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Department for Culture, Media and Sport
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To Secretary of State

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File Ref [REDACTED]

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Bill Bush

Date

COMMUNICATIONS BILL: NOMINATED NEWS PROVIDER PROVISIONS

Issue

Advice on:

- (a) the effects of removing ownership restrictions for the nominated news provider;
- (b) the adequacy of funding and quality safeguards for nominated news providers; and
- (c) the implications for Channel 5 news provision of removing the ownership restrictions from the nominated news provider provisions.

Timing

2. Immediate. If you decide that you want further changes to the Bill, time is very tight.

Recommendation

3. That you agree the Bill be amended so that:

- (i) no one who is disqualified from holding a Channel 3 licence can provide, or be a participant in a body which provides, the news service to Channel 3;

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- ✓ (ii) ITV/ITN is required to offer its news services to Channels 4 and 5 on a fair, reasonable and non-discriminatory basis;
- ✓ (iii) that OFCOM, as part of its review of Channel 5 and Channel 5 licences changing hands, should be able to propose structural ownership changes in news provision which could be implemented by order;
- (iv) OFCOM can require the Channel 3 licence holders and/or its news provider to provide it with such information as it needs to satisfy itself that adequate financial arrangements are in place.

Consideration

4. As you are aware, the nominated news provider provisions presently in the Bill ensure that:

- (a) the nationwide broadcasting of news programmes "that are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom";
- (b) the news provider must be a body corporate selected from a list of bodies nominated by OFCOM;
- (c) OFCOM must be satisfied that the terms of the appointment are appropriate for securing that "the finances of the person appointed are adequate, throughout the period of his appointment, to ensure that Channel 3 obligations are capable of being met";
- (d) no one can hold more than a 40% interest in the nominated news provider, and ITV companies between them cannot hold more than a 40% interest.

5. You are considering removing (b) and (d) above providing that the other elements will ensure that the news service, while no longer independent of ITV, is of sufficiently high quality. This would mean that ITV could own ITN outright or, perhaps more likely, take a majority stake in it. They argue that this would lead to better, more strategic decision making and increase investment.

Effect of removing ownership restrictions for ITV's nominated news provider

6. Assuming that an ITV is allowed to own its own news provider, it seems highly likely that it would want to continue to provide news to Channels 4 and 5. Once the news operation is established, the marginal cost of providing news to other channels is low, and much cheaper than if Channels 4 and 5 sought to set up their own news operations. However, the ITC have

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suggested that the Bill be amended to require ITV/ITN to ~~provide~~^{offer} its news services to Channels 4 and 5 on a fair, reasonable and non-discriminatory basis (as approved by OFCOM). We believe that ITV/ITN would have no objection to this, but there are a number of potential legal stumbling blocks which we have not been able to resolve in the time available. If we can do so, we recommend that this change be made.

7. A greater risk is that Channels 4 and 5 will not want to take their news service from their main terrestrial competitor, and turn to Sky. They could do this at present and Channel 5 already takes its early morning bulletin from Sky, but they may be more likely to do so once ITV owns ITN. However, this could be said to strengthen plurality. Instead of having two very large news providers in the form of ITN and the BBC, and a very minor Sky, a stronger Sky (though still the smallest in terms of audiences for its news) would represent a significant third player.

8. Once we remove the foreign ownership rules, ITV could be bought by a large American company which could provide its own news service. Foreign ownership of itself is not an issue in plurality terms, and the numbers of providers would be unchanged (or even increased, if ITN is sold and continues to provide Channels 4 and 5 with news). It would, however, be possible for the new owner to take its news from Sky and this could ultimately result in Sky being the only alternative to the BBC. It would, on the face of it, be odd for a major national newspaper (or a body controlled by one, such as Sky) not to be able to hold a Channel 3 licence and yet be able to provide it with its news, its most politically and democratically sensitive material. We therefore recommend that no one who cannot hold a Channel 3 licence can have a greater than a 20% share in the Channel 3 news provider. This would leave Sky in the same position as it is under the current legislation.

Funding and quality safeguards for Channel 3 news

9. If we remove the ownership restrictions from the nominated news provider, there will still be a requirement on ITV to provide a news service which complies with (a) and (c) above. The amended provisions would require the news provider to be a separate body corporate even if wholly owned by ITV as this will enable OFCOM to ensure that the funding is sufficient. It would also be possible to strengthen the requirement on ITV to provide OFCOM with information so as to give OFCOM all the assurances it needs. We think there are legal difficulties with this in view of the fact that it is the ITV companies who are the licensees, not the nominated news provider. In the time available, we have not been able to resolve the legal issues but we recommend that, if we can overcome the legal difficulties, an amendment to this effect be made.

10. It is not clear that the quality element could be meaningfully strengthened. (a) sets out everything that we require in policy terms – that ITV should, in effect, provide a news service to compete with the BBC.

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Furthermore, the element that we are removing is the element of independence in the provision of news. Increased quality elements do not address that issue which can only be addressed in its own terms; in other words, if independence is considered important it can only be achieved through an independent structure (such as currently exists) or not at all. It cannot be achieved through higher quality standards. On the other hand, it is quite reasonable to conclude that requiring independence is a belt and braces approach and that the quality elements are sufficient for ITV's news; being able to own one's news service does not appear to have had a detrimental effect on the news service provided by the BBC or Sky.

11. Apart from the one possible change identified above, we do not think that any further changes are necessary to the basic nominated news provider provisions on quality and funding if a decision is taken to remove the ownership restrictions. The other safeguard, of course, is the existence of the BBC which provides the yardstick against which the ITV news service will be judged.

implications for Channel 5 news provision of removing ownership restrictions from the nominated news provider provisions

12. As you know, the Bill allows you to introduce a nominated news provider regime for Channel 5 if its share of TV audiences becomes "broadly equivalent" to Channel 3's. If we remove the ownership restriction from the nominated news provider regime, it would follow that introducing these provisions for Channel 5 would introduce the requirements on quality and funding at (a) and (c) above, but no restrictions on ownership.

13. Let us consider what would happen if Sky/News International bought Channel 5 and used Sky to provide its news service. There would be no loss of plurality as there would still be three separate news providers (BBC, ITV and Sky). One could indeed argue that plurality was strengthened since, instead of a dominant BBC and ITV news and a very small Sky (the most popular Sky News programme is watched by only 1.5% of the total TV audience), Sky news would reach a larger market.

14. There would seem to be no grounds for treating Channel 5 any differently from Channel 3 once they are broadly comparable in terms of audience share. It would, however, be possible to amend the Bill to give you a power to re-introduce (by order) ownership restrictions on the news provider for one or other Channel. This could be done as the result of a review on change of control, as part of a plurality test, or simply at some point in the future. It would seem most sensible to link this power to the review upon change of control of a Channel 3 or Channel 5 licences. Firstly, these reviews already look at the effect of a change of control on news provision, and OFCOM can make changes to the licence as a consequence of such a review. It would be possible to amend these provisions so that OFCOM could recommend that a structural change in ownership of the news provider

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was necessary, as a result of which you could make an order giving effect to such changes as you deem necessary. Secondly, you have agreed that the plurality test should concentrate on the number of providers of services. It is therefore better to handle issues of news provision through a separate mechanism such as the reviews on change of control. We recommend that OFCOM, as part of its review of licences changing hands, should be able to propose structural ownership changes in the news provision which could be implemented by order. In practice, it may be difficult for OFCOM to justify such a change but at the very least it is useful presentationally for the option to be available.

15. Finally, all the possible changes outlined in the submission are being considered very late in the day and there has been little time to consider them never mind draft them. It will not be possible to have them down for Report but we should have them ready by Third Reading, though this will have timetable implications for the Bill.

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