newspaper with more than a 50% share of local circulation.

A continuing restriction on large newspaper groups and subsidiaries (News International and Sky, Trinity Mirror, and possibly Associated Newspapers in the near future) owning any significant share of ITV or Channel 5 companies. Other newspaper groups, with less than 20% of the national market, would now be able to invest in terrestrial TV without the acquisition having to pass a public interest test.

Further deregulation (or even re-regulation) as an option in 3 years time.

ANNEX 4: POTENTIAL WINNERS AND LOSERS

This note tries to assess who will benefit from the changes we propose and who will not, by suggesting how each company's possible share of the market could change.

BIG WINNERS - TERRESTRIAL TV COMPANIES; MOST NON-EEA COMPANIES; THE BIGGEST RADIO GROUPS; THE SMALLER NATIONAL NEWSPAPER GROUPS.

Carlton and Granada:

- will be able (eventually) to merge, and to buy C5 (they could actually buy C5 now but don't seem to realise it);
- will be free to buy all three national analogue radio stations;
- could acquire stakes of up to 50% in local newspaper markets;
- will be able to acquire around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- would be restricted to their existing combined share of 40% in ITN.

If they grew to the maximum possible size (and competition law imposed no restraint) they might control:

- 29% of the total TV market (48% of the commercial TV market, 56% excluding C4);
- 22% of the total radio market (roughly 44% of the commercial radio market);
- 19% of the national newspaper market;
- 50% of the local/regional newspaper market.

Scottish Media Group (SMG):

- will now be able to buy into local radio markets;
- could also buy the other two national radio stations (they already own Virgin);
- might acquire stakes of up to 50% in local radio markets, to add to the Glasgow Herald (counted as a national paper);
- could eventually attain the same maximum share as Carlton and Granada as part of a single ITV.

If, as seems likely, SMG started by buying out Scottish Radio Holdings, they would have:

- 5% of the total radio market (roughly 10% of the commercial market)
- 3% of the total TV market (5% of the commercial market)
- 1% of the national newspaper market

This would amount to a significant position across Scotland (potentially 25% of the commercial TV market, 44% of the commercial radio market and one of the most influential Scottish national/regional newspapers, *The Herald*). However the rules on local cross-media ownership will ensure that in each separate local area there continues to be a plurality of at least 4 separate voices for local news and opinion.

Bertelsmann:

- might buy the whole of ITV, to add to Channel 5;
- could also buy into other media to exactly the same extent as Carlton or Granada.

GWR and Capital Radio:

- [as the two largest existing radio companies might be best placed to expand. If the radio rules stipulated at least 2 commercial owners of local radio in each area, they could between them come to control all local services, analogue and digital. Alternatively they may face competition from newspaper and TV companies in larger markets, and, if the radio rules insisted on 3 commercial owners of local radio, from another large radio group.]
- could own all 3 national radio licences (any single company could own all 3);
- might merge with a local or national newspaper company or an ITV/C5 company if they shared the radio market with a third company.

A radio-only company could grow to control:

- [29% of the total radio market (roughly 58% of the commercial radio market) if the rule was for 2 commercial owners in each local area.
- 22% (44%) if the rule was for 3 owners in each area.]

A radio company that merged with a TV or newspaper company could eventually control the same maximum share as ITV, ie:

- 29% of the total TV market (48% of the commercial TV market, 56% excluding C4);
- 22% of the total radio market (roughly 44% of the commercial radio market);
- 19% of the national newspaper market;
- 50% of the local/regional newspaper market.

Daily Mail and General Trust:

- will be able to buy around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- will be able to buy as many national radio licences as they like;
- as long as their share of the national newspaper market stays below 20%, will be able to buy Channel 5;
- as long as their share of the national newspaper market stays below 20%, will be able to invest in ITV companies, although they won't be able to hold licences or control the licence-holding company in regions where the Northcliffe Press control more than 50% of any local newspaper market;
- will no longer need to pass a public interest test to buy any broadcasting interests;
- would be able to double the size of their ITN stake if they wished (we don't think they do).

They could ultimately end up as part of a company controlling:

- 4% of the total TV market (roughly 7% of the commercial market)
- 22% of the total radio market (roughly 44% of the commercial radio market);
- 19% of the national newspaper market;
- 50% of the local/regional newspaper market.

Northern and Shell:

- could buy whatever TV interests they wanted;
- could buy a significant slice of local radio markets.

If they retained their existing share of the national newspaper market and invested heavily in radio they might come to own:

- 12% of the national newspaper market
- 22% of the total radio market (44% of the commercial market)

AOL Time Warner, Disney, Viacom, ClearChannel, Austereo:

- can now move into terrestrial broadcasting markets if they wish, buying into ITV, Channel 5 and analogue radio.

A big foreign cross-media company would not be held back from investing any more than a British company. They could therefore own the same maximum combination, unless the competition authorities prevented it:

- 29% of the total TV market (17% of the commercial TV market);
- 22% of the total radio market (roughly 44% of the commercial radio market);
- 19% of the national newspaper market;
- 50% of the local/regional newspaper market.

It seems particularly likely that ClearChannel, the American radio group, may wish to invest in British radio markets, where they might own up to

- 29% of the total radio market (roughly 58% of the commercial radio market).

SMALLER WINNERS - THE LARGEST NATIONAL NEWSPAPER GROUPS AND THEIR SUBSIDIARIES; THE REGIONAL-ONLY NEWSPAPER GROUPS.

News International and Sky:

- will be able to buy into national radio, to own all 3 licences;
- will be able to acquire around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- will no longer need to pass a public interest test to buy any radio interests;
- will be frustrated in any attempt to buy into ITV or Channel 5.

If Sky bought as many radio stations as possible, they might control:

- 8% of the total TV audience (13% of the commercial audience)
- 29% of the total radio market (roughly 58% of the commercial market)

This in addition, of course, to News International's 33% share of the national newspaper market. News International have a 36% share in BskyB. If News International were deemed to control Sky (a judgement for the ITC) Sky's local radio interests would be restricted to markets with 3 or more stations - this might reduce their share of the total radio market to 22% or lower.

Trinity Mirror:

- will be able to buy as many national radio licences as they wish;
- will be able to acquire around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- will no longer need to pass a public interest test to buy any radio interests;
- if they maintain more than a 20% share of the national newspaper market, they will be frustrated by any attempt to buy into ITV or Channel 5.

So Trinity Mirror, if they bought as many radio stations as possible, might end up owning:

- 23% of the national newspaper market
- 23% of the total newspaper market (including local/regional press)
- 22% of the total radio market (roughly 44% of the commercial market).

The Johnston Press and Newsquest:

- should be able to continue their consolidation in the local press;
- will be able to acquire around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- would not need to pass any public interest test for any acquisition.

If Newsquest bought as many radio stations as possible to add to their current press holdings they might eventually control:

- An 11% share of total UK circulation;
- 22% of the total radio audience (44% of the commercial market).

If Johnston Press bought as many radio stations as possible to add to their current press holdings they might eventually control:

- A 5% share of total UK circulation;
- 22% of the total radio audience (44% of the commercial market).

TREADING WATER

No one - there should be an opportunity for every different type of company to expand in some direction, although there is no way of knowing which companies will take their opportunities and which will not.

LOSERS?

Anyone who gets bought out. This is impossible to predict with any accuracy but the most likely candidates in the immediate future would seem to be the smaller radio companies - EMAP, Chrysalis, Scottish Radio Holdings, the Wireless Group - [especially if the radio ownership rules allow only 2 commercial owners of local radio in each local area, rather than 3]

ANNEX 5: LIKELY CRITICS AND SUPPORTERS

Below is an assessment of who is likely to support and oppose each of the rules we propose (and, where appropriate, what the likely reaction will be to the absence of some of the existing rules) based on the responses we received to the consultation document. Where there are markedly different reasons for such support or opposition these have been identified.

Since our consultation paper did not provide any detailed options for reforming cross-media ownership rules, the analysis for changes in that area is less certain, but we have predicted what reactions will be to the general approach of the package of cross-media rules.

A glossary of acronyms is provided.

General Disqualifications (this assumes Foreign ownership rules will be scrapped)

1. No religious organisation may own any national broadcasting licence or any licence to provide a multiplex service

For Radio Authority; BECTU; some established Church groups
Against 9,000 individual Christians, evangelical Christian groups and broadcasters

2. *No foreign ownership rules*

For News International, Bloomberg, Telewest
Against (on grounds of reciprocity) CRCA, EMAP, C5, SMG, Carlton, Capital, GMG, GWR, Radio Authority
(completely against) BECTU, SACOT, VLV

Television

3. ITV news must come from a nominated news provider. The value of the contract must meet with OFCOM's approval

For ITC, [REDACTED] C4
Against Carlton, [REDACTED] BBC

4. The nominated news provider system may be sunset by the Secretary of State on OFCOM's recommendation when they are satisfied that there exist a sufficient number of additional high quality competitors to the BBC

For (If there has to be a nominated news provider) Carlton, [REDACTED]

5. No one may own more than a 40% share in the nominated news provider
6. The ITV licensees may collectively own no more than a 40% share in the nominated news provider

For ITC, [REDACTED] C4, GMG, BECTU
Against Carlton, [REDACTED] BBC

7. *No other rules on ITV ownership*

For Carlton, [REDACTED]
Against Advertisers [REDACTED] (PACT also have concerns about how the network would work)

Radio

8. [EITHER:

[In each local market, there must be at least 2 separate commercial owners of both analogue and digital local services, in addition to the BBC.

For CRCA, GWR, Capital, EMAP, Scottish Radio Holdings
Against Radio Authority

OR:

In each local market, there must be at least 3 separate commercial owners of both analogue and digital local services, in addition to the BBC.

For Radio Authority
Will accept (although would rather have '2 + 1') CRCA, GWR, EMAP, Scottish Radio Holdings
Against (would much rather have '2 + 1', if not competition law) Capital Radio]

9. In areas where multiplexes overlap, they must be owned by at least [2 or 3] different persons.

For GWR, CRCA
Against (too much of a restriction) Capital Radio
(too light a restriction) Radio Authority

Newspapers

10. [DTI stuff to follow - a less onerous regime, applied post-acquisition only to significant cases, making clear plurality is a serious concern and with stipulation to take heed of 'citizens councils' or equivalent.]

Cross-media ownership

11. No one controlling more than 20% of the national newspaper market may hold any licence for Ch 3 or C5.
12. (a) No one controlling more than 20% of the national newspaper market may hold more than a 20% stake in any Ch 3, or C5 service.
(b) A company may not own more than a 20% share such a service if more than 20% of its stock is in turn owned by a national newspaper proprietor with more than 20% of the market.
13. No national newspaper proprietor may own a local radio station [analogue or digital] that covers an area where there are fewer than 3 separately-owned providers of local radio in addition to the BBC.
14. No owner of a local newspaper with more than a 50% share of local circulation in the coverage area of a local radio station [analogue or digital] may own that station if there are fewer than 3 separately-owned providers of local radio in addition to the BBC in the same area.
15. No one owning the regional Channel 3 licence in the coverage area of a local radio station [analogue or digital] may own that station [if there are fewer than 3 separately-owned providers of local radio in addition to the BBC in the same area?]
16. No one owning a regional Channel 3 licence may own [more than 50%? or more than 20% (the existing rule)?] of any local newspaper market in the same area.

For ITC, Radio Authority, EMAP, SRH, [REDACTED] SACOT, BECTU, VLV
(as the best option if there have to be rules) Trinity Mirror, GMG

Against (prefer competition law) News International, [REDACTED] Telewest, DMGT, C5, Carlton, Bloomberg, Capital
(prefer a 'sliding scale' 40-30-20-15 scheme) CRCA, GWR
(have their own schemes) SMG, IPA, [REDACTED]
(want limits on cross-ownership of platforms and content) C4, BBC
(want stricter rules) CPBF

Review of ownership rules

17. OFCOM should review all media ownership rules no less than every 3 years, and may make recommendations to the Secretary of State to reform or remove them. The Secretary of State may then use secondary legislation for this purpose.

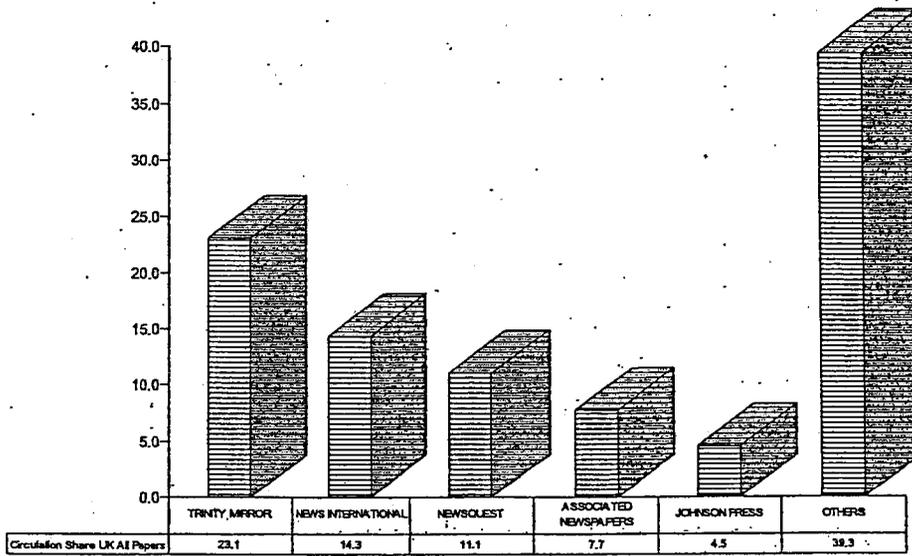
For CRCA, ITC, BBC, SACOT, DMGT, [REDACTED] Capital, C4, GWR, IPA, [REDACTED]
Against BECTU, CPBF
(not often or quick enough - prefer sunsets) [REDACTED] Carlton
(too uncertain) Radio Authority

Glossary of acronyms

BECTU	Broadcasting Entertainment Cinematograph and Theatre Union
CPBF	Campaign for Press and Broadcasting Freedom
CRCA	Commercial Radio Companies Association
DMGT	Daily Mail and General Trust
GMG	Guardian Media Group
IPA	Institute of Practitioners in Advertising
	
PACT	Producers Alliance for Cinema and Television
SACOT	Scottish Advisory Committee On Telecommunications
VLV	Voice of the Listener and the Viewer

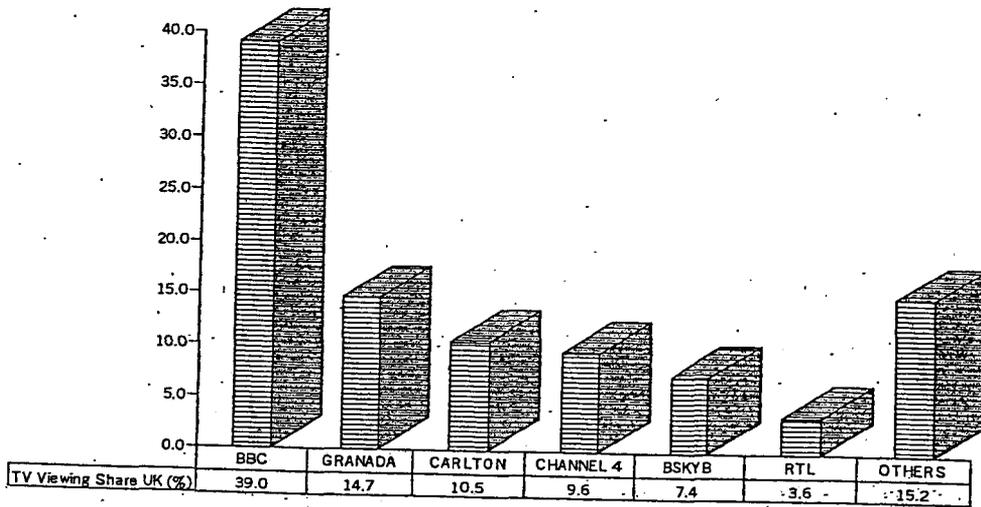
NEWSPAPERS

National, regional, local



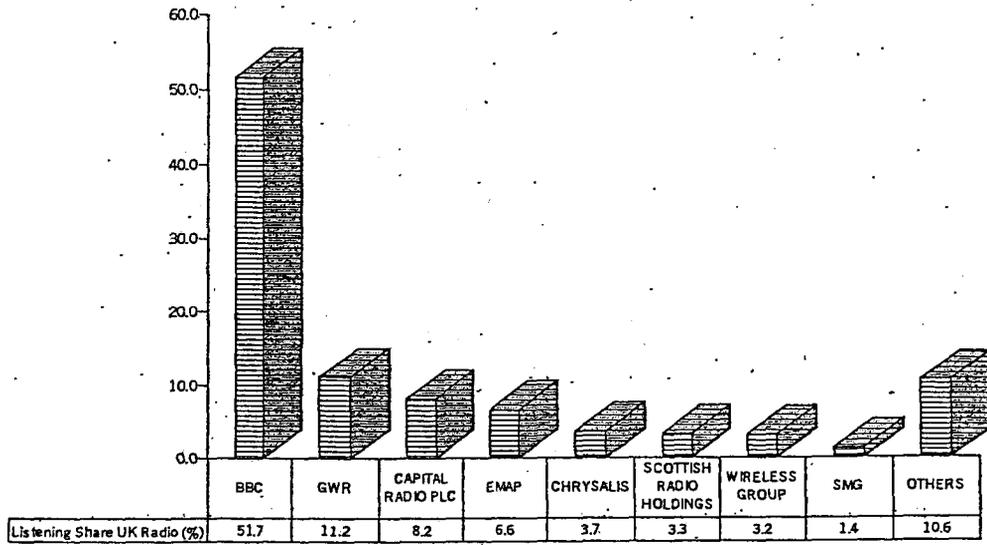
TELEVISION

(all UK)



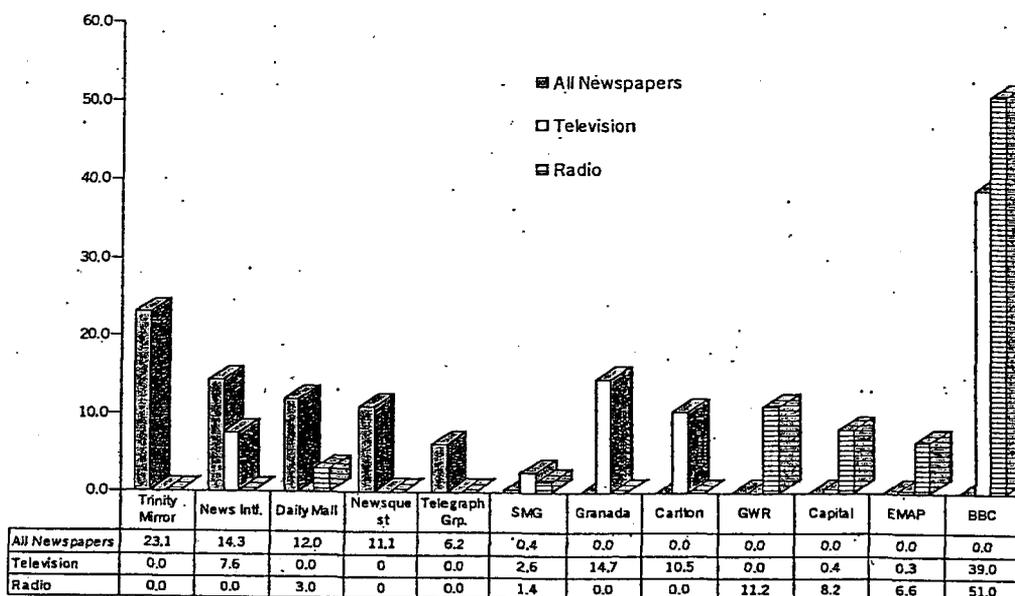
RADIO

(all UK)

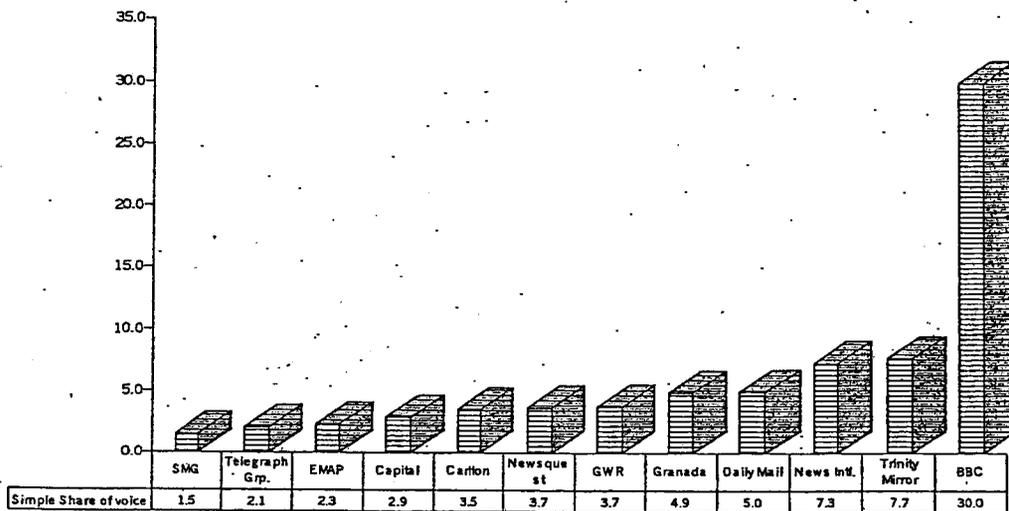


CROSS MEDIA

Counting all national newspapers approximate percentage shares - Q1 2001



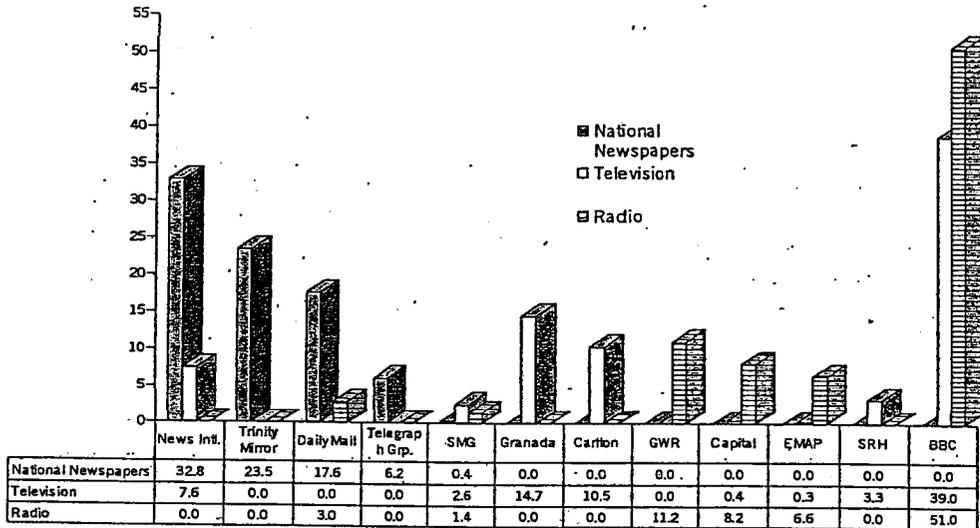
SHARE OF VOICE



Calculation - no explicit exchange rate between media, simple summation of percentage shares in national radio, TV, newspaper markets expressed as percentage of theoretical maximum

XMO SHARES

(National papers only, excluding regional/local)



ANNEX 7: INDUSTRY TRENDS (draft)

The growth in available media

2002

National terrestrial TV	6 stations
National analogue radio	8 stations
Local analogue radio	300stations
Satellite and Cable TV	200+channels
National digital radio	12 stations
Local digital radio	43 stations
National newspapers	30 daily/Sunday titles
Local and regional press	1,200+titles

In addition:

- access radio and TV are supplementing existing arrangements for university, hospital and special licence radio.
- Internet provision continues to expand, and nearly half of all households are now connected.

[1980 equivalent numbers to be provided]

Note on developing convergence

Note on circulation, viewing and listening, employment and investment trends

Figures on advertising and other earnings trends.

ANNEX 8: SUMMARY OF EXISTING CROSS-MEDIA OWNERSHIP RULES

TV/radio cross-ownership

1. No one can hold the GMTV licence or the C5 licence and a national radio licence.
2. No one can hold a local radio licence (analogue or digital) and the regional Ch 3 licence in the same area.

20% rules on newspaper owners

3. No one controlling more than 20% of the national newspaper market can hold any licence for Ch 3, C5, or any radio service.
4. (a) No one controlling more than 20% of the national newspaper market can hold more than a 20% stake in any Ch 3, C5 or radio service.
(b) A company may not own more than a 20% share such a service if more than 20% of its stock is in turn owned by a national newspaper proprietor with more than 20% of the market. *[This is the so-called 20:20 rule]*
5. No one controlling more than 20% of the local newspaper market in any Ch 3 region may hold the licence for that Ch 3 service.
6. No one controlling more than 20% of the local newspaper market in the area of a digital programme service may hold the licence to provide that digital service.

Limits on local newspaper companies owning local radio stations

7. Anyone controlling more than 50% of the local newspaper market in the coverage area of a local radio station own that station only if: there is another station under different ownership in the same area; the acquisition passes a public interest test. They may own no more than one station in any area.
8. Local newspapers owners controlling more than 20% of the market may own up to two licences for overlapping local radio services if: one is FM and the other is AM; the acquisition passes a public interest test.
9. Local newspapers owners controlling less than 20% of the market can own up to three licences for overlapping local radio services, as long as they pass a public interest test.

Rules that merely stipulate a public interest test

10. Any application by any newspaper owner to hold a licence for GMTV, C5, or any national radio service will be subject to a public interest test.
11. Any application to hold a regional Ch 3 licence or a local radio licence by any national or relevant local newspaper owner will be subject to a public interest test.
12. Digital programme services may not be provided for three months after the award of the licence to a national or relevant local newspaper owner unless a plurality test is met.

ANNEX 9: OPTIONS FOR REFORM OF THE NEWSPAPER MERGER REGIME

OPTION ONE – a bespoke newspaper regime – Recommended.

1 The DGFT would be able to refer a transfer over which he had competition concerns to the Competition Commission, within a set period from the later of the completion of the transfer or its publication, OFCOM would be able to refer any remaining cases over which it had “plurality” concerns by a slightly later timescale.

2 The Competition Commission would assess the transfer(s) on competition and plurality grounds. If they found no detriments to the transfer on both grounds, and OFCOM consented, the transfers would be cleared. If they found detriments on either or both grounds, they would so advise the Secretary of State and recommend remedies which would cure the problem.

3 The DGFT would be required to advise on the competition aspects of the CC’s case, and OFCOM on the plurality aspects. Decisions would be for the Secretary of State, but would be restricted to remedying the identified detriments.

OPTION TWO – an alternative, which would apply to newspaper ownership the procedures for ‘exceptional public interest’ cases to be introduced by the Enterprise Bill.

1 The SoS would be able to intervene in any case that raised issues concerning the plurality of newspapers. The DGFT would advise the SoS on the competition aspects of the case, and the SoS could seek OFCOM’s advice on the plurality issues. The reference decision would rest with the SoS.

2 The CC would assess the transfer(s) on competition and plurality grounds (if the DGFT had raised competition concerns) or on plurality grounds alone (if the DGFT had concluded that the transfer would not result in a substantial lessening of competition). On receipt of the CC’s report, the ultimate decisions (on whether the merger was in the public interest and, if not, what remedies should be imposed) would be for the SoS.

ANNEX 10: SUMMARY OF KEY CONSULTATION RESPONSES

Alphabetical list of responses included in this summary

- 1 Associated Newspapers Limited
- 2 BBC
- 3 BECTU
- 4 Bloomberg
- 5 Broadcasting Standards Commission (BSC)
- 6 BSkyB
- 7 Capital Radio plc
- 8 Carlton Communications plc
- 9 Channel 4
- 10 Channel 5
- 11 Commercial Radio Companies Association (CRCA)
- [REDACTED]
- 13 Daily Mail and General Trust (DMGT)
- 14 Emap
- 15 Endemol UK
- [REDACTED]
- 17 Guardian Media Group (GMG)
- 18 GWR Group plc
- [REDACTED]
- 20 Independent Television Commission (ITC)
- 21 Institute of Practitioners in Advertising (IPA)
- 22 mediawatch-uk
- 23 News International plc
- 24 Producers Alliance for Cinema and Television (PACT)
- 25 Radio Authority
- 26 Scottish Radio Holdings plc
- 27 SMG plc
- 28 Trinity Mirror

Associated Newspapers Limited

Newspapers

Abolish special newspaper regime: newspaper market is self-regulating.

No Ministerial involvement in newspaper merger decisions.

Supports removal of local titles from newspaper regime:

Supports extension of regime to all qualifying acquisitions.

Abolish criminal sanctions.

Cross Media Ownership

Share of voice approach has potential - merits further research.

BBC

Television

Supports single ITV.

Joint ownership of ITV and Channel 5 is matter for competition authorities.

Supports retention of nominated news provider system for ITV: regulations should require commitment by licence holder to adequate financing.

Radio

Supports abolition of radio points system. Competition authorities should determine limits of radio ownership.

Supports Radio Authority/CRCA proposal for ILR, comparable scheme for digital radio and multiplexes.

Supports removing ban on ownership of more than one national radio licence.

Cross Media ownership

Competition law and single-media rules would not be enough.

Opposes plurality test as it may undermine certainty delivered by the media ownership rules. (Any test should include "gateway/platform" and "premium content" control).

Plurality test decisions must be taken by Ministers.

40 / 30/ 20 ownership proposal may work.

OFCOM

OFCOM should review media ownership rules every four years. Ministerial scrutiny and consultation should play a part.

BECTU

Non-EEA ownership

Keep current prohibitions.

Religious Ownership

Opposes any further relaxation of ownership restrictions on religious organisations.

Television

Concerned about implications of a single ITV.

Supports prevention of joint ownership of ITV and Channel 5.

Supports retention of nominated news provider system.

Supports raising nominated news provider ownership limit to 40%.

Radio

Supports retention of points system.

Supports 'three-plus-BBC' proposal for ILR, and comparable scheme for digital services and multiplexes.

Opposes allowing ownership of more than one national radio licence.

Supports enabling OFCOM to prevent onward sale of licences.

Cross Media ownership

Supports retention of existing limits on cross-media ownership.

Opposes abolition of current cross-media limits, and reliance on competition law.

OFCOM

Does not support OFCOM review of rules every 2 years.

Bloomberg

Non-EEA ownership

Abolish current prohibitions.

Broadcasting Standards Commission (BSC)

Newspapers

OFCOM will need to develop expertise in newspaper industry.

Other comments

Content regulation and public broadcasting corporations bear directly on issues of plurality.

BSkyB

Television

Government's approach to ITV and Sky respectively is inconsistent.

Abolish existing cross-media ownership rules.

Tighten impartiality rules, rather than impose restrictions on ownership.

Newspapers

Leave plurality decisions to Competition Commission.

Opposes exceptional public interest gateway.

Abolish current cross-media limits, and rely on competition law regulation.

OFCOM

Supports OFCOM review of rules every 2 years.

Capital Radio plc

Radio

Rely on competition authorities to determine the appropriate limits on UK radio ownership (including digital services).

Supports removal of disqualification from owning more than one national radio licence.

OFCOM should be not able to prevent the onward sale of licences for two years after award

Cross Media ownership

Abolish current cross-media limits, relying on media and competition law regulation.

OFCOM

OFCOM should review media ownership rules, but every three years.

Other Comments

OFT and OFCOM should take into account effect of BBC on market influence, market distortion and economic effect.

Carlton Communications plc

Non-EEA ownership

Relaxation should be reciprocal.

Television

Allow ITV to consolidate.

Allow joint ownership of ITV and Channel 5.

Supports abolition of nominated news provider system.

Radio

Competition authorities should determine limits of radio ownership.

Digital radio: open access to platforms more important than ownership.

Cross-Media Ownership

Abolish cross-media limits, rely on competition law.

OFCOM

Agrees with 2 year review and sunset clauses.

Channel 4.

Television

Supports single ITV.

Supports restriction on joint ownership of ITV and Channel 5.

Supports retention of nominated news provider system. Supports raising ownership limit to 40%.

Cross Media ownership

Supports plurality test with Ministers making final decisions.

Rejects 40/30/20 ownership model.

Platform ownership should be recognised as a form of media ownership.

OFCOM

Review of rules should involve full consultation and democratic scrutiny.

Other comments

Government should consider the regulation for the separation of carriage (ownership of a platform) from content (service provision).

Channel 5

Non-EEA ownership

Reasonable to keep current prohibitions.

Television

Concerned about potentially anti-competitive nature of a single ITV, but prefers to leave to competition law.

Joint ownership of ITV and Channel 5 should be left to competition law.

ITV should be free to produce or buy its own news, but Ch 5 supports raising ITN stakeholder limit to 40%.

Cross Media ownership

Leave decision-making process to OFCOM and competition authorities.

Supports proposal for permeable limits with a plurality test.

OFCOM

Media legislation should be modified, on recommendation of OFCOM, by secondary legislation and approval of Parliament.

Commercial Radio Companies Association (CRCA)

Non-EEA ownership

Relaxation should be reciprocal.

Radio

Proposes further deregulation with a system of 'two-plus-BBC' for ILR. Apply same system to digital services until sufficient multiplexes serve an area.

Ensure that, where local multiplexes overlap, there should be at least two owners in each marketplace.

OFCOM should not be able to prevent onward sale of licences.

Cross Media ownership

Supports the 40/30/20 ownership model.

OFCOM

Supports OFCOM review of rules every three years. Believes Ministers should make final decisions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Daily Mail and General Trust (DMGT)

Television

Abolish nominated news provider system.

Radio

Proposes "two-plus-BBC" proposal for radio ownership, including digital.

Ownership of digital radio multiplex licences should be unrestricted.

Cross Media ownership

Newspaper ownership of radio should be unrestricted.

Plurality tests lack clarity and do not deliver certainty.

Does not object to 40/30/20 limits.

Supports 'Share of Voice' scheme, if Government considers it necessary.

OFCOM

Supports OFCOM review of rules every 2 years.

Emap

Non-EEA ownership

Relaxation should be reciprocal.

Radio

Abolish points system.

Support for Radio Authority/CRCA proposal for ILR, but wants to raise number of percentage points one operator can own.

Cross-Media Ownership

Supports Radio Authority "three-plus-one" proposal.

Supports "public interest test". 'Share of voice' too complex and cumbersome.

Other comments

OFCOM regulation of BBC essential.

[REDACTED]

[REDACTED]

Guardian Media Group (GMG)

Non-EEA ownership

Relaxation should be reciprocal.

Religious Ownership

Supports retention of restrictions on religious organisations.

Television

Competition law alone to regulate single ITV.

Supports preventing joint ownership of ITV and Channel 5.

Supports retention of nominated news provider system

Supports raising the ITV nominated news provider ownership limit to 40%.

Radio

Supports abolition of points system and reliance on competition authorities alone.

Supports removal of disqualification from owning more than one national radio licence

Leave digital radio (and multiplex) regulations at minimum.

Supports enabling OFCOM to prevent onward sale of licences.

Newspapers

Supports proposal for an exceptional public interest gateway.

Supports removal of local titles from newspaper regime.

Supports extension of newspaper regime to all qualifying acquisitions, including non-newspaper proprietors.

Cross Media ownership

Cross-media ownership restrictions are necessary at national but not local level.

Opposes permeable limits with a plurality test as unhelpful

Rejects 40/30/20 and 'Share of Voice' model.

GWR Group plc

Non-EEA ownership

Relaxation should be reciprocal.

Radio

Supports Radio Authority/CRCA proposals for ILR.

Local digital radio should follow Radio Authority/CRCA model until sufficient multiplexes serve an area.

Cross Media ownership

Supports application of 'three-plus-BBC' model.

Supports 40/30/20 ownership model (but preferring higher thresholds). Supports 'Share of Voice' model.

OFCOM

Supports OFCOM review of rules every 2 years.

Other comments

Roll over of national and local analogue licences should be extended to allow for investment in digital services.

[REDACTED]

Independent Television Commission (ITC)

Non-EEA ownership

Government should argue for reciprocal liberalisation of foreign ownership rules.

Religious Ownership

Religious ownership should be allowed only where sufficient spectrum for multi-faith ownership is available.

Television

Supports single ITV.

Supports retention of nominated news provider system.

Supports Radio Authority proposal for "three-plus-BBC" for ILR.

Newspapers

Ministers should take final decisions on significant newspaper mergers on "freedom of expression" grounds.

Cross Media ownership

Opposes plurality tests, numeric-based systems and 'Share of Voice' model as they create business uncertainty.

OFCOM

Supports OFCOM review of rules, but every two years is too frequent.

Institute of Practitioners in Advertising (IPA)

General Prohibitions

Ownership of media by advertising agencies is strictly forbidden to IPA members.

Non-EEA ownership

Nationality of ownership is immaterial to advertisers.

Television

Opposes single ITV

Radio

Supports Radio Authority/CRCA proposals for ILR and comparable schemes for digital services and multiplexes.

Opposes enabling OFCOM to prevent onward sale of licences.

Newspapers

Supports liberalising the current regime.

Cross Media ownership

Prefers to keep current ownership rules.

Also proposes a minimum of four sales players (25% max share) in each medium and seven (max 15%) across media.

OFCOM

Supports OFCOM review but proposes three to four yearly interval.

mediawatch-uk

Newspapers

Agrees OFCOM should assess accurate presentation of news and free expression.

Agrees Ministers should, on the advice of regulators, exercise a moderating influence on newspaper mergers.

OFCOM

Agrees OFCOM should review media ownership rules.

ws International plc

non-EEA ownership

move current restrictions.

newspapers

abolish special newspaper regime - regulate by normal competition law.

local titles should be included in current newspaper regime.

Supports extension of regime to all qualifying acquisitions.

Abolish criminal sanctions.

Cross Media ownership

Abolish current cross-media limits, and rely on competition law regulation.

Plurality test is arbitrary and puts onus on media companies. 'Share of voice' model also arbitrary.

OFCOM

Supports sunset clauses unless continuation of rules agreed by Parliament.

Producers Alliance for Cinema and Television (PACT)

Television

Concerned about implications for programming production of single ITV.

Supports preventing joint ownership of ITV and Channel 5.

Cross-Media Ownership

Supports public interest test. Rejects 'Share of voice' model.

OFCOM

Thresholds for media ownership should be amendable by Order on advice from either or both of OFCOM and OFT.

Other comments

OFCOM should be given a specific duty to "promote" competition in the production and distribution of content.

Radio Authority

Non-EEA ownership

Relaxation should be reciprocal.

Religious Ownership

Religious organisations should not be permitted to own national analogue licences, national digital sound programme service licences, or digital multiplexes.

Radio

Maintains proposal of 'three-plus-BBC' for ILR, and for digital services.

Supports removal of disqualification from owning more than one national radio licence.

Ownership of digital radio multiplex licences should be a competition matter.

Supports enabling OFCOM to prevent onward sale of licences.

Cross Media ownership

Suggests the 'three-plus-BBC' principle for cross media ownership.

Opposes plurality tests as labour-intensive and inconsistent. Rejects 'Share of voice' model.

OFCOM

OFCOM should not review rules every 2 years.

Other comments

Access Radio should not be counted in accumulation of radio interests.

Scottish Radio Holdings

Radio

Broadly supports Radio Authority/CRCA proposal, but wants to deregulate further.

Supports removal of disqualification from owning more than one national radio licence.

Cross Media ownership

Makes its own proposals for XMO.

Other Comments

All commercial radio licences should run for fifteen years.

SMG plc

Non-EEA ownership

Keep current prohibitions.

Religious Ownership

Remove restrictions on religious organisations holding broadcasting licences

Television

Supports single ITV.

Allow joint ownership of ITV and Channel 5

Abolish nominated news provider system.

Radio

Abolish points system.

Supports proposal that OFCOM should ensure that there are at least 3 owners of ILR services in addition to the BBC

SMG proposes threshold 30% of radio revenues overall (including the BBC) for ILR.

Supports removal of disqualification from owning more than one national radio licence.

No need for OFCOM to prevent onward sale of licences.

Newspapers

Supports OFCOM and Competition Commission assessing mergers.

Supports exceptional public interest gateways, and final Ministerial decisions.

Supports removal of local newspapers from regime.

Supports extension of newspaper regime to all qualifying acquisitions.

Abolish criminal sanctions.

Cross-Media ownership

Abolish current cross-media limits, and rely on competition law.

Or establish limits derived from financial turnover.

Trinity Mirror

Newspapers

Opposes OFCOM assessment of newspaper mergers as over-regulatory.

Accepts proposal for exceptional public interest gateway.

Opposes extension of newspaper regime to acquisitions by non-newspaper proprietors.

Cross Media ownership

Abolish current cross-media limits, and rely on competition law.

Plurality tests create business uncertainty, are unwelcome and unnecessary.

Strongly opposes 40/30/20 proposal. 'Share of voice' model is unworkable.

Foreign Ownership - Why change the rules?

1. Scope

The foreign ownership ban is a ban on non-EEA (effectively American or Australian) ownership of analogue terrestrial broadcasters - ITV, C5, Classic FM, Virgin Radio, talkSPORT and all local analogue radio stations.

2. The investment argument

It is suggested that foreign ownership rules restrict investment in the British economy. We have two aims to balance - the need to remove regulatory barriers to inward investment, and the need to support British businesses.

Attached are two pieces of work that stress the importance of inward investment to the economy. The first is taken from a report titled 'UK Competitiveness Indicators' which was written by the DTI and published in February 2001. The second attachment (with more up to date figures) was written by the Treasury [for a letter written on behalf of Ed Balls].

European companies are free to acquire control of any British media company as things stand, though few have done so. Bertelsmann have invested in Channel 5, which continues to lose money, and look likely to support it as United Business Media pull out. However, there have been no foreign bidders for Carlton or Granada, possibly because they are not large enough to be commercially attractive, and because of the large investment they have made in the loss making ITV digital - Bertelsmann were in talks last year, but made it clear that they did not want ITV digital.

Where foreign ownership rules have been removed elsewhere in Europe, the effect does not appear to have been spectacular. In Germany, the existing duopoly of Bertelsmann/RTL and Kirch has been strong enough to ward off foreign competition, although now that Kirch is in trouble there have been rumours of News Corp buying a stake in the company. In Spain, similarly, PRISA and Telefonica Media control the TV market and have proved impervious to foreign takeover.

3. Other arguments for removing the ban

- 'Britishness' - Whatever the nationality of the owner, a British service will always have to produce definitively 'British' content in order to attract an audience, just as *The Sun*, for instance, does now. (For similar reasons, we don't mind national radio/newspaper groups owning a range of different local media).
- **Inconsistency** - We already allow any European company to buy into our broadcasting markets - there is arguably little difference between Bertelsmann and Viacom, say. Other European States have already removed all foreign ownership rules - Germany, Spain, the Netherlands - seemingly without disastrous effect.

4. Arguments for keeping it

- Key foreign countries, such as the US and Australia, still impose restrictions on British ownership of their media. We might therefore feel we can only consider lifting our ban if there are reciprocal arrangements for British companies in those countries.
- We want to ensure European consumers continue to receive high quality European content (the argument in the White Paper).

5. Possible effects of removal

- Competition law, and whatever media ownership rules we end up with, will be the only means of preventing a giant American company from dominating our market.
- Non-European companies (eg AOL Time Warner, Disney, Viacom, News Corporation) could buy ITV, Channel 5, and up to 25% of the UK radio market. The American radio company, Clear Channel, may be interested in buying a significant number of radio stations. The prospect of a single ITV, with a potential 25% of the TV audience, might be more appealing to foreign investors than Carlton and Granada have been to giant European companies.
- Sky would no longer have to worry about being classed as 'non-European' due to their involvement with News Corp. However they would still be restricted by cross-media rules on companies part-owned by newspaper groups.

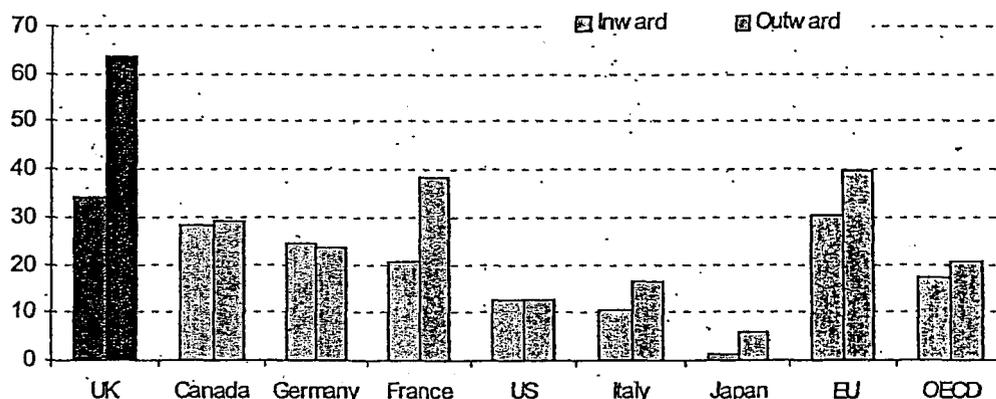
Importance of foreign investment for the UK

[Taken from: UK Competitiveness Indicators, 2nd Edition, DTI, February 2001]

2.2.3 Value of foreign direct investment

G7 comparison plus EU and OECD averages, 2000

Book value of balance sheet as per cent of GDP



Source: UN World Investment Report

Competition, whether from abroad or amongst domestic firms, is a spur to efficiency and the diffusion of new technology and innovation, which in turn drive productivity growth. However, the contribution of competition to economic performance cannot easily be measured. Instead it is more likely to be a determinant of the conditions under which high productivity levels emerge.

Since competition is a complex and multi-dimensional dynamic process, a single measure is not likely to provide a good reflection of the competitive environment. One factor that influences the extent of competition in a market is the relative degree of openness in an economy. In addition to the increased competition it creates, openness facilitates technology transfer, helps spread best practice and promotes access to the global knowledge pool. It opens up new markets and increases the potential returns to new ideas. The variables often used to proxy openness are export intensity, import penetration, the level of tariffs and non-tariff barriers and the degree of inward investment.

The stock of foreign direct investment as a proportion of GDP for the UK was the highest of the G7 countries in 1999 for both inward and outward investment (Chart 2.2.3). In 1998 and 1999, the growth in value of the UK's direct investment (inward and outward) exceeded that for the EU or OECD as a whole by around half as much again. The latest UNCTAD report shows that in 1999 UK firms invested more overseas than any other country, overtaking the US for the first time since 1988. In the same year the UK maintained its position of being second largest recipient of inward direct investment flows in a given year.

What does this mean for the UK?

The UK remains relatively open. This puts the UK in a good position to take advantage of increasing global trade, and to benefit rapidly from new developments, ideas and production techniques. However, the ability to adapt to new technology and the extent to which best practice diffuses throughout the UK economy will depend on the skills of the working population and the attitudes of UK firms. It is also important that the UK continues to take positive action in conjunction with both the EU and the World Trade

Organisation to remove existing barriers to trade, especially in the services area where many markets around the world still remain unliberalised.

Foreign Investment in the UK

Foreign Direct Investment (FDI) has an important contribution to make to productivity growth in the UK, and to the growth of the economy as a whole. The UK has been, and continues to be, a major beneficiary of and contributor to FDI flows in the EU, and it is crucially important that the UK continues to be an attractive location for inward direct investment.

The UK has a higher degree of inward and outward investment in relation to GDP than any of our major competitors, both in terms of outstanding stock and current flows. This puts the UK in a good position to take advantage of increasing global trade, and to benefit rapidly from new developments, ideas and production techniques.

According to ONS figures released in December 2001, FDI inflows reached another record in 2000 of £77 billion (up from £54.4 billion in 1999), a clear vote of confidence in UK business conditions. According to UNCTAD, in 2000 the UK ranked third in the world at attracting inward investment. The UK has the highest stock of inward investment in the EU and the second highest in the world after the US.

EU-owned direct investment assets in the UK now exceed those from the US. According to ONS figures, 67 per cent of UK FDI inflows in 2000 came from the EU, compared with 18 per cent from the US. Almost 77 per cent of UK outward investment in 2000 went to the EU, compared with 18 per cent to the US.

Overseas investors choose Britain for many reasons – these include a flexible and adaptable workforce, good labour relations, low taxes, tolerance of other cultures, a respected legal system, inventive and creative people, language advantages, international outlook, open markets, commitment to the EU and to lasting economic stability. The Government's reduction of the main rate of corporation tax to 30 per cent, its lowest ever rate, will help to bolster the UK's position as an attractive location for inward investment.

Defensive lines on local cross-media ownership

3. You wanted to have an answer ready to those MPs concerned about the consolidation of ownership in their constituencies. Below is an indication of what could happen in a local market if we adopt the proposals in the draft letter to the PM, accompanied by lines to take in response to criticism. There follow some further examples of what could happen in other local markets, and some lines to take on particularly isolated/poorly served areas.

4. Leicester

Local radio stations Leicester Sound (FM)
Sabras (AM)
Century 106 (FM, regional)

Local newspapers with more than 50% of the market Leicester Mercury (DMGT)

Regional TV Central (Carlton)

The proposals to allow newspaper or TV companies to own a radio station as long as there continued to be 3 owners plus the BBC would allow:

- DMGT to buy 1 station
- Carlton to buy 1 station

The other station (although it could be the smallest in terms of audience) would have to remain in separate hands, but the owner could be another newspaper or TV company.

At present Carlton may not own control more than 20% of the local newspaper market in its area. *[If this limit were raised to 40% they might own a Midlands paper of reasonable size (possibly the Mercury) as well as a radio station in Leicester.]*

3. Lines to take

The DMGT group, which owns the Leicester Mercury, will now be in complete control of local opinion in the area.

Not so. These rules will prevent any company dominating the debate in any local area. The rules on the cross-ownership of newspapers, television and radio stations ensure that there will always be at least 4 different sources of local content, news and opinion where a range of services exist. Of these one of the most important and the most constant will be the BBC, but there will also be 3 distinct commercial operators.

Any form of cross-media ownership is dangerous, but at this sort of local level it could be disastrous.

Cross-media ownership is not a bad thing in itself. It is good for local companies and good for the local and national economy, offering economies of scope and scale which will create better products for the consumer. Cross-media ownership can and does already happen at the local level. The changes we are making will simplify the rules, which at present are often difficult to understand and rely on subjective judgements. However we will retain a plurality of ownership that should ensure at least 3 different commercial voices are heard.

What is to stop local newspapers turning radio stations into mouthpieces for their editorial opinion?

There are rules that ensure all radio stations report news with 'due accuracy and impartiality'. All local radio stations are also required to ensure that "due prominence" is not given to the views or opinions of particular persons or bodies. And furthermore there will always be at least 2 other local radio stations to "keep them honest".

This change will allow national newspaper groups like DMGT, which has a clear political agenda, to buy up swathes of the local media in an attempt to brainwash the population

Some national newspaper groups already own large chains of local newspapers. The experience of such consolidation has been that, even in the local press, commercial logic has dictated that any editorial direction of news reporting has been tailored to local circumstances and local opinion, rather than mirroring the stance of any co-owned national paper.

Some other examples

4. Norwich

Local radio stations Classic Gold AM (Classic Gold Digital Ltd)
Broadland FM (GWR)
Vibe FM (DMGT)

Local newspapers with over 50% of the market Norwich Evening News (Eastern Counties Newspapers)

Regional ITV licence Anglia (Granada)

The proposals to allow newspaper or TV companies to own a radio station as long as there continued to be 3 owners plus the BBC would allow:

- Eastern Counties Newspapers to own a radio station
- Granada to own a radio station

DMGT would be restricted to the one station they already own. All the stations could be owned by newspaper/TV companies.

At present Granada may not own control more than 20% of the local newspaper market in their area. *[If this limit were raised to 40% they might own a local paper of reasonable size in the Anglia area (possibly the Evening News?) as well as a radio station in Norwich.]*

5. Inverness

Local radio stations Moray Firth FM (Scottish Radio Holdings)
Moray Firth AM (Scottish Radio Holdings)

Local newspaper owners with over 50% of the market Scottish Provincial Press

Regional ITV licensee Grampian (Scottish Media Group)

The proposals to allow newspaper or TV companies to own a radio station as long as there continued to be 3 owners plus the BBC would prevent either SMG, Scottish Provincial Press or any Scottish or UK national newspaper owning either of the radio stations.

Moreover, if Scottish Radio Holdings wanted to sell the stations, no single buyer would be allowed to buy both, under the radio ownership rules that will make sure there are two owners in every area with two stations, whatever waveband they broadcast on.

If the limit on SMG's local newspaper holdings were raised to 40%, they'd be able to buy more papers, but not as many as Scottish Provincial Press currently own.

6. Lines to take for isolated areas such as Inverness

Our area already has only two radio stations and they are both owned by the same company. Now that you're allowing newspapers and TV companies to buy radio stations, won't we be left with only one source of news and opinion?

No. No newspaper or TV company will be able to buy into the radio market in an area which has less than 3 stations. Moreover, the new radio ownership rules will mean that no new buyer will be able to own both radio stations in areas where only two exist.

What if SMG buy up all the local papers? Then we'll be left with only two voices:

No regional ITV licensee will be able to control more than [40%/20%] of the local newspaper market in the same area. This means that if ITV companies choose to buy into such markets, there will always be significant competition. Whatever happens, 4 distinct sources of local news and opinion (including the BBC) will continue to exist.

A note by the Radio Authority

Independent Local Radio cross-media ownership rules

1. Current legislation

1.1 Under present legislation, in addition to the nation-wide limits on accumulation of licences (the 'points system'), there are also limits which apply to concentration of ownership, and cross-media ownership, in individual localities.

1.2 At present, a company may own one FM licence and one AM licence without any regulatory interference. It may not own four licences in any locality, nor three licences on the same waveband in any locality. If it wishes to own two licences on either AM or FM (up to a maximum therefore of three licences in a locality) the Radio Authority (RAu) has to conduct a public interest test, considering plurality of ownership and diversity in the sources of news and expression of opinion.

1.3 Current cross-media rules apply only between newspapers and ILR stations. ITV companies are effectively excluded from owning a local ILR in their area. All qualifying cross-media purchases are subject to a public interest test which is wider than that for concentration of ownership, and looks at plurality and diversity, and in addition at the proper operation of the markets and economic benefit.

2. Radio Authority's proposed new rules

2.1 The RAu's proposals are that OFCOM shall ensure that there are at least three owners of ILR services in any locality plus the BBC, where there is a mature radio market. We have proposed a mechanism for achieving this, through a local 'points' system. This system would also be the basis for cross-media ownership between ILR and local television companies and local newspapers. We have proposed that, in any locality where there are three stations or more, an overlapping newspaper or the regional ITV company could own at least one of them, provided there are at least two other owners plus the BBC.

2.2 The number of ILR licences in any locality that could be cross-owned in this way would be simply governed by the local 'points' formula for ILR concentration of ownership.

3. Examples

3.1 The local 'points' system means checking any potential acquisition against a detailed formula. The following general illustrations might be slightly affected by the position of smaller licences on the periphery of a location, but they serve to show the general effect of the proposed new rules. An accurate 'before and after' comparison would involve working through the formula for each specific intended purchase. It would also involve to a degree guessing the outcome of the present, discretionary public interest test. Where such a test has been conducted in the past, that is referred to in a note in italics, although there can be no certainty that a test conducted at a later date would necessarily produce the same outcome.

3.2 Greater Manchester

ILR stations covering the whole area:

Galaxy 102
Piccadilly Radio (AM)
Key 103 (FM)
Lite AM
Jazz FM (regional)
Century FM (regional)

(There are in addition six smaller-coverage services.)

3.2.1 Under the proposed new rules, the Manchester Evening News (GMEN) would be able to acquire any two of the six services (including regional licences) currently broadcasting to Manchester as a whole. There are currently four owners of commercial radio services. GMEN has not tested the existing rules.

3.2.2 The same principles would apply to Granada Television.

3.3 Leicester

ILR stations:

Leicester Sound (FM)
Sabras (AM)
Century 106 (FM) (regional)

(There are in addition two smaller-coverage stations.)

3.3.1 Under the proposed new rules, in Leicester, where there are two pan-Leicester services plus an East Midlands regional service, the Leicester Mercury (DMGT), which had previously been prohibited from doing so, could own any one of the Leicester services but probably not the regional service.

3.3.2 The same principles would apply to Carlton Television.

[Note: In 1996/7 DMGT, which owns the dominant Leicester Mercury newspapers in Leicester, wanted to buy Leicester Sound, which was at that time the only English-language ILR. The other ILR was Sabras, a predominately Asian-language service. Under the current public interest test principles, the RAU prohibited the purchase. Since then, a new regional service Century 106 also covers Leicester, and there are small scale stations in Loughborough and Hinckley. A further regional service is also currently being applied for. Under the present rules it is unclear whether a new request from DMGT to purchase Leicester Sound would or would not pass a public interest test, not least as there are now more stations.]

3.4 Greater London

ILR stations:

LBC 1152 (AM)
News Direct (FM)

Capital FM
Capital Gold
Jazz FM
Spectrum (AM)
Magic (FM)
Kiss FM
Sunrise Radio (AM)
Country 1035 (AM)
Virgin FM
Heart FM
Liberty Radio (AM)
Premier Radio (AM)
XFM

(The two separate Choice FM licences together effectively make one more London-wide ILR station. There are in addition many smaller-coverage stations in and around the locality.)

3.4.1 In London, where there are fifteen pan-London stations, the Evening Standard would be restricted only by the radio concentration rules, as there would be many stations owned by other companies. This would mean that the Evening Standard (DMGT) could own theoretically seven or perhaps eight radio stations. This would presumably be disallowed by the competition authorities, although Government might want to consider a 'cap' for the particular circumstances of London.

3.4.2 The same principles would apply to the London ITV companies.

[Note: In 1999, when Capital Radio wanted to buy XFM, a public interest test was needed. It led to agreement, and Capital now has the current maximum holding of two FM stations (Capital FM and XFM) and one AM (Capital Gold).]

3.5 Canterbury

ILR stations:

Invicta FM
Capital Gold (AM)
CTFM (Canterbury)

3.5.1 The Kent Messenger is now, and would be on the new basis allowed to own one of these licences, provided the other were owned by someone else. The locality is too small for the three-plus-BBC rule to apply, and the RAU has suggested that localities of this size should be exempt from the general principle.

3.5.2 The same principles would apply to Meridian Television.

[Note: The ILR station in Canterbury, CTFM, was acquired by the Kent Messenger in October 2001. There are two other stations in the area, Invicta FM and Capital Gold, both owned by Capital Radio. The purchase passed the existing public interest test.]

Radio Authority

1 February 2002

Media ownership rules as they affect Scotland

Scotland is in most respects similar to any other area of the UK with respect to the effects of media ownership rules:

7. One company (of any European nationality) will be able to own all the Scottish ITV licences under our proposals.
8. In individual local areas, plurality will be protected to a greater extent than at present by the proposed radio ownership rules, ensuring at least 3 different owners in every area with 3 or more stations.
4. A major difference is that Scotland-wide papers are considered to be UK national papers, and will be considered as such under the special regime for newspaper mergers. However they are not large enough in circulation terms for any Scotland-only newspaper group to be affected by the cross-media ownership rules on national newspaper owners.
5. From a Scotland-wide plurality perspective, the key cross-media ownership rule at present is therefore that preventing joint ownership of Channel 3 licences and radio licences in the same area. We propose removing this rule, so that one company could own all Scottish ITV licences and up to 44% of the commercial radio audience (or 22% of the total radio audience) within Scotland.
6. However, the rules that act at local level affect Scottish communities in exactly the same way as English ones, and should make sure there are at least 4 separate voices (1 local newspaper, 1 different regional ITV company, at least one other local radio owner, and the BBC) in every area.
In the North of Scotland there may be more communities with fewer media services in total - in these areas the rules on cross-ownership of local radio stations will prevent any radio ownership by newspaper or TV companies.

THE UK REGIONAL PRESS – AN OVERVIEWProducts

The products of the UK newspaper industry may be divided into national, regional and local, daily and weekly, and free and paid-for titles. All have different audiences (though these may overlap). The terms 'local' and 'regional' as used in the newspaper industry are not well defined and are sometimes used interchangeably. Where a distinction is drawn, it is usually by reference to the area of circulation (or distribution).

Current structure and recent trends

There are almost 1,300 regional and local newspapers in the UK today, including 25 mornings (19 paid-for and one free), 74 evenings, 21 Sundays, 509 paid-for weeklies, and 640 free newspapers. This compares with 17 mornings, 70 evenings, 10 Sundays, 448 paid-for weeklies and 722 frees in 1991.

Circulation trends for regional and local newspapers are complex and indicate long-term shifts in the focus of the industry. For dailies and Sundays, there has been a continuous long-term decline in circulation, most notably in the case of evening newspapers, whose circulations almost halved over the period between 1970 and 1999. Total circulation and distribution of regional and local newspapers increased strongly in the 1980s, however, an increase entirely accounted for by the huge growth in the distribution of advertising-funded free weeklies during this period. As a result, total circulation of all regional and local newspapers grew during the 1970s and 1980s, peaking in 1989. Since that time, however, distribution of free weeklies has declined each year with the exception of 1994 and 1999: over the period 1989 to 1999 the distribution of free weekly newspapers fell by around 32 per cent, a steeper decline than that recorded for any of the categories of paid-for regional and local newspapers. Still, more than 41m regional paid-for newspapers are sold and 35m free newspapers delivered every week.

The recent trend has been for the regional newspaper market to become more concentrated. The top five publishers increased their share of all regional and local newspapers from around 42 per cent in 1993, to around 68 per cent as of July 2000. The top 20 publishers now account for over 84% of all regional and local newspaper titles, and 96% of the total weekly audited circulation. The top 5 regional publishers are Trinity Mirror (present in Scotland, Wales, the Northeast, Midlands and Thames Valley), Newsquest (Yorkshire, South Wales, Southern England and the Southwest), Northcliffe (Northern Scotland, East Midlands, the Southwest, Essex, Sussex and West Wales), Associated Newspapers (metropolitan areas), and Johnston Press (East Midlands, the Northeast, East Anglia and the South coast).

Regional press is the second largest advertising medium in the UK, after TV, taking £2,762m in 2000 – around 19% of total ad spend. Regional and local newspapers rely to a greater extent on advertising revenue than is the case with national newspapers, with about 83 per cent of their revenue derived from this source. In the case of the many free local and regional titles, of course, revenue is derived solely from advertising.

Competition

Pressures on circulation come from a variety of sources. A range of alternatives exist for those seeking news and other editorial content, and those advertisers seeking outlets for

advertisements. Alternative advertising media include cinema, roadside campaigns, mailshots, and the internet, (though a number of key internet-based news sites are themselves newspaper owned). Some of these alternative advertising media are not in the same market as certain forms of newspaper advertising, however (for example, radio may be unsuitable for informational and display-type advertising). Paid-for titles compete with 'frees' in the same area, and there has been a growth in recent years in advertising-only media (which are a direct constraint on local and regional newspapers, and which do not qualify as 'newspapers' under the current regime). The future outlook is one of greater competition from the development of interactive digital TV and teletext.

In recent reports (for example 'Regional Independent Media Limited and Gannett UK/ Johnston Press/ Guardian Media Group'), the Competition Commission have indicated that they are prepared to allow very high concentrations of ownership of local and regional newspapers provided there are at least two other major publishers in adjacent areas. Partly this is because of growing and effective competition from other media. It also reflects the significant lowering of barriers to entry in recent years, particularly in the market for free local newspapers, with developments in desk-top publishing. For existing publishers also, barriers to expansion into neighbouring markets for free and paid-for newspapers are now considered to be low. In recent reports the CC have also indicated that there is a considerable commercial incentive for owners of regional newspapers to allow the free expression of local opinion and to reflect local concerns. However, the CC have said that as concentration grows, each new consolidation must be subject to increasingly close scrutiny.

It is also important to remember that in some areas it may only be financially viable for there to be one local newspaper. Because barriers to entry are low, however, this does not necessarily give rise to competition concerns as long as there remain two major publishers in adjacent areas.

Competition Policy Directorate 1,
DTI,
1 February 2002

To:
PS/ TESSA JOWELL

ci:
As email list

ANNEX G

From:

[REDACTED]
Competition Policy Directorate
Room 634
1 Victoria Street



[REDACTED]
8 February 2002

REFORM OF THE NEWSPAPER REGIME: A ROLE FOR CITIZENS' JURIES

Issue

Ms Jowell asked for a note explaining the process by which a local newspaper transfer would be handled, incorporating the suggestion that OFCOM would be required to consult a local "Citizen's Jury" before advising on a transfer of a local newspaper.

Timing

2 Urgent. Ms Jowell and Mrs Hewitt are meeting at 11am on Monday, 11 February.

Recommendation

3 I attach such a note for Ms Jowell's and Mrs Hewitt's consideration. Given that the Citizens' Jury proposal assumes a formal role for OFCOM, the note is based on the bespoke newspaper regime model (i.e. Option One in my submission of 4 February).

Comment

4 If there is merit in a requirement for consideration to be given to the outcome of effective tests of local opinion, it would in my view be much better to place the duty upon the Competition Commission (CC) rather than OFCOM, notwithstanding that the CC would not welcome it. It is the CC which will carry out the in-depth investigation of a newspaper transfer (as it does on mergers more generally), assembling evidence and analysing it. It would be odd for this evidence to be added into the process separately from the main consideration of the issues and after the CC has given its account and recommendations. To the extent that evidence from a Citizen's Jury were relevant and helpful, why should it not form part of the CC's deliberations? And it would be odd for the Citizens' Jury to comment in ignorance of the CC's considered views. Finally, putting the step in at the OFCOM stage would make the whole process more protracted.

5 That said, and as I explained at yesterday's meeting, the CC has already developed processes by which it seeks and analyses evidence and it has become increasingly transparent in the way that it works. I attach a note from the CC which among other things describes how it goes about a newspaper transfer case currently. You will note that the CC believes it is able to seek, obtain and evaluate public views of the sort that might be forthcoming from a Citizens' Jury in a structured and efficient manner.

6 I would also comment that it would be odd to single out in the legislation this particular form of evidence gathering, perhaps especially as it may not be the most relevant to the exercise. It cannot be expected to add much to the competition analysis. It may be of assistance in gauging the local sentiments that were very relevant to the consideration of the *Belfast Telegraph* transfer, but that was a highly unusual case where anyway the CC's advice fully reflected the local political sensitivities.

7 I recognise that your Secretary of State described the suggestion as "a fig leaf", and clearly the presentation of local issues is a matter of great interest to backbench MPs. I do not believe that the proposal is of such significance to how the regime would operate that I would wish to recommend against it if it applied to the CC rather than OFCOM and if the benefits in terms of smoothing the passage of the legislation were judged to be significant. But it would be a rather odd legal requirement which might be seen as reflecting a lack of faith in the CC's ability to conduct its investigations professionally. And you will wish to bear in mind the CC's own opposition.



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ANNEX H

To: SECRETARY OF STATE
cc: see attached list

From:

[REDACTED]
CPI
Room 634
1 Victoria Street
[REDACTED]
4 February 2002

REFORM OF THE NEWSPAPER MERGER REGIME

Issue

Advice on reform to the system of regulation of newspaper transfers in the Fair Trading Act 1973 following the joint DCMS/DTI Consultation on Media Ownership Rules. The reforms are to be included in the Communications Bill; it is not intended to amend the current newspaper regime through the general reform of merger control in the Enterprise Bill.

Timing

2 Urgent. Tessa Jowell is meeting officials tomorrow to discuss media ownership controls with a view to putting proposals on media ownership to the PM on Friday. Any views you have should therefore be fed in as soon as possible.

Recommendations

3 That you consider which of the two procedural models outlined in Annex A you would prefer:

- (i) Option One which provides a bespoke regime;
- (ii) Option Two which applies to newspaper ownership the procedures for "exceptional public interest" (EPI) merger cases to be introduced by the Enterprise Bill

Option One would maintain a newspaper regime that is separate from the general merger regime. Option Two would bring freedom of expression considerations in respect of newspapers within the general newspaper regime; this was one option floated in the consultation document. We do not advocate the other option floated there of separate consideration of the competition and plurality aspects of a newspaper merger, with the most negative solution prevailing.

4 Both options in Annex A could deliver the goals of a more streamlined and better targeted regulatory system which would still enable those cases which give rise to "plurality" concerns in the national or regional press to be tackled. Both provide for the Competition Commission (CC) when requested to carry out full investigations

RESTRICTED - POLICY

of both the competition and plurality aspects of newspaper transfers, with the final decisions being for Ministers. The key differences are:

- (a) **the scope of the regime** Option One would create a new qualifying threshold, applying to transfers affecting newspapers commonly circulated in **at least a substantial part of the UK**. Option Two would apply the standard merger threshold of where the target business had a **turnover of £45 million or created or increased a share of supply of 25% in the UK or a substantial part of it** (we prefer these approaches to the criteria of circulation thresholds or day or days of publication suggested in the consultation document as ways to remove local newspapers from the regime).
- (b) **the role of OFCOM**. Option One would provide a formal role and status for OFCOM in referring cases on plurality grounds to the CC, and in commenting upon the CC's analysis and recommendations. OFCOM could advise the Secretary of State at both stages under Option Two, but only informally.
- (c) **the extent of Ministerial powers**. Option Two provides Ministerial discretion to determine whether any plurality detriments would arise from a transfer, what they are and how they are to be remedied. Such Ministerial discretion is of course appropriate for national security, which is the only EPI to be specified in the Enterprise Bill. Option One provides scope for limiting the discretion: for example, by providing that if the CC and OFCOM identify no detriments Ministers have no powers to intervene, or by more generally restricting their powers to remedying the specific detriments identified by the CC.

5 Under both options

- (a) there would be **no requirement for the prior approval** of the Secretary of State to newspaper transfers, nor as a corollary would there then be any criminal sanctions. Parties could complete transfers, but at the risk that Ministers might subsequently order divestment or other remedies;
- (b) the regime would **apply to all acquisitions of such newspapers**, irrespective of whether the acquirer is a current UK newspaper proprietor;
- (c) both a **specific competition test** (along Enterprise Bill lines) and a **plurality test** (perhaps involving consideration of the preservation or promotion of significant shades of opinions, freedom of expression and the accurate presentation of news) would be applied. However, in Option Two competition considerations could not be assessed by the CC if the DGFT had not raised such concerns (but the transfer had been referred on plurality grounds)-it could be argued this would avoid unnecessary assessment. In Option One the CC could look at competition even if OFCOM had made the reference (on the grounds

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that concentration of the market is central to assessing certain plurality concerns).

The propositions at (a) and (b) would be very different from the current special newspaper regime; (c) would be formally so, but in practice the tests would be similar to those currently applied.

Background

6 Attached at Annex B is an extract from the consultation document concerning the Press. It describes the present regime, against which you will wish to consider these recommendations, sets out the case for retaining special merger provisions for newspaper transfers whilst rationalising and targeting the regime, and identifies the areas in which we are considering reforms. Comments were particularly sought on

- the merits of taking local newspapers out of the regime, and if so how this should be done;
- whether the requirement for the Secretary of State's prior written consent for transfers to proceed on pain of nullity and criminal sanctions was still appropriate;
- whether the regime should apply to non-newspaper proprietors acquiring a title; and
- whether the restrictions on transfers of newspapers assets should be relaxed (the latter is a technical issue on which decisions do not need to be taken now: we will furnish advice on it at a later date).

As you will see, the consultation document also put forward two procedural models, one involving separate consideration of competition and freedom of expression issues with the most negative prevailing, the other modelled on the EPI gateway regime in the Enterprise Bill. Both contemplated a role for OFCOM in advising on freedom of expression issues.

7 A précis of the main comments on the newspaper regime is at Annex C. Although the Newspaper Society has yet to give a formal response to the consultation document – it is still consulting its members – a number of major newspaper businesses such as News International, Associated Newspapers and Trinity Mirror have done so. Their firm view, with the exception of the Guardian Media Group, is that special treatment of transfer of newspaper transfers is no longer justified, if it ever was, and that such arrangements should fall to be considered on competition grounds under the general merger regime. Most reluctantly recognise that the Government does intend to continue to treat newspaper transfers differently (a policy endorsed by the way by several non-newspaper consultees who gave a view on this issue). In commenting on the particular options they argue that

- there should be no requirement for prior approval;
- local titles should be taken out of any continuing special newspaper regime;

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- any such regime should apply equally to non-newspaper proprietors; generally the EPI/Enterprise Bill procedural model is favoured;
- the Competition Commission should continue to be the body responsible for advising on any freedom of expression issues arising from newspaper transfers; with the exception again of the Guardian, they are wary of giving a role to OFCOM, partly because of its lack of expertise in newspaper matters and partly because of one part of its heritage as a detailed regulator of media content, which they see as a potential threat to press freedom.

Argument

Removing local titles

8 Local titles constitute a high proportion of the many cases considered under the current regime. Few proposed newspaper transfers are found on investigation to be likely to operate against the public interest; of those few cases where Ministers have acted to address freedom of expression concerns arising out of proposed transfers, none has involved a local title. Removing local titles from the regime is therefore central to creating a more streamlined, better targeted and yet effective regime.

9 The difficulty has been defining the scope of regime so as only to catch national and regional titles.

10 The present regime operates on the basis of paid-for circulation thresholds and the most obvious way of differentiating national/regional titles from local ones would be to use such criteria; the newspaper consultees generally recommend the regime should only catch titles with a paid-for circulation of 100,000 copies. The difficulty here is that any threshold is arbitrary and is unlikely to be effective in catching all that we would wish to catch (for example *Metro* would not be caught by this test; free newspapers may well become increasingly significant). Other possibilities raised in the consultation document seem equally lacking in an intellectual basis (eg basing the regime on the day or days of publication) or be difficult to enforce.

11 However, the precision of the approach in the present regime is chiefly important because of the need to be absolutely sure at the outset whether a newspaper transfer is caught: the consequence of getting this wrong are invalidity of the contracts and criminal sanctions. If, as we recommend, these are removed, a change of approach becomes more credible. Moreover, the danger of precision is a lack of flexibility to deal with changing markets and technology.

12 In conceptual and drafting terms, it seems best to focus on what, as commonly understood, differentiates national/regional titles from local newspaper titles: that is, that they serve different kinds of geographical areas. A better approach therefore seems to be to provide that the titles we seek to catch are those which are commonly circulated in a geographically significant area, such as at least a substantial part of the United Kingdom.

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13 It would be possible to play with other, similar formulation ("a significant part"?). However, reference to a substantial part of the UK already constitutes the basic entry point to the UK general merger regime and has been helpfully interpreted by the courts. The jurisprudence is that while there can be no fixed definition, an area must be of such size, character and importance as to make it worth consideration for the purpose of the regulatory system. Factors which have been taken into account in the past have included its social, political, economic, financial and geographic significance, and whether it has any particular characteristics that might render it special or significant. Such factors would seem to be amenable to covering eg parts of Northern Ireland, Scotland and other areas where community voice issues would properly be a matter of concern. As it is, the competition authorities have been able to focus on quite small areas where appropriate – for example, in the case of radio broadcasting, they have defined Peterborough, Norwich and Cambridge each as being a substantial part of the UK.

14 Such factors could be left to the courts to adopt or alternatively be specified in the legislation. It would also be possible to provide for OFT or OFCOM to make a reference where they believed the circulation met the test. It could then be left for CC to investigate and rule definitively and as a matter of law whether the geographic test was met, thus settling whether the additional plurality test would apply to the transfer.

15 Alternatively, the EPI system would also enable newspaper transfers affecting a market within the UK to be looked at. It would provide jurisdictional tests which align the treatment of newspapers with other sectors of the economy and would do so by concentrating on key economic criteria. If the concern were more generally plurality and the more pure interests of regional voice, the Option One version might be better and would be more straightforward.

Nullity of the transfer and criminal sanctions

16 The provisions for prior approval and criminal sanctions were included when the newspaper regime was put in place in 1965 because of a fear that irreparable damage could be done to a newspaper by an inappropriate owner before action could be taken by Ministers to prevent the transfer. That now seems a little far-fetched and may also underestimate the financial self-interest of any purchaser. In any case, the general merger regime contains powers, which are occasionally exercised, enabling Ministers to prevent an acquiring company from exercising control over the one it has purchased, or integrating the companies: that seems to achieve all that needs to be done to meet any concern here.

17 This would make it easier for newspaper owners to act swiftly in reaching transfer deals, and would level the playing field compared to the present situation in which only current proprietors of UK newspapers are subject to the regime. An alternative way of doing this raised in the consultation would be to apply the regime to all transfers. We anyway recommend extending the regime to cover all acquisitions: it seem to us that, for example, a magazine proprietor or a foreign newspaper proprietor could have interfered on editorial grounds that might warrant investigation were he or she to acquire a UK newspaper. Moreover, this would be desirable for enforceability reasons. The lack of equivalent coverage for new acquisitions giving rise to an equivalent market share is likely to cause ECHR

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difficulties. It is hard to argue that blocking a merger is the least intrusive way to protect the public interest if it is not considered necessary to block a person acquiring a similar interest *de novo*. And in terms of the overall balance of the package, this seems a reasonable *quid pro quo* for relaxing controls over local newspapers.

Procedure

18 The procedural option in the consultation document of separate consideration of plurality and competition was not supported by consultees, was not our own preference and we suggest it be discarded. Adopting the Enterprise Bill (EPI) model would flag up a shift from the current burdensome regime to one where intervention would be "exceptional". The ready made procedure could be presented as more streamlined than a proliferation of separate regimes. However, in the particular circumstances of the newspaper regime, we have provided a revised version for you to consider. This seeks to cover issues raised by the role of OFCOM and Ministerial powers.

OFCOM

19 The industry is wary of OFCOM. Notwithstanding that, OFCOM needs to build up its expertise in newspapers because of its involvement in cross-media regulation; giving it a role in the newspaper regime can only help achieve that task. Furthermore, we have heard criticisms that the Competition Commission has been too relaxed and malleable in its role in assessing newspaper mergers under the current regime; this has not exactly been rebutted by the industry's own preference for the Competition Commission over OFCOM. Whilst we would not accept those criticisms, a role for OFCOM would be a useful counter-balance. Again, in terms of the overall package, it does balance some significant gains for the industry. How formal the role should be is a nice judgement.

Ministerial powers

20 The consultation document said, at paragraph 6.4.15, '.....a crucial question is the extent to which Ministers should have a role in the process. There is a case for removing from party politicians powers designed to regulate freedom of expression and pluralism within a medium so central to political discourse. On the other hand, there is a view that, precisely because these powers are so politically sensitive, they should be exercised not by unelected officials but by Ministers answerable to Parliament. We suggest that Ministers could take the final decisions, acting on the advice of the regulators, but we would be grateful if comments on our proposals could address this question'.

20 Consultees (with the notable exception of Associated Newspapers) did generally support Ministers exercising the powers and we have so provided in both procedural options. In the light of the considerations raised in the consultation paper, you may wish to consider whether there is a case for fettering Ministerial powers in the ways suggested under Option One.

The Plurality Test

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21 There are a number of philosophical questions revolving around the precise nature of the plurality test for newspapers to be applied, in addition to a competition test, under the new regime, and the suggestion we have put to you in paragraph 5 (c) above does not resolve them. Each of the objectives there is open to doubt – for example, freedom of expression is only putting one person's freedom (presumably the editor's) above another's (the owner's); views on what is the truth in the news will vary; freedom of expression and a requirement for so-called accurate presentation of news are inherently at odds; all of these points have greater force given that we have a polemical press; indeed, arguably current owners would not be able to meet these tests, but a variety of views are nevertheless able to find expression. However, looking at it pragmatically, the CC has been able to come to some sensible and useful judgements on the basis of the current public interest test which highlights the accuracy of presentation of news and freedom of expression and we suggest that these remain at the core of the test. The other useful element seems to be the preservation or promotion of certain particular shades of opinion as evidenced by the decisions on the Belfast Telegraph in the light of the nationalist/unionist divide. But doubtless thinking on this will have to be further refined as we move to detailed drafting.



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ANNEX A

OPTION ONE

1 The DGFT would be able to refer a transfer over which he had competition concerns to the Competition Commission, within a set period from the later of the completion of the transfer or its publication, OFCOM would be able to refer any remaining cases over which it had "plurality" concerns by a slightly later timescale.

2 The Competition Commission would assess the transfer(s) on competition and plurality grounds. If they found no detriments to the transfer on both grounds, and OFCOM consented, the transfers would be cleared. If they found detriments on either or both grounds, they would so advise the Secretary of State and recommend remedies which would cure the problem.

3 The DGFT would be required to advise on the competition aspects of the CC's case, and OFCOM on the plurality aspects. Decisions would be for the Secretary of State, but would be restricted to remedying the identified detriments.

OPTION TWO

1 The SoS would be able to intervene in any case that raised issues concerning the plurality of newspapers. The DGFT would advise the SoS on the competition aspects of the case, and the SoS could seek OFCOM's advice on the plurality issues. The reference decision would rest with the SoS.

2 The CC would assess the transfer(s) on competition and plurality grounds (if the DGFT had raised competition concerns) or on plurality grounds alone (if the DGFT had concluded that the transfer would not result in a substantial lessening of competition). On receipt of the CC's report, the ultimate decisions (on whether the merger was in the public interest and, if not, what remedies should be imposed) would be for the SoS.

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ANNEX B – Extract from Media Ownership Consultation Document

The Press

6.4.1 We promised in the White Paper to consider a lighter touch approach to newspaper mergers.

6.4.2 Ownership of the Press has long been treated as a special case. Under the Fair Trading Act 1973, most newspaper mergers are subject to a stricter regime than general mergers. In all cases, a newspaper transfer which meets the circulation thresholds for the special regime will be null and void if it proceeds before the Secretary of State's written consent has been obtained. Qualifying newspaper transfers are also subject to a mandatory reference to the Competition Commission (which will provide the Secretary of State with advice following a thorough investigation) except in limited and specified circumstances involving cases where a title is not economic as a going concern or has a daily, paid-for circulation of not more than 50,000.

6.4.3 The rationale for the introduction of the special regime in 1965, following a Royal Commission on the Press, was that control of the Press was a matter of particular public sensitivity, and that the increasing concentration of newspaper ownership in too few hands could stifle the expression of opinion and argument, and distort the presentation of news. In the light of these concerns, newspaper transfers are judged against a public interest test which specifically requires the competition authorities to take into account the need for accurate presentation of news and free expression of opinion. The statutory provisions do not seek to prescribe any particular limit on concentration, or impose any requirement for impartiality.

6.4.4 This regime has imposed significant costs on the industry and yet, out of 172 cases considered by the Secretary of State since 1980, only three have been refused and five given approval subject to conditions. It is not clear how significant a role the regime has played in preserving day-to-day freedom of expression by, for instance, preventing the tabling of contentious merger bids. Nevertheless, there have been a small number of significant cases, all concerning national or regional titles, where the Government has acted to address freedom of expression concerns, such as editorial independence and community voice. This suggests that there continues to be a role for the regime, but that it could be rationalised and better targeted.

6.4.5 We therefore reject the view of those who suggest that the regime should be completely abandoned and newspaper ownership left to be regulated by normal competition law. It is possible that competition concerns over further concentration in the national press could lead to decisions by the competition authorities which ensured a minimum number of players in the national market. However, we cannot forecast the degree of plurality which would be delivered by pure competition analysis. In addition, as demonstrated by cases the Competition Commission has addressed, acquisitions of key regional titles may raise concerns over local or regional community voice which might not be addressed by ensuring a minimum number of owners at national level.

6.4.6 As outlined earlier in this document, the case for media-specific regulation remains strong on democratic grounds – if anything, particularly so for the Press, who often consider themselves to be opinion-formers as much as conveyors of news. Some light touch regulation of newspaper ownership will therefore be required. We put forward below our own suggestions on how the current regime might be reformed, and invite views. We raise several issues concerning the scope of the regime which

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might be addressed by any reform, and we put forward two options as to the procedures which might be followed.

6.4.7 One possibility to lighten the burden of the regime would be to remove regime local newspapers from its remit entirely. Local issues can be matters of considerable interest and controversy, and we recognise the genuine public interest in their accurate presentation. On the other hand, the burden of complying with the regime seems particularly disproportionate in relation to the acquisition of local newspapers. Furthermore, in no case has the Competition Commission found that the acquisition of purely local newspaper titles would be against the public interest on freedom of expression grounds. In recent years the Commission has taken the view that to maintain or increase circulation, local (and regional) newspapers must reflect the views and concerns of readers in their area, and local editors are best placed to judge the interests of those readers. (It is also the case that some local free and some paid-for papers lack significant editorial content.) On this basis, and taking into account competition for advertising and the potential for new entry, Ministers have been prepared to accept very high concentrations of local newspaper titles under the current newspaper regime.

6.4.8 A key consideration is whether a satisfactory definition of local newspapers could be found. Many local newspapers, being free, do not have paid-for circulation figures which are the basis of the current thresholds. It might be possible simply to exclude all titles with limited circulation or production. Share of supply or gross assets thresholds might be adopted, as in the general merger regime, or a new turnover threshold might be introduced. Our proposals for reforming the general merger regime involve retaining the 25% share of supply test but replacing the assets test with a turnover threshold of £45 million. One possibility might be to retain the existing qualifying thresholds but exclude from the regime titles that are only published weekly, or less frequently than weekly, unless they are published on a Sunday.

6.4.9 One feature of the newspaper regime which we might reconsider in any reform is that it applies not only to newspapers but also to newspaper assets i.e. those necessary to the continuation of a newspaper as a separate newspaper. With changes in technology, business organisation and advertising techniques, it may be that some revision to the scope of the controls in relation to assets would be sensible.

6.4.10 Another difference between the general merger regime and the newspaper regime is that only the latter is underpinned by criminal sanctions. These have never been used. This may suggest that they are effective in operation. However, it may well be that insofar as additional sanctions are appropriate for newspaper acquisitions (and we raise below the issue of whether the two regimes might be brought closer together on level playing field grounds) the sanction that the transfer is null and void is sufficient and there has been no need for a criminal regime.

6.4.11 We also need to consider to whom the regime should apply. At present parties who are not already UK newspaper proprietors are not caught by the special newspaper provisions but are considered under the general merger regime. They may complete a transaction before regulatory clearance is obtained, putting them at a clear commercial advantage. The more de-regulatory approach might be to align the regime with the general merger regime to allow parties to proceed with a merger but at the risk that the authorities will require them to divest the acquisition or impose conditions. An alternative approach which would level the playing field would be to include in the regime all qualifying acquisitions regardless of whether they were by an existing newspaper proprietor. This would help meet concerns that issues of editorial content and freedom of expression are a public policy matter whoever is the acquirer.

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6.4.12 Turning to the question of how a reformed newspaper regime might operate, the Government is considering two alternative options.

6.4.13 Under the first, the regime might be reformed to give OFCOM the duty of assessing whether a particular newspaper transfer would compromise the accurate presentation of news and free expression of opinion. OFCOM could advise the Secretary of State on whether to prohibit the merger or subject it to conditions on "freedom of expression" grounds. The independent competition authorities (the Director General of Fair Trading and the Competition Commission under the proposed merger reforms in the forthcoming Enterprise Bill) would separately assess the merger on competition grounds. Proposed mergers would have to clear both hurdles.

6.4.14 An alternative process could be based on the creation of an exceptional public interest gateway under the reformed general merger regime, so that the Secretary of State could call in any qualifying newspaper merger case which gave rise to freedom of expression concerns. OFCOM might have the role of advising the Secretary of State on freedom of expression issues in such cases. The Director General of Fair Trading would advise the Secretary of State on the competition issues. The Secretary of State would be the ultimate decision maker.

6.4.15 In considering these alternatives, a crucial question is the extent to which Ministers should have a role in the process. There is a case for removing from party politicians powers designed to regulate freedom of expression and pluralism within a medium so central to political discourse. On the other hand, there is a view that, precisely because these powers are so politically sensitive, they should be exercised not by unelected officials but by Ministers answerable to Parliament. We suggest that Ministers could take the final decisions, acting on the advice of the regulators, but we would be grateful if comments on our proposals could address this question.

XIII Options:

- *The special newspaper regime could be reformed to give OFCOM the duty of assessing whether a particular newspaper transfer would compromise the accurate presentation of news and free expression of opinion. OFCOM would advise the Secretary of State on whether to prohibit the merger or subject it to conditions on "freedom of expression" grounds. The independent competition authorities (the Director General of Fair Trading and the Competition Commission under the proposed merger reforms in the forthcoming Enterprise Bill) would separately assess the merger on competition grounds.*
- *An alternative process could involve the repeal of the special newspaper provisions. An exceptional public interest gateway under the reformed general merger regime would be created, so that the Secretary of State could call in any newspaper merger case which gave rise to freedom of expression concerns. OFCOM could have the role of advising the Secretary of State on freedom of expression issues in such cases. The Director General of Fair Trading would advise the Secretary of State on the competition issues. The Secretary of State would be the ultimate decision maker. If either option were to be adopted, we invite views on:*
 - *the merits of taking local titles out of the newspaper regime. In particular, we would welcome suggestions as to how "local" should be defined for this purpose;*
 - *the merits of extending the newspaper regime to all qualifying acquisitions, regardless of whether the potential owner is an existing newspaper proprietor or not;*
 - *whether the scope of controls should be revised in relation to newspaper assets;*
 - *whether it is appropriate to retain the criminal sanctions that underpin the regime.*

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ANNEX C

Trinity Mirror

Believes the special provisions should be repealed and newspapers subject to general merger control. If this is not accepted, argue strongly against a role for OFCOM, which is not well-placed to decide over freedom of expression and editorial independence. Put forward 2 procedural options

First option should be left to the CC and a panel of civil servants. Should be no prior consent for newspaper transfers but a discretionary involvement by the Secretary of State. The threshold for falling within the discretionary regime should be a paid for circulation of 100,000 and should only apply, as now, to transfers to a current newspaper proprietor whose combined circulation is at least 500,000. Criminal sanctions should be repealed. Second option. Prior consent is required but regime then applies to all purchasers where paid-for circulation is 100,000. Alternatively, Secretary of State could publish list, amendable by statutory instrument, of the newspapers to which the regime would apply.

Guardian Media Group

Supports a special newspaper merger regime. Supports the model of an exceptional public interest gateway with a role for OFCOM. Believes the regime should only apply to national titles, since local titles are not subject to political pressure and must concentrate on local issues, but local titles should be caught only if one of following criteria fulfilled:

- (i) paid for circulation is below 1000,000 copies;
- (ii) the newspaper is a weekly; and
- (iii) there is no newspaper group with a hub within 1½ hours driving distance of that market's heartland. The regime should apply to all acquisitions.

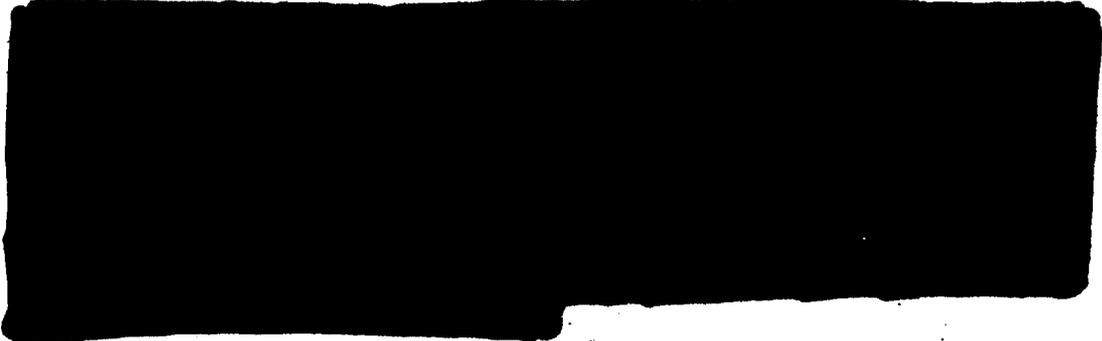
News International

Newspaper transfers should be subject to general merger law. There is no meaningful difference between an effectively competitive market place and an effectively pluralistic one. Supports neither procedural option. A role for OFCOM is wrong: it would be a further regulatory hurdle and by putting a regulation in the business of deciding the accuracy of newspaper reporting would threaten press freedom. It also has no relevant experience. On specific questions, there is no need to control newspaper assets; criminal sanctions should be abolished; foreign or UK non-newspaper purchases should not be exempt; and on local newspapers, the considerations relevant to a policy for a local market are the same as those relevant at a national or regional level.

Associated Newspapers

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A special regime is not required. However, AN Accepts the Government's reluctance to remove the special regime entirely. Ex post facto control is now the appropriate way to govern newspaper acquisitions. Any regime should apply whoever the acquirer. Review should be by the CC: it's difficult to see what skills OFCOM would have. The political element should be reviewed: there should be no role for the Secretary of State. Supports a combination of the procedural models: an exceptional public interest gateway with the decision being by the CC (given its newspaper expertise). If the Secretary of State is to have a role, she should be required to put her concerns publicly to the CC, so it can assess and comment upon them. Local newspapers (those with limited circulation) should be removed from the regime as should newspaper assets; criminal sanctions should be removed.



Campaign for Press & Broadcasting Freedom (CPBF)

National:

No national press mergers have been disallowed. Puzzled therefore as to what a lighter touch approach to newspaper mergers might involve. Agree that special newspaper regime should not be abandoned in favour of regulation by normal competition law.

Local & Regional:

Huge publishing groups with regional monopolies mean many newspapers are 'local in name only'. Consolidation was allowed to proceed largely without consideration under newspaper regime. Note costs and delays of present regime, and note anomaly whereby larger owners are able to acquire titles without consideration by CC. Nevertheless CPBF strongly against any changes in current regime of reference to CC for local/regional transfers. Supports process outlined in 6.4.14 and its application to national, regional and local titles. Extend regime to all acquisitions, regardless of whether they're by existing proprietors.

Stirling Media Research Institute

Increasing newspaper concentration a matter of course, given role as source of news and setting public debate agenda. Regulatory regime should be more effective curbing concentrations. Upper restrictions on newspaper ownership should be

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introduced as per TV, e.g. 20% share of total UK national daily market. Agree that it should be OFCOM to assess transfer, not politicians. OFCOM should look at accurate presentation, free expression etc, while competition authorities look at competition.

ITC

Favours reformed version of special regime process rather than special 'call in power' – want more transparency, predictability than this would give. SoS should retain final say on 'freedom of expression' grounds – democratically accountable. Welcomes proposed role for OFCOM on advising on this.

Mediawatch

Agree with 6.4.13 on role of OFCOM in assessing accurate presentation etc. Agree with 6.4.15 that answerable Ministers should exercise moderating influence, on advise of regulators, to safeguard public interest.

Scottish Advisory Committee on Telecommunications

Agree that provisions are needed above competition law. Want ultimate decision to rest with SoS, but don't want process 'politicised' too early. Therefore favour first option, with OFCOM assessing and making recommendations. SoS must be transparent as to reasoning. Local newspapers should be excluded (if satisfactorily defined). Regime should be applied to newspaper assets. Regime should apply to those who aren't already proprietors. Strong case for dropping criminal sanctions.

ISBA (British Advertisers)

All newspapers should be regulated by similar rules to TV and radio, not a specific regime. Current controls disproportionate. Challenge the assumption of the particular influence of newspapers.

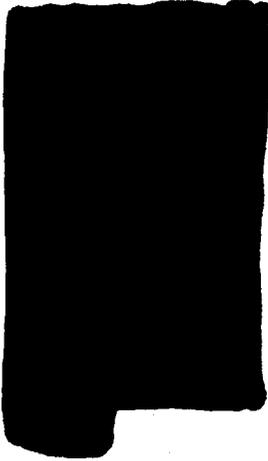
National Council of Women of Great Britain

Concern at limitation of accurate presentation and free expression - Murdoch's influence especially small local newspapers should be protected from being swamped by very large papers.

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ci

DTI



Outside DTI

SoS Culture, Media and Sport



Andrew Ramsey DCMS

Diana Kahn DCMS

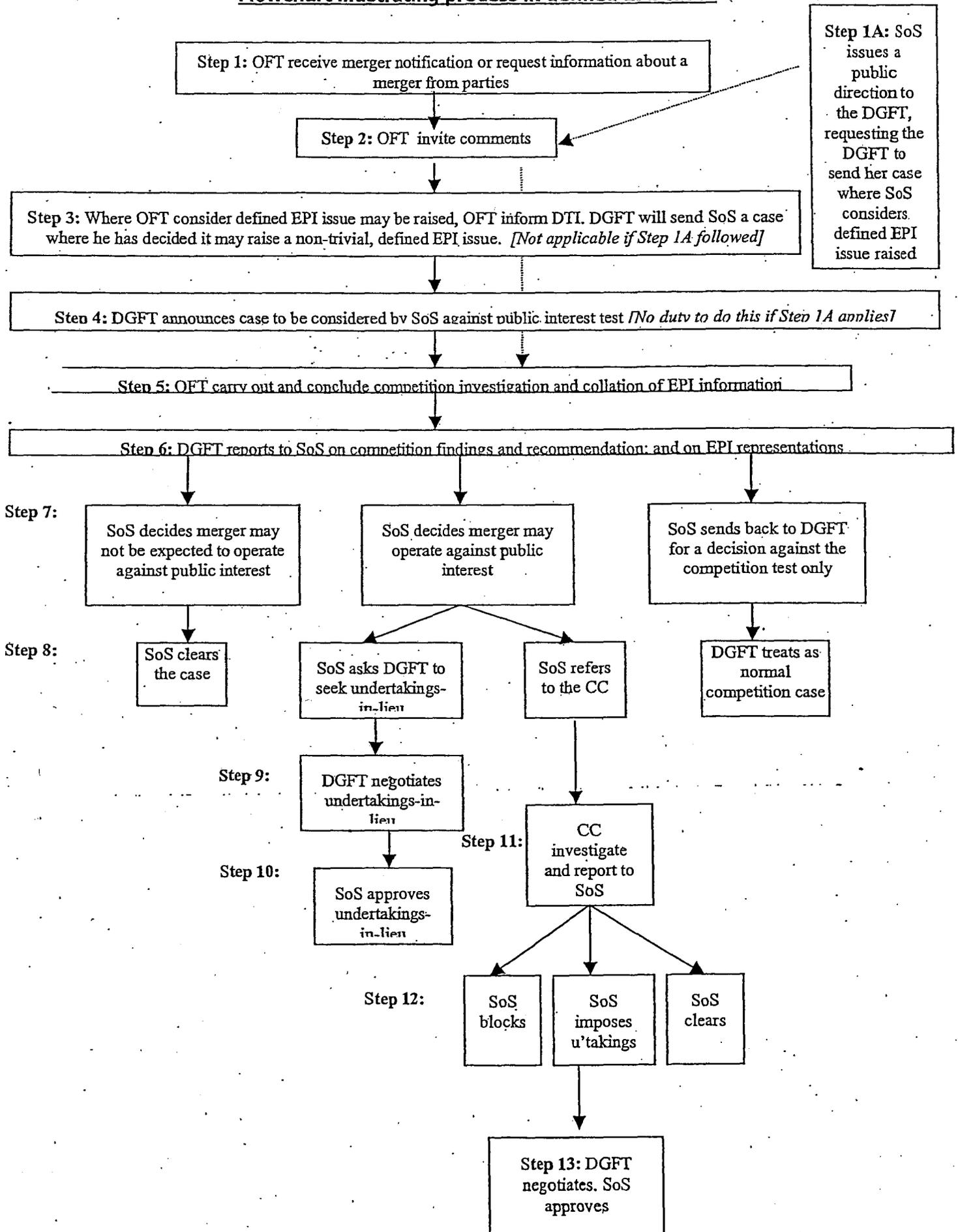


Ruth Mackenzie DCMS

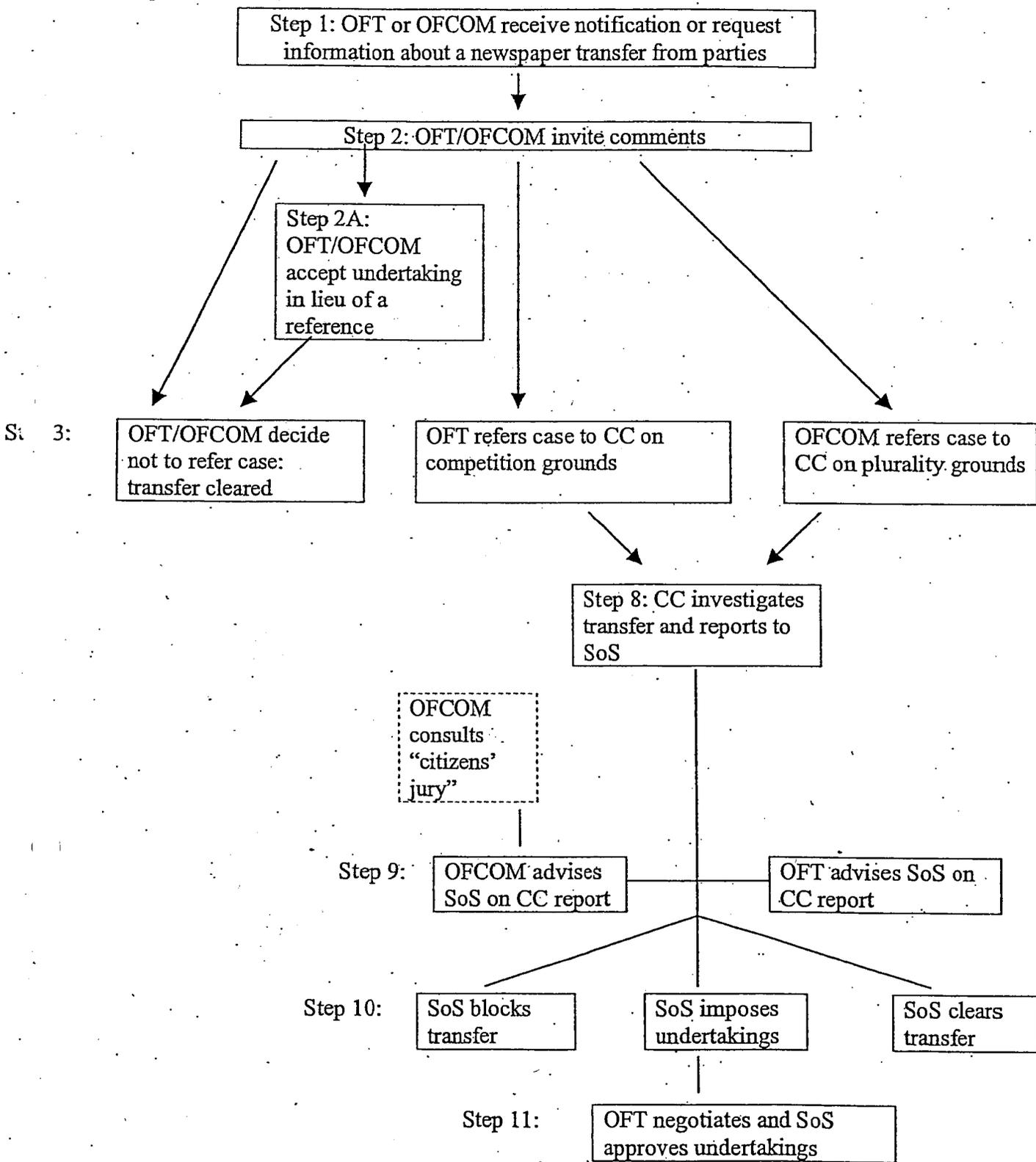
Bill Bush DCMS

ANNEX I

Flowchart illustrating process in defined EPI cases



Flowchart illustrating process for handling newspaper transfers in bespoke regime



ANNEX J

COMPARISON OF REGULATORY BURDEN

Current Provision

Newspaper regime applies to all newspaper transfers if both companies have newspaper interests and paid for circulation of all newspapers involved is 500,000 or more (i.e. it catches even small local newspapers acquired by a large newspaper group).

Newspaper proprietors subject to the newspaper regime cannot effect a newspaper transfer without the written consent of the SoS.

All newspaper transfers subject to the regime must be referred to the CC for investigation unless paid for circulation below 50,000 or the newspaper is not economic as a going concern and the case is urgent, in which case SoS may consent to transfer without CC reference (also, she must do so if the newspaper is not a going concern and is not to continue as a separate newspaper after the transfer).

Purported transfer of a newspaper, and breach of conditions imposed by the SoS, are criminal offences punishable by imprisonment up to 2 years and a fine.

Proposed New Provision

New regime only applies where the newspaper(s) in question circulate in a significant part of the UK, or otherwise meets the merger thresholds (but N.B. regime goes wider in that it catches acquisitions by non-newspaper proprietors and by smaller newspaper proprietors).

Parties could complete a transfer but at the risk that SoS might subsequently order divestment or impose conditions.

Newspaper transfers would only be referred if OFT had competition concerns (or OFCOM plurality concerns).

Parties can complete transfers. Conditions imposed on a transfer would be enforced by a court – failure to comply with a court order would be a contempt of court.

~~DTI COMMENTS ON THE NEWSPAPER SOCIETY'S CONSULTATION RESPONSE~~

Any transfer of any title between newspaper publishers that is not subject to the special FTA regime at present should not be caught by the new regime.

We would not necessarily or by principle deliver this, because the current regime only covers transfers where the total paid-for circulation of the newspapers owned by a proprietor together with those it is proposed to transfer is 500,000 copies or more. The revised regime could also cover smaller proprietors (and also those who are not currently newspaper proprietors).

However, in practice only significant cases should be caught in the first place and then only those which raised competition or plurality concerns would be subject to detailed investigation, so the reformed regime would be inherently more targeted.

It may be worth adding, not least because the industry does not recognise the fact or chooses to ignore it, that because the existing general merger regime assesses mergers (including newspaper transfers not covered by the special newspaper regime) against a wide public interest test, it has always been possible in principle to consider such transfers against the plurality and freedom of expression tests which are, with competition, the focus of the consideration of transfers under the special newspaper regime (the real differences, then, between the general merger regime and the special newspaper mergers regime lie not in the tests but the more extensive controls in the special newspaper regime – prior written consent, usually mandatory reference to the CC, criminal sanctions etc – all of which we propose to do away with). But this wider public interest test would be replaced by a competition test in the Enterprise Bill; so in response widening the coverage in principle of the newspaper transfer regime seems right, once it is accepted that newspaper transfers are different.

Any new regime must not introduce further layers of regulation

This is so widely and imprecisely defined by the *Newspaper Society* that it is difficult to be absolute in rebutting it, but I have no good reason to predict further costs or hurdles as they have defined them – save for a role for OFCOM, on which see below. On the whole, the proposed changes are clearly deregulatory.

Regional and local newspapers should be excluded from any special regime.

We would not deliver this. Some small local newspapers should be taken out but significant regional or local newspapers would continue to be caught. But here one should note the significance of moving to a regime without prior consent and where the authorities have discretion over whether or not to refer a case to the CC. In practice, we would expect most newspaper transfers to be unaffected by the regime: it is only those on which OFT and OFCOM have competition or plurality concerns which will be subject to further investigation with the risk of remedies being imposed.

Prior consent requirements should be abolished

We propose to provide this.

Criminal sanctions and void transactions should be abolished

Ditto.

OFCOM should not have any role in determining newspaper ownership

The CC would be kept as the main investigatory and advisory body on newspaper transfers (which will please the *Newspaper Society*), but we have provided for a formal or an informal rôle for OFCOM in making references and advising on a CC report, if Ministers desired that.

No public interest test

This is in effect again arguing for there being no separate newspaper regime – there would be no point to such a regime if the test were purely competition, as in the general merger regime as it is to be reformed.

Transfers of newspaper assets should be excluded from any special regime

This is a detailed technical issue on which we have not yet reached a view on how to advise you and do not believe we need to in order to decide on the broad shape of the regime. But it may well prove possible to relax the scope of the regime in relation to newspaper assets.

ANNEX L

To Secretary of State cc Andrew Ramsay
Diana Kahn
From [REDACTED] [REDACTED]
File Ref Bill Bush
Ruth Mackenzie
Date 11 February 2002

MEDIA OWNERSHIP AND VERTICAL INTEGRATION

I understand that you have asked for advice on the points raised by Channel 4 and the BBC about the need to regulate ownership of platforms.

2. Channel 4 are opposed to vertical integration. They argue that there is not meaningful competition between digital platforms and that requirements on platform operators to provide open access are insufficient to safeguard content providers. Their proposed solution is the separation of carriage (ownership of a platform) from content (service provision). They also argue that platform ownership should be recognised as a form of media ownership akin to newspapers, TV and radio and should be brought within the media ownership regime (though in what way is unspecified).

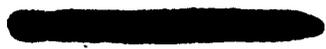
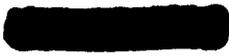
3. The BBC do not comment on vertical integration as such but argue that platform ownership should be brought within the media ownership regime. They suggest that there should either be a new rule to prevent any combined ownership of the new platform market and any of the traditional content markets, or platform ownership should be taken into account in a share of voice type limit of media ownership (eg, the 40%/30%/15% approach could be extended to cover platform ownership).

4. The White Paper position on vertical integration was supportive:

"For that reason, some people argued in the consultation that the Government should take action, on competition grounds, to ban vertical integration, and require all networks to be open to all content providers. We do not believe that it would be right to ban vertical integration outright. First, because it would slow down the necessary investment in high-speed networks; and secondly, because network operators would in any case pursue exclusive agreements with content providers in order to deliver attractive consumer packages. Instead, we believe that the right approach would be for the regulator to have the power to judge at what point a network should be opened up to all content providers. And where a vertically integrated company has a dominant position in one market, the regulator should also take account of the effects of its activities on competition in any related markets."

5. There would seem no reason to depart from the White Paper position that vertical integration is broadly beneficial providing the regulator is able to act forcefully to prevent any abuses which occur.

6. We also think that there is no need to bring ownership of digital platforms within the media ownership regime. To do so would obviously be more regulatory than the present regime. As with TV generally, we believe that ownership of digital platforms can be best left to the competition authorities. The platforms are the delivery mechanism and therefore do not directly raise issues of plurality in the same way as content providers such as newspapers or terrestrial TV.



POSSIBLE IMPACT OF MERGER REGULATIONS ON THE STRUCTURE OF MEDIA MARKETS

TelevisionHorizontal issues - (i.e. platform and broadcasting markets)

- 3 digital platforms will remain - digital terrestrial (ITV digital), digital satellite (BskyB), and digital cable (NTL/Telewest).
- 1 analogue terrestrial platform (5 channels including 2 BBC) for the near future.
- It is unlikely that the Competition Commission (CC) will allow one single ITV Company whilst the analogue terrestrial platform is available and considered a separate market.
- The main area of concern is advertising. The CC (Carlton/Granada report) defined the advertising market very narrowly: effectively ITV itself (due to their mass audience coverage on analogue terrestrial TV). Also possible competition from channel 4 and channel 5 in analogue terrestrial TV market.
- Most concerns would be on the four leading ITV licences (London Weekday, Central, London Weekend, and Meridian).
- Possible scenario – CC likely to maintain at least 2 owners of ITV (both of which cannot have more than 2 of the 4 main licenses) in the near future. This will be in addition to separate owner/s for channel 4 and channel 5 (who may also own other ITV licences), which will provide advertisers with a minimum of 3 or 4 advertising channels via analogue terrestrial TV.
- Who the owners will be is impossible to speculate (possibly Granada and Carlton). May be new entry from BskyB or overseas broadcasters since currently not present in the analogue terrestrial TV market – though BskyB will not be able to acquire either Granada or Carlton due their joint ownership of ITV digital.
- Analogue terrestrial TV is increasingly under pressure from pay-TV. In future the digital platforms will be considered an effective substitute to analogue terrestrial TV for advertisers and viewers.
- A wider market definition will then (probably) allow a single ITV company to exist since the distribution of audience (and the revenue from advertisers) will be more thinly spread across the larger number of channels.
- Content regulation is required to remain in place to oversee diversity of programming.

Vertical issues - (i.e. links between platform owners, channel providers, programme makers, and content providers)

- Consolidation of programme production (makers) is possible. Currently approximately 1200 independent production companies. Entry barriers are low so unlikely to be any immediate competition concerns.
- May also be consolidation (and/or foreign entry) of channel providers (Fox, Disney, AOL/Time Warner).
- CC likely to prevent any platform owner gaining significant market power (assume 25-30% share) in the programme maker and channel provider markets. CC also likely to be tougher on platform owners attempt to leverage market power to content providers (i.e. CC report on BskyB / Man Utd).
- Problem likely to be if the market tips in favour of a particular digital platform. This is not foreseeable in the near future, though ITV digital is still making big losses and the Cable Companies has high debt stocks to service. Their long-term viability is dependent on a critical mass of people subscribing to their platform. This raises different issues.

- If the Cable Companies went bankrupt, Cable would still be a viable digital platform since the infrastructure has already been laid. Bankruptcy would mean a debt write-off, whilst the assets could be transferred to a new owner relatively cheaply. If ITV digital went bankrupt, it is likely that the platform would disappear since there is little (if any) asset specific investment.

Radio

Local and regional

- Assessed by considering effects on advertisers as well as listeners. Considered a separate market to national radio and other forms of display advertising.
- Local radio stations often have a degree of local monopoly power since different audience demographics mean that local radio stations are not necessarily demand-side substitutes for advertisers. The target audiences are determined by the licence format issued by the Radio Authority (RA).
- Number of broadcasters in a local/regional market will depend on the number of licenses available. There are around 200 local licenses currently available – 20 in London.
- Possible scenario - competition law will provide a number of different owners in the core-populated areas where more licences are available. In areas with more than 4 or 5 licenses available, competition law is likely to provide at least 2 different owners. In London, this is likely to be more. Capital Radio's attempted acquisition of Virgin Radio was blocked because Capital's market share of radio advertising in London would have increased from 58% to 66%.
- Local areas where 2 or 3 licenses are available competition law is likely to maintain 2 owners – though no guarantee of this since likely to be aimed at different target audiences and therefore may not be alternatives for advertisers.
- Unlikely that competition law will address the accumulation of local radio interests in a UK wide context due to the local and regional nature of the radio licenses. But if each local market has at least 2 or 3 owners, unlikely that any radio company will have more than 40% accumulation at a national level.
- An aggregated national concentration test could provide a useful indication of total influence of local and regional broadcasters.
- Capital Radio's expansion likely to be limited to local areas where they are not currently present or have limited presence. It seems unlikely that they will be able to acquire additional licenses in London.

National

- In the national radio market competition law likely to maintain 3 owners. This is dependent on the licenses available. Currently only three licenses are available, each with a different owner: Capital FM, Talk AM and Virgin AM.
- Capital Radio's attempted acquisition of Virgin Radio was blocked because Capital's national advertising market share would have increased from 36% to 44%. Maximum market share of around 40% of the national commercial free-to-air market seems to provide the upper limit. (Possibly measured in terms of total national radio advertising spend, not listeners).
- Impossible to say which companies likely to try to expand, or whether likely to be new entry. All dependent on licensing constraint.
- Diversity needs to be maintained by licence conditions. No guarantee the market will provide the diversity automatically.

Newspapers

National

- All daily national newspapers are likely to be considered as one market. This would include popular tabloids, mid-range papers, and quality broadsheets.
- Competition analysis is two-fold: effect on readers of national newspapers, and effect on advertisers.
- The current market structure for national newspapers looks like the following:

Publisher	Title	Market share (circulation)
<i>News International</i>	The Sun	27%
	The Times	5%
Trinity Mirror plc	The Mirror	17%
	Daily Record	5%
DMGT	The Daily Mail	18%
United MAI	The Express	8%
	The Daily Star	4%
Hollinger International	The Daily Telegraph	8%
Pearson plc	Financial Times	3%
Guardian Media Group	The Guardian	3%
Independent News and Media	The Independent	2%

Source: NERA report for the Newspaper Society, July 2000

- Some further consolidation in the national newspaper market is a possibility. This does not mean that the variety of titles will be reduced, unless any of the titles become commercially unviable.
- It is unlikely that News International would be allowed to acquire any other group/newspaper without divesting one of their current titles.
- As a rule of thumb ownership of above 25-30% is likely to start causing concerns, especially with high barriers to entry.
- High barriers to entry, and wide variety of titles mean that it will be difficult for a new title to enter the market and grow. The last attempt was The Today Newspaper, which subsequently exited the market.
- Speculation over recent years that 'The Independent' may exit the market. If so market share likely to be shared between the other broadsheet newspapers.
- Possible scenarios that would make commercial sense as well as (possibly) gaining regulatory clearance: broadsheet titles to be acquired by tabloid and mid-range publishers i.e. Trinity Mirror to acquire The Guardian (though uncertainties as to whether the Guardian could actually be sold), DMGT to acquire the Independent, or UAI to acquire the daily Telegraph.
- The most concentrated (worst case) scenario would look something like the following:

Publisher	Title	Market share (circulation)
News International	The Sun	27%
	The Times	5%
Trinity Mirror plc	The Mirror	17%
	Daily Record	5%
	The Guardian	3%
DMGT	The Daily Mail	18%
	The Independent	2%
United MAI	The Express	8%
	The Daily Star	4%
	The Daily Telegraph	8%
Pearson plc	Financial Times	3%

Local and Regional

- *Local newspaper markets very rarely cause concerns due to low barriers to entry, lack of editorial content, and alternative forms of printed media (such as mail shots, niche publications, advertising only publications etc).*
- There has been consolidation in local and regional markets in recent years, which is likely to continue. In 1993 the top five local and regional publishers accounted for just over 40% of all local and regional titles. By 2000, this had increased to 63%.
- The CC applies a national concentration test, which considers the effect of the merger in terms of national shares of local and regional newspaper publishing. The CC has never reached an adverse finding on this test. Not surprising since the largest publisher (Trinity Mirror), still only has 21% followed by DMGT with 19% and Gannett with 14% of total aggregated circulation.
- Local market definitions are often sufficiently wide that they are analysed at the regional level. Whilst the national concentration test does not refer to a particular market it may provide an indication of the overall influence of a local and regional newspaper publisher, as well as being an easy ad hoc calculation.
- There are economies of scale in publishing regional and local newspapers. These include centralisation of printing and rationalisation of financial and administrative functions. Entry barriers are likely to be lower for established publishers.
- Possible scenario – the top 5 local and regional press publishers to account for around 80% of total circulation – up from the current 63%. Would guess that no individual publisher will be allowed more than 30-35%.
- Television and local radio are considered less of a direct competitor, although compete to some extent for total advertising spend. The internet and other forms of electronic media are likely to offer increasing competition in the future, but the rate of growth and ultimate extent of competition remains a matter of conjecture.

Cross Media Issues in the Longer Term

- It is important to be aware that some of the cross-media ownership proposals regarding ITV (channel 3) licenses will fall away when terrestrial analogue TV is switched off, or (possibly before) when digital pay-TV is considered part of the same market.
- Currently competition for advertising spend in the analogue terrestrial TV market takes place between the ITV companies, channel 4 and channel 5 i.e. limited number of channels available.
- In the (digital) pay-TV market, ITV will become one out of 100(ish) channels available for advertisers. So viewers and advertisers will be more thinly spread across the vast array of

channels. Restrictions on newspaper publishers and radio broadcasters owning ITV licenses (1 out of 100 channels) will become meaningless due to the declining influence of ITV as channel. Most likely scenario will be to own other digital channels with no restrictions.

- Whilst the cross-media ownership rules will be effective as the current market structure stands, they will therefore need re-formulating in the future.
- As the distinction (market definition) between different media blurs, cross media rules based on the current media segregation may need reforming. If convergence leads to a single media market, the current rules will become ineffective.
- There is also the great unknown surrounding the internet. All media streams are currently available via the internet, though current technology means they are not yet effective substitutes for the individual media channels.

Caveats

- A major health warning is placed on the scenarios. The analysis provides a rough and ready hypothetical indication of how the media markets will turn out. The dynamic nature of the media sector makes such scenarios extremely difficult to predict with any certainty.
- Analysis has been drawn from recent Competition Commission reports where possible, though there is still massive uncertainty that the scenarios outlined could actually get regulatory clearance.
- This analysis assumes anti-competitive effects occur through mergers and acquisitions. It is important to remember that firms also grow organically. Therefore, merger legislation is not the only tool under competition law to prevent abuses of market power. The Competition Act 1998 gives the OFT much stronger powers to address anti-competitive behaviour by prohibiting anti-competitive agreements and abuses of dominant market positions. The competition authorities also have the monopoly provision of the FTA as a further tool that allows in-depth market investigations in potentially troublesome markets.
- Note the high confidentiality of the above analysis. A number of companies have been cited, which could adversely affect their future business strategies.

HOW THE EXISTING CROSS-MEDIA RULES CAME TO BE

Share of Voice

1. Share of Voice was a serious option in the consultation that preceded the 1996 Bill, but it was generally unpopular and therefore came to be referred to as a possibility in the longer-term.

Limiting newspapers

2. There was a great deal of anxiety at the time of the last Bill about changing the rules to allow newspaper proprietors to own any part of the broadcasting media - broadly, the suggestion then was that newspapers make the news whereas broadcasters report it. Any marriage of these two cultures was therefore considered to be concerning, and in need of careful control.
3. The 20:20 rule has no scientific basis but is a 'share of voice'-type formulation, based on the view that it was unacceptable for any one voice to control more than 20% of the national newspaper market and more than 20% of another, broadcasting voice.
4. The rules that make any newspaper group's acquisition of any broadcasting licence subject to a public interest test were considered an important catch-all power to prevent those newspapers who were not limited by any other cross-media rule from acquiring more influence, nationally or locally, than was desirable. The nature of the tests, which are defined in general terms and may be applied to any transaction, was derived from the nature of the special newspaper regime - the two processes were envisaged working in parallel to some extent. In practice the public interest tests have rarely had any effect and have become a burden on both regulator and industry.

Limits at the local level

5. Equally, there was a concern to limit the influence that any regional newspaper might have, which contributed to complex and restrictive rules on the joint ownership of local newspapers and local radio stations. It was felt to be important to prevent any one company from becoming a dominant voice in local news of any sort, including that available through local radio, despite its limited speech output and regulation of news and opinion.

National TV and radio

6. The rules that prevent joint ownership of national TV licences and national radio stations were built on the principle that licences for terrestrial TV and radio were extremely scarce, and were valuable enough to warrant separate ownership in the interests of plurality.

Control

7. The definition of 'control' was broadened in 1996 to identify anyone who could direct a company in accordance with their own wishes, 'by whatever means and whether directly or indirectly' as the owner of that service. Previously someone was only considered to direct a company if they did so through shareholdings or voting rights. The intention was to prevent anyone finding more subtle ways of controlling different companies that would enable them to get round the media ownership rules. The Radio Authority now complain that there are ways of getting round the 1996 definition of control, which they say needs broadening to include the OFT concept of 'material assets'.

ANNEX 0

Cross-Media-Ownership issues debated in the House of Commons

2nd Reading of 1996 Bill-16 April 1996

Cross media-ownership issues came up several times during the debate. Concerns were raised that groups having 20% or more of national newspaper circulation were prevented from owning Channel 3 licences.

There was a feeling that the 20% figure was arbitrary. Why not have 25% (which would allow the Mirror Group to purchase a Channel 3 licence) or even 30%. It was argued that this stunted growth, and made it difficult for the smaller British companies to compete globally.

There was also some concern that regional newspaper groups may not be given the same opportunity as national groups to become involved with radio.

Finally, concern was raised that the Bill unnecessarily handicaps local and regional publishers, by allowing national and foreign-owned companies to own local and regional television and local radio services, and to back them up with a local free paper, but not many regional and local newspaper groups to do the same.

2nd Reading of 1990 Bill-18 December 1990

Cross media-ownership issues were only briefly touched upon during this debate. It was felt the proposals were inadequate, by allowing a further erosion of competition.

(Attached are relevant Hansard extracts from the debates)

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Mr. William O'Brien (Normanton): The Secretary of State referred to newspaper groups being involved with radio and newspapers. Will she give me some assurances that regional newspapers will be given the same opportunity as national newspapers, and that regional newspapers will be allowed to make representations during the passage of the Bill to express their concerns to the Secretary of State?

Mrs. Bottomley: I have had many discussions with regional newspapers, on the strength of which I have modified the proposals in the Bill a couple of times already. It remains the case, however, that the Bill is concerned about plurality and diversity, and that, in our opinion, dominant broadcasters and dominant newspapers covering the same territory are not conducive to, or appropriate in, a democracy.

The Bill is a liberalising measure. There are many more opportunities for all those involved in the industry, but it is our view that it is still appropriate to have several additional controls. I understand that the Labour party recently ripped up all the principles it previously stood for, but I shall come to that later.

Mrs. Anne Campbell (Cambridge) rose--

Mr. John Redwood (Wokingham) rose--

Mrs. Bottomley: I give way to my right hon. Friend the Member for Wokingham (Mr. Redwood)

Mr. Redwood: Does my right hon. Friend recognise that these technologies are coming together rather quickly? How will the market share be calculated for things such as electronic newspapers transmitted through the Internet and through the television and home computer, and what adjustments will be made for the fact that these markets are rapidly becoming global in the English-speaking world?

Mrs. Bottomley: My right hon. Friend is right, but it is not yet possible to regulate the market in its fully developed form, and I believe that this is an appropriate staging post at which we will be significantly liberalising the regime. We will move into allowing far more cross-media ownership, and have put appropriate regulation and controls in place, which were widely welcomed not only by the industry but very much by the Labour party when they were first announced.

Mrs. Anne Campbell rose--

Mr. Kaufman rose--

Mrs. Bottomley: I shall move on, if I may, because this is a complex Bill. I have a great deal of material to get through and many others wish to speak.

The Bill also prevents groups having 20 per cent. or more of national newspaper circulation from acquiring channel 3 or Channel 5 licences or radio licences or vice versa. This restriction, however, does not apply to the

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emerging markets of cable, satellite and digital terrestrial broadcasting. Even the largest newspaper

groups therefore have room for expansion under our proposals, but it would not be right for those who dominate the newspaper audience also to control the dominant, established, television or radio broadcasting licences.

The Bill will achieve

"diversity, plurality, quality and the best possible programmes for the viewer and listener. The rules are to make sure that there is not excessive dominance by any one commercial provider."—[Official Report, 23 May 1995; Vol. 260, c. 713.]

Those were not my words; they are the words of the hon. Member for Islington, South and Finsbury (Mr. Smith), spoken when we launched our White Paper in May 1995.

The policy that the hon. Member for Islington, South and Finsbury devised appears to have changed since then. I know that some Opposition Members want to give vested interests a higher priority than the interests of viewers and listeners. In October 1995, the Labour party tried to strike a grubby deal with British Telecom, which might have jeopardised the £10 billion investment programme of the cable companies. Now Labour is at it again, trying to rig the regulations.

In a recent Sunday Times article, the hon. Member for Kirkcaldy (Dr. Moonie) said he favoured removing restrictions on concentration of ownership because

"the whole point is to ensure the creation of bigger companies"

that "can compete abroad". His policy is to allow companies to take more of the market, even if that removes plurality of ownership and undermines people's choice. I am not certain whether he speaks for the whole Labour party, but if he does these proposals are as ill thought through as they are opportunist.

In the words of Mr. Paul Foot—[Laughter.] I quite understand why Labour Members do not want to hear what he had to say. He said that the policy

"stinks of ... back-scratching sleaze."

Opportunism is what new Labour is all about. Only a month ago, the hon. Member for Hartlepool (Mr. Mandelson) went on television to threaten newspaper groups with increased regulation unless they gave Labour an easy ride at the general election.

The right hon. Member for Copeland (Dr. Cunningham) has had plenty of opportunities to explain which policy is official party policy, but we have had only flannel. Do any of the hon. Members whose words I have quoted speak for the Labour party? Or does the right hon. Member for Copeland have yet another view? Like the hon. Member for Newham, North-West (Mr. Banks) on the radio this morning, we shall be very interested to know what is going on. Or perhaps the hon. Member for Stoke-on-Trent, Central (Mr. Fisher) has washed his hands of this issue, just as he has washed his hands, it seems, of the Elgin marbles.

Mr. Robert G. Hughes (Harrow, West): Or lost his marbles.

Mrs. Bottomley: That must be right. I appreciate that.

Or perhaps the hon. Member for Birmingham, Ladywood (Ms Short) could lift another veil from Labour's plans.

In this place and in Committee, my hon. Friends will be relentless in exposing cosy deals that the Labour party dreams up to please its friends.

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The thresholds set out in the Bill provide a clear set of ground rules. At no point have our proposals been devised with any intention to attack or penalise the Daily Mirror, News International or any other specific newspaper group. They are there to protect the public.

Diversity of voice is needed, not only at the national level but in the regions and localities of the United Kingdom--the point the hon. Member for Normanton (Mr. O'Brien) made a moment ago. The Bill therefore retains controls designed to prevent local or regional monopolies.

Mr. Kaufman rose--

Mrs. Bottomley: If the hon. Gentleman will forgive me, I do not want to give way because I have given way at length.

The Bill prevents dominant local newspapers from dominating local radio or owning a channel 3 licence in the same area. If a national newspaper substantially differentiates its local or regional editions, the regulator will treat these as local papers and they will be brought within the scope of those controls.

As a consequence of our consultation--this is the point I made earlier and have made several times to my right hon. Friend the Member for Sutton Coldfield (Sir N. Fowler)--we have already relaxed the local newspaper ownership threshold at which companies would not be allowed to own a radio station in the same area. The threshold has been raised from 20 per cent. to 50 per cent., but we remain concerned not to allow one company to own all the radio, television and newspapers in one town or region. Reciprocal restrictions will prevent local broadcasters from establishing dominant local newspaper interests.

~~If a channel 3 television licence changes hands, clause 67 would allow the ITC to hold the new owner to the standards, range and regional content in programming that the current licensee was achieving. That directly protects the regional flavour of programming, which is such a valuable feature of ITV--a point that has been made by several hon. Members in the debate in recent weeks.~~

~~We shall go further than that. We propose to clarify the definition of various provisions and terms used in clause 67. We want to help the ITC to implement provision and to prevent companies from avoiding the spirit of the legislation, so we propose to require the ITC not to approve amended channel 3 networking arrangements if the regional programming of smaller ITV companies would be threatened.~~

Part III of the Bill amends the funding arrangements for the Welsh fourth channel--S4C. The current funding formula is based on the vagaries of the television advertising market. Under clause 68, the Government's annual payment to S4C will be the January 1997 payment made under the old formula, uprated annually like the BBC's licence fee--in line with the retail prices index. The new arrangements will make the future public funding streams for S4C more predictable. That should benefit both S4C and the Government. We shall also introduce measures to allow S4C to operate digital commercial services, like the BBC.

Clause 70 amends the funding formula for Channel 4. Under that formula, an income of a certain level for Channel 4 is underwritten by the channel 3 companies.

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Digitalisation will accelerate the pace of change and create new challenges and opportunities for legislators and broadcasters alike. It is a time of convergence of education, the arts, drama, the cultural industries, film and television. The right hon. Lady was right to say that those changes have the potential to bring considerable wealth and employment opportunities to the countries that make a success of them.

Mrs. Anne Campbell: Does my right hon. Friend agree that it is crucial that some of the new digitalised channels provide educational opportunities as well as the opportunities that he has already mentioned? Should not we legislate to make available some space for that important purpose?

Dr. Cunningham: Yes. I agree with my hon. Friend. We have the most respected and effective distance learning organisation in broadcasting anywhere in the world—the Open university, which was introduced by a Labour Government. We also have an important proposal to develop a university of industry to utilise precisely the opportunities to which my hon. Friend refers.

Technological convergence can bring together work and leisure, the office and the home, education and entertainment. Broadcasting is a key area of activity wherein news, sport, drama, music, cultural activities, education, business and commerce come together. Public policy in broadcasting has always been, and will continue to be, of critical importance. The growth of multi-media industries and their significance in all aspects of our lives means that public policy must address the challenges of technological innovations, ownership issues and matters of content and standards.

The question for us all is whether we can meet those challenges and turn them to our advantage to produce commercial and economic success. The opportunities are enormous—not just to install the technology, but to develop the huge range of new services that technology will facilitate. That is why the Bill is so important.

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The Government's decision to introduce a Broadcasting Bill can be seen in two ways. It can be seen as a modest measure that tidies up some aspects of the Broadcasting Act 1990, introduces the prospect at some undefined future date of a new form of broadcasting and implements the last vestiges of the Government's privatisation programme. Alternatively, in the words of the Secretary of State, it can be portrayed as the liberation of British broadcasters to be world leaders in the next millennium and a framework to encourage and support the necessary risk investments. I am sorry to say that it seems much more likely that the first scenario will prevail.

Mr. Ian Bruce: I am sure that the House was expecting the hon. Member for Newham, North-West (Mr. Banks) to ask this question, but he is not in his place. In the nine years that I have been in the House, every time any media organisation was taken over, the Labour party was quick to say that it was wrong to concentrate media ownership. Why, therefore, in the reasoned amendment that seeks to deny the Bill a Second Reading, does Labour seem keen to see large newspaper conglomerates taking over terrestrial broadcasting facilities?

Dr. Cunningham: The hon. Gentleman apparently does not understand that the Bill facilitates the purchase of channel 3 licences by newspaper owners. The argument is not about that, as it is already happening. Multi-media companies are developing not only in Britain, but internationally. If the hon. Gentleman does not understand that, he is in the wrong debate. The debate concerns how those developments can be managed and controlled and what legislation or regulation should be put in place to do it. I shall return to that later in my speech.

Mr. David Mellor (Putney): The right hon. Gentleman was unduly unkind to my hon. Friend the Member for South Dorset (Mr. Bruce). I trust that he will treat me rather more sympathetically. What is puzzling the right hon. Gentleman's many admirers in the Conservative party, including me,

is how he can put his name to an amendment that suggests that the newspapers are being treated unfairly when, with the full authority of the Labour party, in another place on 23 May last year, Lord Donoughue said:

"We particularly welcome the 20 per cent. newspaper circulation ceiling on TV ownership, which appears to prevent the existing giants from expanding further into television."—[Official Report, House of Lords, 23 May 1995; Vol. 564, c. 934.]

There is no way in which what Lord Donoughue said can sit with the Labour amendment. What is the explanation for that? Our explanation is that the Mirror Group has got at the Labour party.

Dr. Cunningham: I am happy to respond more kindly if the right hon. and learned Gentleman thinks that I should. It was once said that television was a device that allowed us to see in our own living rooms people whom we would not necessarily invite into our homes. I would not necessarily put the right hon. and learned Gentleman into that category, but it certainly applies to some of his hon. Friends.

I said that I would return to the matter of the Mirror Group, but I am happy to respond now. The Secretary of State should explain what was so fundamental about the Government's choice of 20 per cent. That is the question.

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The arbitrary choice of 20 per cent. of the market happily allows United Newspapers and Associated Newspapers to buy channel 3 licences, but miraculously and coincidentally, prevents the Mirror Group from doing the same. That is the inconsistency in the Government's position and that is why we are raising the question. What made them decide on 20 per cent.? Why was it not 25 per cent., or 30 per cent.? What was the logic in choosing that figure? I shall return to the matter later.

If the Conservative party were following its convictions altogether, it would not want any such regulation. It would want the market to decide, as I have no doubt the right hon. Gentleman would agree.

~~Mr. Redwood: To clear up the point, will the right hon. Gentleman say what contacts he and other members of the shadow Cabinet have had with the Mirror Group in the past three months regarding this important issue?~~

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Cunningham

amendments to provide a statutory framework for the unbundling of sports broadcasting rights.

I come now to the importance of proper regulation of conditional access systems—the set-top boxes and associated technology of must-carry and must-offer protection to ensure that all broadcasters are treated fairly, and of universal access for viewers and listeners across the United Kingdom.

In January, the Government published their proposals for regulation of conditional access systems and they have given a commitment to table next month the relevant statutory instruments to implement the European Union television standards directive, but we need to be convinced that all the necessary steps are being taken. The new licensing regime needs to be put in place now and Parliament should be debating the issues as part of the Broadcasting Bill. We shall certainly raise them in Committee.

A further matter that should be settled by the Bill is the Channel 4 funding formula. The formula was a well-intended measure in the 1990 Act. I say to the right hon. and learned Member for Putney that it was founded on good intentions. The formula worked to most people's satisfaction for a while, but it has fallen into disrepute. There are, I know—we have all had the correspondence—strong feelings on both sides of the argument, but when the 1990 Act sought to underpin the finances of Channel 4, it did not envisage the outcome, and I cannot blame the right hon. and learned Gentleman for that.

In the event, the funding formula has not been a great success. In the five years to the end of 1997, Channel 4 will have paid more than £300 million to the ITV companies, which is considerably more than its expectations and more than anyone envisaged at the time. A fair means should now be established to redirect the substantial amount of Channel 4's revenue back to programme making. The formula should not just be ended, giving a blank cheque or carte blanche to Channel 4; there must be commitments if the formula is to be ended, and we shall want to explore what the Secretary of State had to say about that in more detail in Committee.

The right hon. Lady tried to have some fun about opposition on strong and diverse companies in the media operating in local, national and international media markets, but she must do a bit better than quote Paul Foot in support of her case. As I understand it, Mr. Paul Foot, in *The Guardian*, was saying that we on the Labour Benches should accept without question a piece of

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Conservative Government legislation. I must say that that is a headstand of spectacular proportions, even for him. We have no intention of doing so.

The Government's position is perverse. They want developments in cross-media ownership, but arbitrary figures have been set to judge how much of the market any one company can own. The most arbitrary aspect must be the restrictions on national newspaper groups investing in commercial television—the so-called 20 per cent. rule.

The Mirror Group, as the right hon. Lady knows because she has had discussions and correspondence with it, feels that the legislative proposals are biased against it—and understandably so. It should not be discriminated against, particularly when supposedly smaller newspaper groups own a large number of regional and local newspaper titles. Nationally and internationally, cross-media ownership already exists and is developing. The question is not whether it should exist—it is happening—but what controls should be used to guard against monopoly and to ensure fair competition and diversity. We are happy to debate those issues.

Mr. Mellor: I am grateful to the right hon. Gentleman for giving way a second time. If 20 per cent. is not the right figure, what is?

Dr. Cunningham: I am sure that the right hon. and learned Gentleman knows that, if it was 25 per cent., the Mirror Group would be allowed to participate. The amendment was blocked. United Newspapers and Associated Newspapers can participate. Conservative Members must say why the limit is drawn to block the Mirror Group. [Interruption.] Why not News International, indeed, which has something over 30 per cent. of the newspaper market? That is why my hon. Friend the Member for Bassetlaw (Mr. Ashton) said, apparently to some mirth on Conservative Benches, although Conservative Members pride themselves on pursuing market forces and free enterprise, that perhaps the usual competition laws should be allowed to operate. That is at least as sensible and logical a position as the one adopted by the Secretary of State.

Paragraph 9(1)(b) of the new part IV of schedule 2—to be found on page 108 of the Bill—gives powers to the ITC and provides that a licence does not have to be granted

"if the relevant authority determine that in all the circumstances the holding of the licence by a body corporate falling within paragraph (a) or (b) above operates, or could be expected to operate, against the public interest."

So let us not hear from Conservative Members that there are no safeguards against abuse—they are written into their Bill, but it is apparent from their clacking away during the debate that they have not read it. That has been amply demonstrated by what they have said.

In local newspaper markets, there are other questionable restrictions on cross-media ownership, which are again the subject of much criticism from local newspapers. The thresholds do not seem to be based on any objective assessment of markets. They are clearly derived from the failure of competition policy and the Government's repeated failure to bring such policy up to

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date. If the Office of Fair Trading and the Monopolies and Mergers Commission were able to do their jobs properly, the thresholds would not need to be set in such an arbitrary manner.

If public interest issues are at stake, let us use public interest criteria. That is what they are there for. The public interest also requires that, where takeovers occur, there is adequate protection for regional interests. I know that at least one right hon. Gentleman on the Conservative Benches shares some of the views that I am expressing in this part of my speech.

Mr. Robert G. Hughes (Harrow, West): Will the right hon. Gentleman give way?

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6.50 pm

Mr. Gerald Kaufman (Manchester, Gorton): The Bill would be much better if it took account of the reports by the Select Committee on National Heritage on Channel 4 funding, on which its provisions are unsatisfactory. On listed sports, the Government have been forced to adopt the Select Committee's recommendations. The Government have failed to understand the Committee's recommendations on the future of broadcasting as outlined in our report on the future of the BBC.

The Bill is poor because it has no plans for the future horizons of broadcasting, which is the future of this country. We are not simply debating television entertainment but the future of work, education, medicine and the social organisation of our cities. We shall see the biggest change since the industrial revolution. Countless jobs and billions of pounds worth of exports are at stake. In future, television, computers, newspapers and telephones will merge into one seamless continuum. That is not a fanciful, futuristic prospect: it is happening now.

In the United States NBC and Microsoft are discussing a service by which NBC will broadcast the news. Anyone who wants more will be able to tune in to the Microsoft network and receive everything that is related to that news coverage. That can happen now. Audiences and services are changing. Cable television is providing telephone services and 30 per cent. of the population now have access to satellite and cable television.

The Government have been forced to recognise change through the Bill's historic clauses 26 and 113, which for the first time will give the ITC power over the BBC. But the Bill as a whole is a puny, bureaucratic, petty regulatory measure that cannot see beyond an extremely low horizon. It aims, not very competently, to tidy up the past but fails to prepare for the revolution of the impending future. Its petty, silly and almost certainly unworkable regulations on cross-media ownership are the most vivid illustration of its inadequacy.

I have rarely read such claptrap in any legislation as that contained in clause 5 and schedule 2. They set out batty requirements for an assessment of changes in the percentage of total audience time of television stations, and changes in the national and local market shares of newspapers and the number of 15-year-olds who watch any particular programmes. The percentages are utterly arbitrary. The right hon. and learned Member for Putney (Mr. Mellor) asked my right-hon. Friend the Member for Copeland (Dr. Cunningham) what percentages he supported, but the right hon. and learned Gentleman failed to take account of the fact that the Bill gives the Secretary

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of State power to change the percentages at any time she wishes--so she does not necessarily believe in those percentages either.

I do not know whether to laugh at the sheer fatuity of the legislation or to cry at the expenditure of time by highly paid civil servants, no doubt with first-class degrees. Such demented provisions are aimed at limiting what needs to be expanded. We need more cross-media ownership, not less. In the United States, cross-media alliances are powerful enough to dominate the world, but in Britain the future of communications will be crabbed and stunted. There is no policy for the future of the biggest growth industry for the foreseeable or, indeed, the unforeseeable future. The Department of National Heritage is not a Ministry for fun: it should be a powerful industrial Department rather than a finicky calculator of points and percentages.

Robert MacLennan]

weigh against an entry into broadcasting of long-established newspaper companies, for example--artificial and undesirable.

However, we are not talking only about very big business and the demands of the global marketplace--we are concerned with the need to ensure that the media of communication are not unacceptably dominated by too few players. Broadcasting and newspapers have always been recognised as apt subjects for particular rules of competition, since monopoly in the flow of information and ideas is wholly unacceptable.

Subject to substantial strengthening of the Bill's provisions to secure the regional diversity which is one of the most attractive aspects of current British independent television, I would not be unhappy in principle with the relaxation on cross-media holdings to allow groups to control a mix of newspapers, television and radio licences; but--here I take issue with the Government--the market share mechanism, which is the basis of the regulatory proposals for television and radio, is inevitably arbitrary in its effects. A more general requirement--contained in, I think, schedule 2--to satisfy public interest criteria before authorising an acquisition or merger would seem more likely not only to work equitably but to enable the regulatory authority to extract appropriate conditions before authorising mergers or takeovers.

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The Government cannot really suggest, as the Secretary of State did, that they are completely lacking in political partiality, whereas the Opposition were politically partial in taking the view that 20 per cent. was the right market share when that would cut out the Daily Mirror but allow the Daily Mail to enter the broadcasting market. These figures are not arrived at accidentally--they are arrived at arbitrarily. They are chosen with a particular purpose which was, no doubt, not to isolate Mr. Rupert Murdoch in his purdah.

On reflection, that is perhaps a rather strange way to put it. I should say that the intention is not to isolate him in being unable to enter the terrestrial market, which I imagine does not trouble him unduly, in view of his domination in other areas. That automatic approach is not sufficiently consumer-oriented to be an acceptable way of regulating the industry. The regulatory authority should examine questions of public interest in the round and be given more detailed guidance than that set out in the Bill.

Above all, it is important that the regulatory body should be dedicated to the media industry, and to the particular interests of viewers and listeners in this country. I do not think that it is appropriate to rely on the MMC to do that work.

I noted reports at the weekend that the MMC has been considering the interests of consumers of electricity and taking into consideration global market arguments to allow the coming together of providers and suppliers in a way that would be highly damaging to the consumer interest if it were to be applied by parity of reasoning in the broadcasting world. I very much hope that that will not come about, but I especially urge that the Independent Television Commission should be the regulatory body for such matters, and that the consumer interest should be dominant in the consideration of regulatory matters.

I was glad to hear what the Secretary of State had to say this afternoon about regional planning. It has been a concern of mine that the greater concentration of ownership, perhaps in the hands of as few as two major companies following the passage of the Bill, could destroy the regional characteristics of the independent television network. Although clause 67 enhances the power of the ITC to extract necessary conditions on the change of ownership of regional companies, the Bill does not deal with the problem of a change in the balance of power among ITV companies, which could result in amendment to the network supply agreement, to the detriment of smaller regional

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7:31 pm

Mr. John MacGregor (South Norfolk): In the time available I want to deal with one issue only. I congratulate my right hon. Friend the Secretary of State and the Government on the way in which they have responded to debates and representations in another place. My right hon. Friend said that she intends to make a number of further changes as the Bill passes through the House. I add my voice to those who are urging one further change, concerning the issue of regional and local newspapers, in the hope that it can be made in Committee.

We are all agreed on the importance of the 1,400 regional and local newspapers. They help to produce plurality—which is sought through the Bill—diversity and, of course, good coverage of regional and local news, which cannot be obtained as well elsewhere. Local publishers are under immense pressure from their own industry, national newspapers and, above all, from the new means of communication, on which there has been so much focus in this debate, and which are expanding very quickly while communication through the printed word is declining.

The Bill would adversely affect the competitive ability of many regional and local newspaper publishers, their ability to develop their businesses in the only strategic way that makes sense—by diversifying—and their ability to earn additional revenue from which they can continue to provide regional and local services. In other words, the Bill unnecessarily handicaps local and regional

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publishers, for it allows national and foreign-owned companies to own local and regional television and local radio services, and indeed to back them up with a free local newspaper, which in itself is often a major source of competition for local newspapers, yet does not permit many regional and local newspapers to do the same.

As my right hon. Friend the Secretary of State says, that provision is justified on the grounds that the Government consider that

"those with a strong voice in an area's local newspaper market should not also be able to dominate local radio services in that area."

In response to the proposal of the Newspaper Society, which represents the relevant interests, that national newspapers, together with all other media, should be included in the threshold calculations, my right hon. Friend has said that she believes that there is a clear distinction between the editorial content of national and local newspapers, and that, therefore, the proposal should not be implemented. I believe that that view is mistaken. Of course I accept that at the very time a Bill is preventing cross-media dominance at a national level, we do not want to permit it at regional or local level, but that would not happen if the Newspaper Society's request were met.

First, as my right hon. Friend the Secretary of State has said, the Bill tries in a number of ways to enable some local papers to invest more in local radio. Secondly, and perhaps most important, there is a public interest test. That test is sufficient to deal with the local dominance problem. Thirdly, regional publishers, such as the one affecting my region, Eastern Counties Newspapers, would be hit by the Bill. Such publishers do not have a monopoly of local news; there are a considerable number of local radio services, local television, BBC radio, and so on.

procedure to the night hours and the ownership rules. We have made substantial changes, but the basic principles on which the Bill is constructed remain.

First, we want viewers and listeners to enjoy the increased choice that is now possible. Therefore the Bill authorises Channel 5, three new national radio services, local multi-channel franchises able to use microwave as well as, or instead of, cable, and many new local and community radio stations. We do not know precisely how fast broadcasting will expand, but expansion there will certainly be, and the legislation must cater for it. The appetite for a much wider choice of local radio stations is clear. When the IBA recently offered a further 23 local radio contracts, the scheme attracted no fewer than 540 letters of intent, with little indication that all that the promoter wanted was pop and more pop. Under the future arrangements, new stations will cater for a wide range of tastes, from jazz to classical music. They will reflect the interests of neighbourhoods, of ethnic minority groups, and of other communities of interest, and there will be three new national independent radio channels.

Secondly, the Bill fully recognises that aspects such as programme quality and diversity, regional links, healthy and widespread ownership of broadcasting companies and proper geographical coverage cannot simply be left to take care of themselves. It therefore provides sharply focused statutory safeguards for all of them. It also incorporates a wider and more flexible set of enforcement sanctions, including financial penalties and performance bonds.

Thirdly, the Bill acknowledges that television and radio are powerful media with potential to be abused, to offend, exploit and cause harm. It therefore contains safeguards of programme standards on taste, decency, accuracy and balance, and extends them to all United Kingdom based broadcasters. It removes the broadcasters' exemptions from the law of obscenity and incitement to racial hatred, and it establishes a key role for the Broadcasting Standards Council in overseeing standards of taste and decency. It also implements the Council of Europe Convention and the EC directive. Those instruments only provide enforcement mechanisms that the United Kingdom can activate against broadcasts originating in the European countries where programmes are of an explicit or glamorised violence. The Bill also provides draconian sanctions against those who support unacceptable foreign satellite services receivable here.

Many points will arise in the debate, but there are three key matters with which I ought to deal now. They are competitive tender, ownership and quality.

Our proposal that Channel 3, Channel 5 and certain other licences should be allocated by competitive tender has two main objectives. First, we want to establish a fairer and more objective system for awarding franchises than is present one, which has few bidders, but at the same time to ensure high standards and diversity. Secondly, we have a clear duty, which some campaigners gloss over far too quickly, to ensure that the taxpayer gets a proper return for the use of the valuable and scarce national resources constituted by broadcasting rights and, in particular, the use of the frequency spectrum.

Mr. Tam Dalyell (Leithgow): The Home Secretary used the phrase "gloss over". Will he give one concrete example of what he means by that?

Mr. Waddington: I mean that if the state is to allot to certain persons a valuable legal right, the state is entitled to claim in exchange a return for the taxpayer. One is not talking about the right of individuals but about claiming for the taxpayer a return on the valuable rights allotted by Government.

Mr. Tony Banks (Newham, North West): Would not the taxpayer derive more benefit from the auctioning off of those national resources if the money raised were invested in programme production and training? That would represent better value for the taxpayer than the Treasury amassing more and more money that it cannot spend for fear of inflation.

Mr. Waddington: I do not accept that argument for one moment. A person entering into the bidding process will have very much in mind what he can afford to pay. He will therefore pay the proper price for the valuable right that he is given. That will be fair both to him and to the taxpayer.

If we are to enjoy high standards and diversity, there must be ownership rules. The Bill includes in schedule 2 much clearer and more extensive ownership rules than anything that we have now. There is no chance whatsoever of British broadcasting falling into the hands of a bunch of tycoons or a cluster of conglomerates. To prevent that from happening, the Bill provides the means for implementing the limits on ownership which were clearly set out by my right hon. friend, now the Secretary of State for Foreign and Commonwealth Affairs, in his announcement of 19 May.

Non-EC ownership will largely be prohibited. National newspapers will not be permitted to hold more than a 20 per cent stake in a direct broadcasting satellite channel, Channel 3, Channel 5 or national radio licensee. Satellite channels targeted at the United Kingdom, whether based here or abroad, will be subject to a similar 20 per cent restriction on interests in those other licensee.

Mr. Dennis Skinner (Bolsover): Is the Home Secretary aware that a newspaper proprietor, for example, who already owns three or four newspapers but only one football club—that is the kind of society in which we live, where the Government are more concerned about football clubs than about the media—will be able to exercise a formidable degree of power and control with 20 per cent share ownership? That is particularly true when one considers that the Prime Minister has only a 5 per cent interest in the Cabinet as one of 20 members, but she still runs it.

Mr. Waddington: I assure the hon. Gentleman that in deciding on these restrictions the Government addressed their mind carefully to the need to ensure that national newspapers would not be subject to the degree of influence and control that he fears.

Mr. Roy Hattersley (Birmingham, Sparkbrook): The Home Secretary stated categorically that all satellite broadcasters, whether based in this country or abroad, would be subject to the 20 per cent newspaper ownership rule, but he knows very well that no such provision appears in the Bill. The Minister of State, the hon. and learned Member for Putney (Mr. Mellor), stated at his press conference that Sky Television would not be subject to such a restriction because it had already invested so much money in the United Kingdom. The Minister of

procedures to the night hours and the ownership rules. We have made substantial changes, but the basic principles on which the Bill is constructed remain. It is our intention that we want viewers and listeners to enjoy the increased choice that is now possible. Therefore, the Bill introduces Channel 5, three new national radio services, local multi-channel franchises able to use microwave as well as, or instead of, cable, and many new local and community radio stations. We do not know precisely how that broadcasting will expand, but expansion there will certainly be, and the legislation must cater for it. The appetite for a much wider choice of local radio stations is clear. When the IBA recently offered a further 23 local radio contracts, the scheme attracted no fewer than 540 offers of intent, with little indication that all that the promoters wanted was pop and more pop. Under the future arrangements, new stations will cater for a wide range of tastes, from jazz to classical music, rather than reflect the interests of neighbourhoods of ethnic minority groups and of other communities of interest, and there will be three new national independent radio channels.

Indeed, the Bill fully recognises that aspects such as programme quality and diversity are national, not local, issues. It respects the diversity of broadcasting companies and programmes, geographical coverage, and the right of the public to be able to choose what they watch and listen to. It therefore provides sharply focused statutory safeguards for all of them. It also incorporates a wide and more flexible set of enforcement sanctions, including financial penalties and performance bonds. Thirdly, the Bill acknowledges that television and radio are powerful media with potential, if abused, to offend, to alarm and cause harm. It therefore contains safeguards on programme standards on taste, decency, accuracy and balance, and extends them to all United Kingdom-based broadcasters. It removes the broadcasters' exemption from the law of obscenity and incitement to racial hatred, and it establishes a key role for the Broadcasting Standards Council in overseeing standards of taste and decency. It also implements the Council of Europe convention and the EC directive. These instruments maintain enforcement mechanisms that the United Kingdom can activate against broadcasts originating in other European countries where programmes are available or claim some violence. The Bill also provides for sanctions against those who support unacceptable foreign satellite services receivable here.

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Mr. Tim Dalyell (Glenfingow). The Home Secretary has the phrase "gloss over". Will he give one concrete example of what he means by that?

Mr. Waddington: I mean that if the states to allow to certain persons a valuable legal right, the state is entitled to claim in exchange a return for the taxpayer. One is not talking about the right of individuals but about claiming for the taxpayer a return on the valuable rights allotted by Government.

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Mr. Waddington: I do not accept that argument for one moment. A person entering into the bidding process will have very much in mind what he can afford to pay. He will therefore pay the proper price for the valuable right that he is given. That will be fair both to him and to the taxpayer. If we are to enjoy high standards and diversity there must be ownership rules. The Bill includes in schedule 2 much clearer and more sensitive ownership rules than anything that we have now. There is no one who has ever of British broadcasting falling into the hands of a bunch of tycoons or a cluster of conglomerates. To prevent that from happening, the Bill provides the means for implementing the limits on ownership which were clearly set out by my right hon. Friend, now the Secretary of State for Foreign and Commonwealth Affairs, in his announcement of 19 May 1987. Non-EC ownership will largely be prohibited. National newspapers will not be permitted to hold more than a 20 per cent stake in a radio broadcasting, satellite channel, Channel 3, Channel 5 or national radio licence. Satellite channels targeted at the United Kingdom, whether based here or abroad, will be subject to a similar 20 per cent restriction on interests in those other licences.

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Mr. Martlew: My hon. Friend talked about the Border Television region, which covers areas on both sides of the border. Will my hon. Friend consider the position of a television area dominated by Strathclyde and the fact that people on the Scottish border would object to that? I am glad that my hon. Friend supports the existence of a television station spanning the English and Scottish sides of the border.

Mr. McAllion: My hon. Friend makes a fair point. We are not raising this as a fanciful idea or as a spectre. Mr. George Russell, the new chairman of the ITC, has made it clear that the ITC is not committed to the existing map of the ITV areas—it is committed to it merely in broad terms. Mr. Russell has not ruled out the possibility of fine tuning around the fringes—we can only hope that he does not mean the Celtic fringes—of the ITV regional map.

Mr. Russell went on in yesterday's article to say that the Government have allowed for the ITV companies to bid for any—or if they wish for all—of the other areas. Today the Home Secretary gave an assurance that no licensee would be allowed to bid for two contiguous areas, but his predecessor made it clear in an answer last May that the restrictions on ownership of Channel 3 areas were only an initial limit. So the Government do not rule out in the long term the possibility that Scotland might be left in the same position as Wales and Northern Ireland—areas which will have single regional channels to provide their services.

There are important lessons to be drawn from commercial radio in Scotland. In the beginning there were four independent commercial radio stations in each of the four major Scottish cities—Radio Clyde in Glasgow, Radio Forth in Edinburgh, Radio Tay in Dundee, and Radio North Sound in Aberdeen. I understand that Radio Clyde has now taken over North Sound and I know that Radio Forth has already taken over Radio Tay. I read only recently in the *Financial Times* that Radio Clyde is now set to take over Radio Forth, too. So, of an original four independent stations, two now dominate the Scottish scene, and ultimately there may be just one. If that can happen to radio in Scotland, I see nothing to suggest that it could not happen to television.

Nothing in the Bill rules out the possibility of the concentration of ownership and control of commercial television in Scotland—and not necessarily in the hands of someone from Scotland. An outsider might come in; nothing in the Bill prevents outsiders from bidding for franchises in the regions of this country. Nothing in the Bill will prevent one or those bidders from subsequently concentrating all the franchises in Scotland under one ownership and control. Nothing in the Bill will prevent the new licensees from dismantling existing production facilities in Scotland; nor will anything in the Bill require them to establish equivalent production facilities of their own.

The Government may argue that these are the consequences of opening up the market in television and that ultimately the viewer will benefit from them, but few Opposition Members share their complacency. We believe that the consequences of the changes outlined in the Bill will be that money will be everything—enough money to outbid rivals for a franchise, then enough money earned from the franchise to pay back the initial outlay for winning it. All this will mean choosing programmes with high viewing figures—programmes that are capable of

producing high revenues. That means going for the cheaper option of buying in programmes from the network and not investing in locally and regionally produced television of high quality. In the end, this will mean undermining the financial basis of smaller regional companies such as Grampian and Border.

The Home Secretary said that the Bill will not mark the demise of public service broadcasting in this country, and that may or may not be true. However, it certainly marks the demise of independent, locally produced commercial television in areas such as Scotland. For that and many other reasons I shall vote against the Bill tonight and hope to amend it later.

Mr. Simon Coombs (Swindon): I hope that the hon. Member for Dundee, East (Mr. McAllion) will forgive me if I do not follow his path, although it is clearly a matter of great concern to him and his constituents.

I speak as chairman of the all-party cable and satellite TV committee, which I joined four years ago because we have in my constituency the oldest and one of the best of the cable companies operating in this country. Swindon Cable was established in 1984 and it provides an excellent service for a growing number of my constituents. I want to speak mostly about part II of the Bill, which refers to cable broadcasting.

Before doing so, I should comment on quality and diversity, themes which have concerned a large number of hon. Members on both sides. One of the effects of the increased diversity of available television is dear to my heart—the fact that later this winter we shall be able to watch live, ball-by-ball coverage of the English cricket games against the West Indies on Sky Television. That may not appeal to all hon. Members but it commends itself to those of us who regard cricket as one of the finest flowerings of the English character, and to a lesser extent of the Welsh and Scottish characters. I hope that many in this House and elsewhere are pleased at this development. Let us be prepared to accept that we have already derived great benefit from what has happened.

Cable television is predicted to reach half the population by 1995, but clause 70 constitutes a snag in its steady progress. Clause 70 proposes a percentage levy on qualifying revenue of cable companies set up and licensed by the ITC. If this levy is pitched too high, it may discourage investment in the spread of cable; indeed, it may put off future investors altogether. Do the Government want to encourage such investment? We have already heard about the inevitable growth in the provision of television in this country, but that growth could be stifled, and so I seek an assurance that that is not the Government's intention.

Will my hon. and learned Friend also consider the effects of his proposals on cross-ownership, and the prospect of foreign ownership of United Kingdom television companies? There is a real chance that the 20 per cent maximum share ownership will mean that Yorkshire Television, for example, could become an Italian company, or that Grampian could become a West German company. I am not being xenophobic when I say that this will not be in the interests of television watchers in parts of the country that are affected. Is my hon. and learned Friend the Minister of State prepared to look again at his proposals to ensure that such a situation will not arise?

[Mr. Maclellan] Sir Richard Attenborough has said, what is at stake is not the stewardship of public money but the maintenance of independent, innovative broadcasting.

The Bill's proposals on cross-ownership and ownership by newspapers are disturbingly inadequate. They will allow a further erosion of competition, the entry of Sir Rupert Murdoch into independent television and radio and a reduction in the number of television regions from the present 15 to eight. In the United States, under the 1955 Federal Communications Commission rules, ownership of radio plus newspapers and television in the same market is prevented. Under those rules, Mr. Murdoch has been forced to divest himself of two newspapers and a television station. We should follow that route.

The Government claim to be committed to the preservation of regional television. If that claim is to be made good three major changes are required. First, licensees must maintain full regional production and transmission of facilities within the region. On that, the hon. Member for Pudsey (Sir G. Shaw) was right. Secondly, ownership must be confined to one ITV licence. The Government's proposition that small companies are legitimate targets for large ones is simply not acceptable. Thirdly, the Bill must make suitable provision for a network. As the chairman-elect of the commission, Mr. George Russell has said that no independent company produces more than 30 per cent. of the programmes that it shows that its ability to transmit high quality programmes depends upon the network. Furthermore, it is desirable to secure fair access to the network for the smaller companies and prevent the larger franchise holders from reducing competition by exercising complete control over the internal tariffs.

The arrangements allowing for multiple bidding must be changed. They may favour—no doubt the Government hope that they will—the first time entrant to broadcasting. They would make the maintenance of a network between now and the auction wholly untenable.

Regional broadcasting offers the opportunity to bring cultural diversions of our regions into everyone's home. The Government, however, have shown their weak commitment to such diversity by their treatment of Scotland. There is no provision for a Scottish, Welsh or Northern Irish member of the ITC board—there should be. There are provisions in the Bill to prevent the takeover of all the English regions, but there is no comparable provision for Scotland. [Interruption.] The Whip on the Front Bench, the hon. Member for Solihull (Mr. Taylor) may have no interest in Scottish television. That does not surprise me in the least and that may account for the poor support for his party in Scotland. There are many people

Mr. Mellor: On a point of order, Mr. Deputy Speaker. As the Whip cannot speak for himself I feel compelled to defend him. The point that was being made is one to which the hon. Member for Caithness and Sutherland (Mr. Maclellan) should address himself. He has fallen outside the 10-minute rule. It would be a courtesy to other hon. Members waiting to speak, especially as the Front Bench spokesmen are prepared to shorten their replies, if the hon. gentleman would keep within the reasonable confines of 10 minutes.

Mr. Maclellan: If the Minister had done me the courtesy of coming in to listen to my speech his remarks might carry some weight. As he absented himself for the greater part of my speech, I shall continue in my own time. I am wholly in order and I intend to take my time. The House will not allow minority parties to be put at a disadvantage in the debate in the way that the Minister would like. The Home Secretary took three quarters of an

Mr. Dykes: On a point of order, Mr. Deputy Speaker. I am tempted not to interrupt this hysterical attack, but it would be right to remind the House that the Minister was outside the Chamber for an extremely brief moment. He has been in the Chamber for the rest of the debate.

Mr. Maclellan: Such interruptions merely take up the time of the House.

The most serious omission from the Bill for Scotland and those other parts of the country where the population is scattered over a wide area is the absence of provision to equalise transmission costs. That absence, particularly threatens the future of the radio companies operating in Wales and Scotland, which serve the more remote areas. The Bill is also silent about the transmission costs of television. The transmitter at Crystal Palace serves millions in London, but it takes eight transmitters and 68 relay lines to serve the northern half of Scotland. The Government have not promised that their plans to privatise the lines owned by British Telecom will not place intolerable burdens on companies in sparsely populated areas. The Bill makes no provision for Gaelic, but I welcome the step announced by the Secretary of State this afternoon. We shall look closely at the funding offered in support of it.

The Government have sought to remove the sting of the criticism that they are unconcerned about the quality of broadcasting by emphasising the importance of the so-called quality threshold in the bidding process. The only specific consumer protection provided by the Bill is defined in terms of taste and decency. The licensing authority, operating in the shadow of Lord Rees Mogg's Broadcasting Standards Council—a wholly unnecessary quango—has a duty to codify the rules and to supervise their application. There is no comparable obligation on the authority specifically to secure the at-risk services—children's programmes, social action programmes, programmes for the disabled and the ethnic minorities and, most notably, religious programmes. Perhaps the Government believe that all that should be left to the BBC. Perhaps those obligations are intended to compensate the BBC for the almost inevitable loss to cable and satellite broadcasters—should the Bill go through in its present form—of major sports events such as the cup final, Wimbledon and the Grand National.

Those who have complained about the time taken to set out the points that the Social and Liberal Democrats wish to place before the House would do well to remember that this is the only intervention in the debate from a party which speaks for about a quarter of the electorate.

If there is intensive competition for ratings by Channel 3 and Channel 5, which are not to have any quality or regional remit, the BBC will be faced with the nasty choice of either going downmarket or losing its audiences either