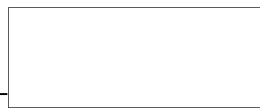


Department for Culture, Media and Sport



File - Media Ownership (news) Bill
cc. RIA file

To Tessa Jowell
Patricia Hewitt

cc Kim Howells
Andrew Ramsay
Diana Kahn



From [Redacted]



Bill Bush
Kitty Ussher
Ed Richards

File Ref

Peter De Val



Date 26 April 2002



RESTRICTED - POLICY

MEDIA OWNERSHIP - POLICY NARRATIVE AND REGULATORY IMPACT ASSESSMENT

Issue

Media ownership proposals will not be discussed by LP Committee, but will remain confidential until publication. However they will form an important part of the policy narrative and the regulatory impact assessment.

Recommendation

That you agree the draft text attached here.

Timing

Urgent - we need to have something to give to typesetters by Tuesday 30 April.

The text consists of:

- Annex A A chapter for the policy narrative on media ownership
- Annex B A further chapter on news provision
- Annex C A rough draft of the summary that will preface the policy narrative, including text on media ownership. Bill Bush is doing further work on this.
- Annex D A regulatory impact assessment for policy on media ownership and the nominated news provider

Department for Culture, Media and Sport

Consideration

The only issue not fully discussed in these drafts is the newspaper merger regime. A decision is now urgently required from DTI Ministers on whether they prefer the bespoke or the EPI option for reform of the regime, so that something can be drafted at the start of next week (see Tony Metcalfe's submission of 4 February on the subject).



POLICY NARRATIVE - MEDIA OWNERSHIP

7.1 Consultation on Media Ownership Rules

7.1.1 In November 2001 the Government published the paper, *Consultation on Media Ownership Rules*. That document, a summary of responses and the major responses in full are all available on the DCMS website (see Annex A for details).

7.1.2 The consultation paper set out the Government's principles in this policy area, which can be summarised as follows:

Media ownership rules exist to retain the balance of different media viewpoints that make democracy work, but they must also promote the most competitive market possible for the benefit of both industry and consumers.

The existing rules are outdated:

- they are not flexible enough to respond to the rapid change we have seen in media markets;
- they appear inconsistent and directed at particular media interests.

Given the possibilities of new technologies and new services to offer consumers a greater choice there may be less need for ownership rules in the future. In light of this the Government is determined to be as deregulatory as possible, and to consider different methods of regulation in the future.

However, for the time being legislation must address the present situation, where most people engage with the media in its traditional forms, and media ownership rules remain the best way of doing this.

Competition law alone is not sufficient. It can address issues of concentration, efficiency and choice, but it cannot guarantee that a significant number of different media voices will continue to be heard, and cannot address concerns over editorial freedom or community voice.

The key aims of the Bill are:

- to retain a diversity of content from a plurality of sources;
- to promote competition;
- to be flexible in allowing legislation to adapt to changing market conditions;
- to provide as much predictability as we can for business.

7.1.3 The consultation paper discussed the difficult balance the Government has to strike in this area, to uphold the interests of citizens as well as those of business. The responses proved once again that there is no consensus on how that balance should be struck. Suggestions straddled a wide range of political and economic viewpoints, from those who insisted that competition law alone can protect democracy to those who wanted the existing rules tightened to restrain the influence of large media companies.

7.2 *The Government's approach*

7.2.1 The Bill will deregulate to a significant extent, but will place a few basic limits on the market. Proposals are based on three core beliefs:

- that there should be no disqualification on any particular group being able to hold a broadcasting licence, except where there are likely to be adverse effects;
- that within individual media markets (TV, radio and newspapers) deregulation can promote healthy competition, as long as minimum guarantees of plurality remain;
- that at national level the functioning of democracy is most threatened by joint ownership of significant newspaper assets and mass audience, universal access public service television services, and that this is where specific rules must be retained.

7.2.2 Competition law will continue to address issues of concentration, efficiency and choice, to make markets work as efficiently as possible, and to encourage new entry. The regulatory framework provided by the rest of the Bill will maintain the diversity, quality and impartiality of broadcasting content.

7.2.3 In the future new technologies may increase choice and competition in communications markets to the point where there is no longer any need for ownership rules to guarantee plurality of media voices. Almost all the rules that we retain will therefore be subject to regular review, providing certainty for the foreseeable future as well as flexibility in the longer term.

7.3 *Detailed Proposals*

7.3.1 *General Disqualifications*

7.3.1.1 The existing prohibitions on the non-EEA ownership of broadcasting licences will be removed. These rules are inconsistent and difficult to apply. The Government wants to encourage inward investment from non-EEA sources, to allow the UK to benefit rapidly from new ideas and technological developments, aiding efficiency and productivity. Content regulation will maintain requirements for high quality, original programming.

7.3.1.2 The prohibition on the ownership of broadcasting licences by advertising agencies will also be removed - the new competition regime will ensure fair competition in the advertising market without the need for such rules. Local authorities will now be able to own broadcasting licences as long as they use them exclusively to carry out the functions of a local authority, enabling them to provide information services to the communities they represent. The prohibition on the ownership of any licence by a political party will be retained, since we are not satisfied that a political organisation could run a broadcasting company with the necessary impartiality.

7.3.1.3 The Government has considered the many representations in connection with removing the restrictions on religious broadcasting. Where there is sufficient spectrum availability, restrictions on religious bodies holding licences will be removed. The Bill will therefore allow OFCOM to award religious bodies TV licences for digital programme services, digital additional service licences and restricted service licences. This is in addition to the undertaking in the Communications White Paper to allow religious bodies to hold digital local sound programme licences. Religious bodies can already hold local analogue

radio licences and satellite and cable TV and radio licences. There will continue to be restrictions on national analogue radio and national digital sound programme licences, analogue TV licences and analogue additional services licences, and local and national radio and TV multiplex licences.

7.3.2 Cross-media ownership

7.3.2.1 The Government proposes to deregulate. UK companies have to be allowed to grow, to find new opportunities to reduce costs and attract new investment, if they are to bring better products to consumers. However, there will continue to be rules preventing the most influential media in any community, those that make a democracy tick, being controlled by too narrow a range of interests.

7.3.2.2 Cross-media rules will be stripped down to three key rules, to regulate the three forms of media voice: national, regional and local:

1. A rule limiting joint-ownership of national newspapers and Channel 3:
 - (a) no one controlling more than 20% of the national newspaper market may hold any licence for Channel 3;
 - (b) no one controlling more than 20% of the national newspaper market may hold more than a 20% stake in any Channel 3 service;
 - (c) a company may not own more than a 20% share in 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.
2. A parallel, regional rule: no one owning a regional Channel 3 licence may own more than 20% of the local/regional newspaper market in the same region.
3. Rules as part of the local radio ownership scheme to ensure there are at least 3 local/regional commercial media voices (in TV, radio and newspapers) in addition to the BBC, in every area.

The first two rules already exist, the third will be part of the new local radio ownership scheme, as described below.

7.3.2.3 National newspapers are the most editorially influential mass medium. The deregulation proposed will allow newspaper proprietors to buy into radio markets, and into Channel 5, creating many new opportunities for investment and growth. However, in the Government's judgement, joint ownership of a significant slice of the national newspaper market and a large part of Channel 3, the only public service broadcaster that currently has universal access to a mass audience, would represent a concentration of influence too great for democracy to bear, and such cross-holdings must for the moment be prevented.

7.3.2.4 At regional level, the rule preventing joint ownership of a regional ITV licence and more than 20% of the local/regional newspaper market in the same region runs parallel to the national '20%' rule. Regional TV and regional/local newspapers are the two most important media, in size and scope, at regional or city level. This rule will prevent any one company becoming the most-influential voice in both.

7.3.2.5 The new rules remove uncertainty and provide a clear and simple framework that protects plurality where it is important to do so, while deregulating elsewhere. All other

rules on cross-media ownership will be removed. As a consequence some new forms of cross-holding will be allowed:

- Joint-ownership of national TV and national radio licences
- Joint ownership of a regional Channel 3 licence and a local radio licence in the same area (as long as there are if there are two or more other radio stations that reach more than 50% of the adult population in the radio station's area)
- Ownership of more than 20% of the national newspaper market and Channel 5.

7.3.2.6 In addition, the complicated rules on cross-ownership of local newspapers and local radio services will be simplified and relaxed, to allow joint-ownership as long as: there are two or more other radio stations that reach more than 50% of the adult population in the radio station's area; and the newspaper owner stays within the 'points' limit established by the local radio ownership scheme (see below for details).

7.3.2.7 There are currently a set of rules that together stipulate the application of a loosely-defined public interest test to any acquisition of any broadcasting licence by any newspaper owner. These rules, and the uncertainty and costs they create, are disliked both by newspaper proprietors and by regulators. They will be removed - the rules that remain constitute a sufficient check on the power of newspaper proprietors for the public interest to be satisfied.

7.3.3 Television ownership

7.3.3.1 The Bill will revoke the two rules that prevent the formation of a single ITV company - the ban on joint ownership of the two London Channel 3 licences and the rule that imposes a limit of 15% on any company's share of the total TV audience. Consolidation in the TV industry will benefit consumers and companies alike. The competition authorities are best placed to consider the effects on the advertising market, and they may well prevent the formation of a single ITV company for the time being on these grounds. ITV will continue to consist of regional licences with targets for UK regional production and programming, ensuring there is no dilution of such content.

7.3.3.2 The rule preventing joint ownership of a national Channel 3 licence and the Channel 5 licence will also be removed. The existence of the BBC and Channel 4, in addition to the commercial channels, will still ensure the existence of at least 3 separately-controlled public service TV broadcasters, in addition to the expanding range of digital channels.

7.3.3.3 As described above in the section on news provision, the nominated news provider system will be retained for ITV, and Channel 3 licences will contain a new requirement to provide adequate financial support to the news provider to make sure the service is of high quality. This should prevent the price of future ITV news contracts being negotiated down to a point where it affects the standard of coverage.

7.3.3.4 To allow more strategic and dynamic management of the news provider, the limit on its ownership will be raised from 20% to 40%, potentially reducing the number of shareholders from 5 to 3. In addition, Channel 3 licensees will not be allowed to control more than a 40% share, either in total or in combination. This will make sure the service is independent of the licensees, and unaffected by any of their commercial concerns, but will not force any of the existing shareholders to disinvest. If more than one Channel 3 licensee continues to be a shareholder, there will be 4 major shareholders rather than 3, but since two of them will have shared interests this should not hamper management or investment

decisions to any significant degree.

7.3.3.5 Although at present Channel 5's viewing figures are much lower than ITV's, with the added investment that ownership by a large newspaper company (or an ITV company) might bring under the new ownership rules, there is no guarantee that they will remain so. If the balance in the free-to-air news market shifts, the Government needs to be able to respond, to ensure that the population continue to receive independent news of high quality. There will therefore be a new power for the Secretary of State to introduce a nominated news provider system, with ownership limits, for Channel 5 if it becomes clear that Channel 5 has gained a significant share of the audience for free-to-air news, comparable to ITV's share. Before using the power, the Secretary of State will be required to consult OFCOM and the licence holder.

7.3.3.6 In future, the growth of new technologies and services should expand the range of news sources, and free-to-air TV news may no longer be the medium people turn to first for impartial reporting. A separate power will therefore allow the Secretary of State to revoke the whole nominated news provider system for either ITV or Channel 5, or both, if she is satisfied that a sufficiently wide range of high quality, easily accessible news services will still exist without it. Again, she must first consult OFCOM and the licence holders.

7.3.4 Radio ownership

7.3.4.1 The rule preventing anyone owning more than one national analogue radio service will be removed. There are three such stations, one of which is required to play non-pop music and one of which must be predominantly speech-based. They will continue to provide diversity, and competition to BBC services, in this form, regardless of ownership.

7.3.4.2 The existing radio points system, that limits the extent of UK-wide ownership of licences, will be abolished. The competition authorities, taking advice from OFCOM as necessary, will determine the appropriate limits on the accumulation of radio interests on a UK-wide basis.

7.3.4.3 In radio, unlike TV, plurality is important at a very local level, where a variety of local stations of different sizes flourish under many different owners. The Government is determined to maintain a range of radio voices in every area. We welcome the initiative of the Radio Authority and the Commercial Radio Companies Association, who have agreed a set of proposals that they believe can deliver dynamic growth and investment whilst upholding the aim of a plurality of ownership. The policy set out below broadly follows their recommendations.

Independent Local Radio (ILR) ownership

7.3.4.4 For Independent Local Radio (as defined by the 1990 Act) the Secretary of State will introduce by Order, on advice from OFCOM, a scheme to ensure that in every area with a well-developed choice of radio services (typically 5 or more stations) there will be at least 3 separate owners of local radio services in addition to the BBC. The scheme will be applied on point of acquisition of a station, and will prevent an acquisition if it results in more than 45% of the available 'points' in any of the coverage areas of stations in question being controlled by:

- anyone who controls two other stations that cover more than 50% of the adult

- population in the station's coverage area;
- any owner of a national newspaper;
- any person who holds a regional Channel 3 licence whose coverage area is to a significant extent the same as that of the radio station;
- any person who runs a local newspaper with more than a 50% share of circulation in the coverage area of the station.

In addition, none of the parties referred to in (b) (c) or (d) will be able to buy any radio station if there are fewer than two other stations that reach more than 50% of the adult population in the station's area.

The effect of (a) is that, as now, a company may own two overlapping radio stations, even if they are the only two stations in that area. Having tested the scheme in a range of existing localities, however, the Radio Authority and the Commercial Radio Companies Association are satisfied that it should deliver the principle of three commercial owners to most areas. It is also deregulatory in the sense that it will be wave band neutral.

The effect of (b) (c) and (d) is that no other commercial media company with a significant voice in a local area will be able to own a radio station unless there are at least two other stations in competition, and that where such forms of cross-media ownership exist there should usually be at least 3 separate commercial owners of local/regional media (radio, TV and newspapers) in addition to the BBC.

Digital radio ownership rules

7.3.4.5 The Secretary of State will also introduce (again on the advice of OFCOM) a parallel scheme to ensure that in any locality there will be at least 3 separate owners of local digital sound programme services.

7.3.4.6 In addition, no one will be able to more than one local digital multiplex in areas where they overlap (most areas will have at most two local multiplexes to act as the gatekeeper for digital services for the foreseeable future). Overlap for multiplexes is to be defined as where the primary protected area of a multiplex covers more than 50% of the adult population in the primary protected area of another multiplex.

Grandfather clause

7.3.4.7 All the above radio ownership rules will apply only to new acquisitions - where existing holdings exceed the new limits (there will be a very small number of instances) there will be no insistence on disinvestment.

7.3.5 Newspaper ownership

[REDACTED] to add more in the light of Ministerial decisions]

The most minor newspaper titles would be removed from a reformed newspaper merger regime by a qualification that circulation must cover a market in a significant part of the UK. Regional and significant local titles would continue to be caught by the regime. The requirement for prior approval of the Secretary of State to newspaper transfers, on pain of criminal penalties, would be removed. The new regime would apply to all qualifying

transfers whether the acquirer was a significant newspaper proprietor or not. Only those cases about which the authorities had competition or plurality concerns would be referred to the Competition Commission for detailed investigation, with the possibility of remedies being imposed. Final decisions on remedies, at least with regard to any plurality concerns, would remain with Ministers.

7.3.6 Review of ownership rules

OFCOM will be given a duty to review all the media ownership rules (except that on the ownership of broadcasting licences by political parties) no less frequently than every 3 years. OFCOM will make recommendations to the Secretary of State, who will then be able to amend rules by secondary legislation. This power should allow the legislation to be adapted to respond to rapidly changing market conditions, but will provide stability and certainty for businesses in the immediate future. The Government does not envisage there being a case for OFCOM to review the rule much more frequently than every three years - there would have to be a clearly definable need for them to do so. Companies should not therefore expect that aggressive lobbying will bring instant changes to regulation.

7.3.7 Control of media companies

The Government proposes to retain the existing definition of the circumstances in which a person controls a body corporate for the purposes of media ownership rules (see the Broadcasting Act 1990, Schedule 2, Part I, 1. (3)). Further consideration will be given to this definition, however, to explore whether it needs to be updated to make sure it applies to all the means by which a company may influence the output of a media company.

7.4 Content regulation

The regulatory framework provided by the rest of the Bill will ensure that any increased concentration of ownership does not dilute the quality, diversity or impartiality of broadcast content. Regulators will be able to act in response to the changing market that consolidation will bring.

- ITV will still consist of regional licences, with requirements for UK regional production and programming, as well as independent production and original production. OFCOM will have the power to vary these licences whenever they change hands to maintain their regional character.
- Under the new regulatory regime for public service broadcasters, Channel 5 will also have requirements for independent production and original production. There will be provision for OFCOM to vary the terms of the Channel 5 licence to alter the scale of these requirements. The Secretary of State will also be able to alter the public service remit of the service. If the Channel 5 licence changes hands, OFCOM will be able to vary the licence to maintain the existing character of the service.
- There will be a power (described above) to introduce a nominated news provider system for Channel 5, if it becomes clear that Channel 5 has gained a significant share of the audience for free-to-air news, comparable to ITV's share.
- OFCOM will have a new duty to protect and promote the local content of local radio services, and they will now be able to vary the licences for such services on a change of control, to maintain their local character.
- OFCOM already have the power to investigate the news/current affairs programming

of any local radio service where they have cause to suspect that news is being presented without due accuracy or impartiality, or that undue prominence is given to views or opinions of particular persons or bodies in matters of political or industrial policy. This power may become more important in the light of the likely consolidation in local radio markets, and OFCOM will need to use it to pay particular attention to matters of impartiality.

~~POLICY NARRATIVE - PROVISION OF NEWS BY PUBLIC SERVICE BROADCASTERS~~

1. News services perform a vital function in a democratic society. They provide a platform for open debate, and allow citizens to make informed and responsible decisions. Many consider television news to be particularly trustworthy, and one of the principles of regulation has been to ensure that high quality, impartial news is available to all viewers. This principle will be carried forward by the Communications Bill.
2. Channel 3, Channel 4 and Channel 5 will be required to broadcast high quality domestic and international news at intervals throughout the day and in peak viewing hours. News services must be presented with due accuracy and impartiality.
3. The nominated news provider system will be retained for Channel 3. This arrangement requires the licensees to network their news service, and to appoint as provider an organisation that OFCOM nominate as being effectively equipped and adequately financed to provide high quality news services.
4. However effectively equipped and adequately financed the news provider was at the start of the process, the quality of service provided depends to a large extent on the final contract that is signed. There will therefore be a new requirement in all Channel 3 licences: to provide adequate financial support to the news provider to make sure the service is of high quality. This should prevent the price of future news contracts being negotiated down to a point where it affects the standard of coverage.
5. There will be a new power for the Secretary of State to introduce a nominated news provider system for Channel 5's news service if it becomes clear that Channel 5 has gained a significant share of the audience for free-to-air news, comparable to ITV's share. Before using the power, the Secretary of State will be required to consult OFCOM and the licence holder.
6. A separate power will allow the Secretary of State to revoke the whole nominated news provider system for either ITV or Channel 5, or both, if she is satisfied at some point in the future that a sufficiently wide range of high quality, easily accessible news services will still exist without it. ~~Again, she must first consult OFCOM and the licence holders.~~
7. There will continue to be limits on ownership of the nominated news provider. These are outlined in the section on media ownership below, which also discusses the new flexibility in the nominated news provider system in the context of the deregulation of other ownership rules.

FIRST DRAFT POLICY NARRATIVE FOREWORD 26/04/02

A1 In the White Paper 'A New Future for Communications' the government set out its vision for a converged media and telecommunications sector delivering real benefits for business, consumers and for society as a whole. The draft Communications Bill, published today, is the next step towards realising that vision. The Bill fleshes out the detail of most of the White Paper. This policy document explains the intention behind its proposals and the effects it will have. This paper also sets out our proposals on the few issues where policy has not yet been written up into draft clauses, including the reform of media ownership rules. Clauses to enact these policies will be forthcoming over the next few weeks.

A2 A dynamic, competitive market is the key to unleashing the potential of new technologies. The framework we are proposing is one where regulation is delivered with the lightest of touches but where the public interest is properly protected.

A3 Nowhere is it more important to uphold the public interest than in the ownership of our media. In a modern democracy, citizens must be able to make informed decisions. To do so they need access to a range of debating, divergent media voices. So we are proposing to retain key rules on media ownership, to make sure that a range of voices are still heard, and that democracy works properly. Competition law cannot always guarantee the plurality of ownership that we consider essential, so some additional regulation is necessary.

A4 Our approach, nevertheless, is to deregulate wherever possible. We are removing rules on foreign ownership, to encourage inward investment. Within individual media markets (newspapers, television and radio) our proposals will allow significant consolidation to take place, with less regulatory intervention. Where we have removed rules, content regulation will be able to maintain the quality, diversity and impartiality of programming (for TV and radio), and competition law will tend to encourage dispersed ownership and new entry. Deregulation should allow ~~companies to grow and invest more freely, reduce costs, increase productivity and efficiency and supply new, better and cheaper products to consumers.~~

A5 It is where competition law will not guarantee a sufficient plurality of ownership that we will keep some specific rules. The result is a set of simple regulations, to act as key democratic safeguards. There will be two rules to limit the joint-ownership of newspapers (the most editorially influential medium) and Channel 3 (the only mass audience commercial public service television station with universal access and regional programming commitments), at both national and regional level. There will continue to be stipulations on the ownership and provision of TV news services, to ensure the independence and quality of news that people particularly trust. There will also be a scheme to uphold the plurality of ownership that exists in local media. This should ensure that at least 3 local commercial radio operators, and at least 3 local or regional commercial media voices (in TV, radio and newspapers) exist in most local communities.

A6 The existing rules on media ownership are over-restrictive, inconsistent, sometimes inflexible and sometimes unpredictable. We have scaled them down to provide a clear set of rules that will give businesses the certainties they need to grow and expand. In the longer term, the development of new technologies and services may well change the way people use the media to the extent that ownership rules are

FIRST DRAFT POLICY NARRATIVE FOREWORD 26/04/02

outdated or in need of reform. We want to have the flexibility to adapt to this change, and all the rules we establish will therefore be subject to regular review and amendment.

A7 The new regulator at the heart of the new regime is the Office of Communications (OFCOM). OFCOM's position will give it a panoramic view across the whole communications sector that will prove invaluable as we move towards convergence. Advances in technology and changes in audience and customer expectations will demand changes in regulation too. To cope with the uncertainties the future holds we are creating a flexible framework overseen by an agile organization. OFCOM's top board will be small and focused enabling it to move quickly in a sector where change can be rapid and revolutionary. The Board will be able to draw on the wealth of knowledge and expertise that currently exists within the five regulators. The essential elements of OFCOM's internal structure that are proposed in the Bill are designed to ensure that decisions taken by the top board are fully informed by research and take into account a wide range of interests.

A8 OFCOM's activities will impact on virtually every one of us and consumers, be they audiences, citizens or purchasers of telecoms services, are a major focus of the entire Bill. A dynamic and vigorous market in electronic communications will benefit the consumer in terms of access to services, service quality, choice, price and value for money. OFCOM will have the powers needed to prevent market abuses and a corresponding general duty to further consumer interests.

A9 Not only has there been an explosion in choice in the media over recent years but the way in which we access the media is constantly changing. From PDA's (personal digital assistants) to 3G Mobile, from Internet fridges to interactive television – the information age is with us. Digital television has the potential to ~~transform the TV, how we use it and what it delivers. The Government is committed~~ to digital switchover both because of the benefits it brings to consumers and because switching off the analogue signal will free up vital radio spectrum for other uses. OFCOM will be empowered to maximize the usage of radio spectrum by establishing and regulating spectrum trading.

A10 Undoubtedly it is the content of new services that drives their take up and the consistently high standards of UK programming are renowned worldwide. The new regime levels the playing field for public service and commercial broadcasters introducing more self-regulation and giving broadcasters greater freedom to set their own standards.

A11 We are committed to have OFCOM regulating in 2003, the target we set in the 2001 Business Manifesto. The multi-media future is a bright one – the new regime we have created to regulate it will ensure that everyone can enjoy it.

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ANNEX D

Regulatory Impact Assessment - Media Ownership Rules

The Government's approach (and risk assessment)

It is essential in our society to retain a balance of different media viewpoints (a 'plurality' of debating voices). Competition law can address issues of concentration and abuse of market power, but will not adequately guarantee this plurality, or a diversity of content. There are, therefore, some clear benefits to be gained from retaining regulations in this area. Certain media outputs may be perceived themselves as merit goods or as contributing to the maintenance of a healthy, informed democracy. Merit goods can be thought of as outputs whose value to the (potential) consumer exceeds the perceived level, and where, as a result, a market-based mechanism may lead to an underprovision. A plurality of media voices is one such output, which may be seen to have intrinsic value, contributing substantially to the maintenance of democracy. Since a reliance on the market mechanism alone would be unlikely to achieve the desired degree of plurality, there are broad social and democratic benefits to be accrued from having more restrictions on media ownership than on ownership in other industries.

Specific limits on the ownership of media assets, over and above competition law thresholds, remain the best way to attain these benefits whilst providing the transparency and predictability that minimises costs on business. We will therefore keep some rules on ownership. However, our general approach to reform is deregulatory. In some sectors we will remove the existing rules, and rely entirely on competition law. The existence of publicly-owned broadcasters will provide additional safeguards of plurality. In other areas we have relaxed the existing rules significantly. These moves should create significant efficiency savings. Content regulation will maintain the diversity, quality and impartiality of broadcasting output.

Alternative options

Alternative means of regulation have been considered, but are considered either unfeasible or too costly relative to the expected benefits. The most radical alternative considered was to remove all the current restrictions and to rely entirely on competition law. This would provide a market based approach and (post Enterprise Bill) would be independent of political interference. Media markets would be subject to the same degree of scrutiny as any other market in the UK. However, for the reasons outlined above, a market-based approach was not considered to provide sufficient safeguards in all circumstances to guarantee the Government's wider democratic goals.

Another alternative would be to use 'guarantees' of editorial independence to try to prevent owners using a range of media outlets to promulgate the same opinions. However such guarantees could not be relied upon - there is no clear way of distinguishing managerial from editorial decisions, nor of preventing the manipulation of news agendas through the commissioning of documentaries/articles, the hiring of particular editors or the omission of particular stories.

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Calculating costs and benefits

Potentially there are synergies to be gained from some consolidation within a broadcasting medium as well as potentially some synergies between different broadcasting media. These usually revolve around cost savings obtained through economies of scale and scope, such as news collection, records checking, and marketing. However, the evidence on post-merger performance is mixed. Not all mergers are beneficial. It is also important to remember that consolidation takes place not only through acquisition but also through organic means. That is, those efficient companies offering superior products at competitive prices will gain at the expense of inefficient producers.

In calculating potential savings, we have adopted Cowling's (1980) often-cited study of the cost savings from mergers. Cowling's study concluded that on average a merger results in a 1.5% increase in productivity. However, we would point out that this figure may be subject to significant caveats:

- it covers all industries, and may reflect, particularly, increasing returns to scale, particularly in manufacturing, not as likely across media or in "services" (though see below - "entry barriers") more generally;
- it may reflect a mix of capital/other factors which differs especially between manufacturing and services, such as media (this is related to the first point).

For these reasons the figure of 1.5% must be seen as a maximum, with any expected savings likely to be much closer to zero; perhaps 0.5%.

General disqualifications

Proposed measures

As the White Paper proposed, the rule preventing advertising agencies holding broadcasting licences will be removed. Local authorities will also now be able to hold broadcasting licences as long as they are used to carry out the legal functions of a local authority.

The rules on non-EEA ownership of broadcasting licences will also be removed in their entirety.

Some rules on religious ownership will be removed. Religious organisations will now be allowed to own local digital sound programme licences, TV restricted service licences, digital programme service licences and digital additional service licences, in addition to the local analogue radio and satellite/cable broadcasting licences they are already allowed to hold.

Purpose and intended effect

The intention is to remove general disqualifications on ownership except where there are likely to remain significant adverse effects for democratic debate. To that end, the rules preventing political organisations holding any form of broadcasting licence, and preventing religious organisations holding licences to run national free-to-air broadcasting services, or operate digital multiplex services, will be kept.

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Local authorities should be able to use broadcasting licences to run information services within their area.

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 within and into the EU, and it is crucially important that the UK continues to be an attractive location for inward direct investment. Inward investment from non-EEA companies and individuals should therefore allow the UK to benefit rapidly from new ideas and technologies, increasing efficiency and productivity.

Benefits

Local communities will be able to benefit from a new avenue of information services provided by local government. This will provide a more efficient distribution of information with a broader reach, which should benefit local communities.

Religious organisations and their supporters will now be able to receive religious stations on all forms of local radio and on digital terrestrial television.

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). According to UNCTAD, in 2000 the UK ranked third in the world at attracting inward investment. Relaxing the rules on non-EEA ownership of media assets will bring additional FDI benefits that will add to these wider policy goals.

It is impossible to speculate the extent of inward investment flowing from the relaxation of this regulation. However, it is more realistic to say that this relaxation will have an impact on UK productivity. Recent research by Criscuolo and Martin (January 2002) found that there is a significant productivity advantage for foreign establishments of 22%. This is in line with findings of previous studies (e.g. Griffith et al 24%). These results find that multinationals (especially US owned) are far more productive than domestic firms. As a result we would expect a positive flow of inward investment and foreign ownership in the media sector.

Costs

There should be few costs associated with the removal of these disqualifications. In the case of advertising agencies, the competition authorities will be well placed to regulate ownership so that there is no distortion of markets. It is hard to see how the regulation that remains could have a significant economic impact, since it will affect relatively few organisations.

Implementation

The relevant rules will be retained, to prevent OFCOM granting certain licences to certain bodies. There will be no enforcement costs.

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TV ownership

Proposed Measures

We propose to remove the upper limit of 15% on the share of the TV audience that any one company may control. We also propose to remove the rule preventing joint ownership of the two London ITV licences.

The rule preventing the joint ownership of a national ITV licence and Channel 5 will also be removed.

Purpose and intended effect

One person will be able to hold all the ITV licences, subject to the agreement of the competition authorities. Such potential for consolidation should enhance competition within the market and the corporate governance that this brings. Competitive markets that function efficiently provide the best means of ensuring that the economy's resources are put to their best means by encouraging enterprise and efficiency, and widening choice. Where markets work well they provide strong incentives for good performance – encouraging firms to increase productivity, to reduce prices and to innovate; whilst rewarding consumers with lower prices, higher quality and wider choice.

One company could also potentially own all the ITV licences and the Channel 5 licence, subject to the competition authorities' approval. The removal of all restrictions over and above competition law is likely to provide the most allocatively and productively efficient outcome, which will bring significant benefits. Furthermore, the existence of competition law and public sector broadcasting will provide sufficient safeguards to maintain the plurality of views.

Benefits

If we also assume that there are no absolute bars put in the way of joint ownership of ITV, GMTV and Channel 5, this could conceivably allow the creation of a single company with a combined estimated turnover of £1,975.6m in 2001 [source: Merrill Lynch, The Media Handbook - July 2001].

On the basis of the Cowling [et al (1980)] figure - that on average a merger results in an increase in productivity equivalent to 1.5% of turnover - adjusted to 0.5% for the reasons discussed above, a single owner of Channel 3, GMTV and Channel 5 could produce efficiency gains worth between £10m and £30m. At present, however, it is very unlikely that the competition authorities would allow a merger of the sort postulated, or even a merger that results in a single ITV company, given the dominant position such a company would have in the market for advertising in free-to-air TV. Whilst these efficiency savings should (potentially) be possible it is unlikely that all of these efficiency gains would be achieved if the market were to become too concentrated. The removal of the competitive constraint would reduce the incentive for the firms to actively seek these efficiency gains, which would be detrimental to economic welfare. Hence, competition law is believed to result in the most efficient outcome and to maximise welfare.

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Costs

If any of the imagined mergers occurred, there would be a reduction in the number of 'voices' in free-to-air television. However the existence of the BBC and Channel 4 will ensure that there are always at least 3 separately-controlled entities in this market.

Implementation

The existing rules will simply be revoked.

The Nominated News Provider System

Proposed Measures

The nominated news provider system requires Channel 3 licence holders to network their news, and to have it provided by an organisation that the ITC (OFCOM in future) nominate as fit for the purpose. We will retain this system.

There are also certain ownership limits involved. At present no one may own more than 20% of the nominated news provider. We propose to raise this figure to 40%, and also to introduce a new rule to prevent Channel 3 licensees owning more than 40%, either in total or in combination.

We propose to introduce a new licence requirement for Channel 3 licence-holders, so that in negotiating future news contracts they have a duty to ensure the service is adequately financed to ensure it is of high quality.

~~There will be a new power for the Secretary of State to introduce a similar arrangement for Channel 5's news services, if it becomes clear that Channel 5 has gained a significant share of the audience for free-to-air news, comparable to ITV's share. A separate power will enable the Secretary of State to revoke the whole arrangement for ITV or Channel 5, or both, if she is satisfied that a wide range of high quality competitors to free-to-air TV news services will exist without it. Before using either power the Secretary of State must seek the advice of OFCOM and must consult the relevant licence holders.~~

Purpose and intended effect

The nominated news provider has two purposes - the system itself (particularly with a new condition to ensure adequate financing) will ensure that there is a high quality competitor to BBC news. The ownership rules guarantee the editorial independence of the service.

The new powers to introduce or remove the system will enable the Government to maintain high quality and independent competition, whatever changes occur in viewing habits. This may mean that such requirements become completely unnecessary.

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Benefits

The benefits of the system are unquantifiable - the public will have access to a range of independent and high quality news services.

Powers to introduce and remove the system allow it to adapt flexibly to the news market of the future, without any additional cost. In the case of the sunset clause, this could allow considerable deregulation, offsetting all the costs outlined below.

The relaxing of ownership rules better enable strategic management of the company, through more dynamic decision-making.

Costs

The condition that insists on adequate financing for high quality may impose artificial costs on broadcasters - they could provide cheaper news of lesser quality. There may also be an administrative cost involved in conjecturing what will constitute 'high quality' and 'adequate financing'. These costs could be worth 1-2% of the contract price (roughly £350,000 to £700,000 for the existing contract).

The ownership restrictions may prevent dynamic investment. In-house news services could be cheaper to run. However, the relaxation of the ownership constraint is deregulatory compared to the status quo and should therefore encourage more investment, compared to the current position.

Implementation

The new ownership limits will take effect as soon as the Bill is enacted. The new licence requirement to ensure adequate financing will take effect only for future contract negotiations.

The sunset and sunrise clauses may be activated at the Secretary of State's discretion, although she must consult OFCOM.

Radio ownership

Proposed Measures

It is proposed to remove the points scheme that (in broad terms) prevents any owner having licences that cover more than 15% of the population. The restriction on ownership of more than one national analogue licence will also be removed. Rules on local concentration will be simplified, so that a scheme is established that can make sure there are at least three commercial owners of Independent Local Radio (in addition to the BBC) in every area with a well-developed choice of radio services.

There will be a parallel scheme ensuring that there are at least 3 commercial owners of digital radio services in each area.

In addition, no one will be able to own more than one local digital multiplex in areas where they

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overlap (most areas will have two local multiplexes at most for the foreseeable future). Overlap for multiplexes is to be defined as where the primary protected area of a multiplex covers more than 50% of the adult population in the primary protected area of another multiplex.

Details of the proposed ownership schemes:

ILR ownership

For Independent Local Radio (as defined by the 1990 Act) the Secretary of State will introduce by Order, on advice from OFCOM, a scheme to ensure that in every area with a well-developed choice of radio services (typically 5 or more stations) there will be at least 3 separate owners of local radio services in addition to the BBC. The scheme will be applied on point of acquisition of a station, and will prevent an acquisition if it results in more than 45% of the available 'points' in any of the coverage areas of stations in question being controlled by:

- (a) anyone who controls two other stations that cover more than 50% of the adult population in the station's coverage area;
- (b) any owner of a national newspaper;
- (c) any person who holds a regional Channel 3 licence whose coverage area is to a significant extent the same as that of the radio station;
- (d) any person who runs a local newspaper with more than a 50% share of circulation in the coverage area of the station.

In addition, none of the parties referred to in (b) (c) or (d) will be able to buy any radio station if there are fewer than two other stations that reach more than 50% of the adult population in the station's area.

The effect of (a) is that, as now, a company may own two overlapping radio stations, even if they are the only two stations in that area. Having tested the scheme in a range of existing localities, however, the Radio Authority and the Commercial Radio Companies Association are satisfied that it should deliver the principle of three commercial owners to most areas.

The effect of (b) (c) and (d) is that no other commercial media company with a significant voice in a local area will be able to own a radio station unless there are at least two other stations in competition, and that where such forms of cross-media ownership exist there should usually be at least 3 separate local/regional commercial owners of local media (radio, TV and newspapers) in addition to the BBC - see section on 'cross-media ownership' below.

Digital radio ownership rules

The Secretary of State will also introduce (again on the advice of OFCOM) a parallel scheme to ensure that in any locality there will be at least 3 separate owners of local digital sound programme services.

Purpose and intended effect

Broadly speaking the effect will be that rather than having a minimum of seven owners for all

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radio stations, there will be a minimum of three, allowing significant consolidation. What the final figure might be is unknowable; at present there are about 70 owners so it is by no means certain that the full concentration which the rules potentially permit will take place.

The rule on multiplex ownership is designed to prevent any one company holding a position of 'gatekeeper' over all the local digital services in any area - most areas will only have two local multiplexes, and the licence-holder will be able to decide which services are carried.

Benefits

The proposed regulation is significantly deregulatory compared with the current position. This should allow radio broadcasters to utilize technological convergence and to benefit through synergies and efficiency savings. There will be synergies in joint ownership of national services, and a broader range of 'networked' local services. Annual national radio turnover is around £510m, suggesting possible maximum efficiency gains of £2.5m to £7.5m (subject to the same caveats as for TV above). This is based on the premise that the efficiency gains are obtained from a move to competition law. The proposals above may be similar in effect to competition law in some markets, but will kick-in above competition law thresholds in others. This may slightly reduce the efficiency gains quoted above, though this may be offset by administrative and bureaucratic costs savings from a transparent and predictable threshold.

There should also be significant plurality benefits for local citizens, who are used to receiving a variety of local radio services, and should continue to receive a range of different voices of local news and opinion. It was considered that competition law did not provide sufficient guarantees that the plurality of voice would be maintained in all local and regional radio markets.

Costs

If all radio ownership rules were to be removed, further consolidation and organic growth could be possible, and efficiency gains for the companies involved might therefore be slightly higher. However, it is unclear whether local radio companies with a significant amount of market power would actually strive to achieve these additional savings if entry was essentially foreclosed by the licences on offer.

Implementation

The radio ownership schemes will be introduced by Order, and the orders will contain the precise detail. However, the schemes will apply on point of acquisition, and will not require existing owners to divest of any holdings that may exceed the limits set down.

Newspapers

[REDACTED] to provide]

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Cross Media Ownership

Proposed Measures

We will remove most regulation of cross-media ownership, but will retain three rules:

1. A rule limiting joint-ownership of national newspapers and Channel 3:
 - (a) no one controlling more than 20% of the national newspaper market may hold any licence for Ch 3;
 - (b) no one controlling more than 20% of the national newspaper market may hold more than a 20% stake in any Ch 3 service;
 - (c) a company may not own more than a 20% share in 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.
2. A parallel, regional rule: no one owning a regional Channel 3 licence may own more than 20% of the local/regional newspaper market in the same region.
3. Rules as part of the local radio ownership scheme to ensure there are at least 3 local/regional commercial media voices (in TV, radio and newspapers) in addition to the BBC, in every area that has a range of services.

The first two rules already exist, so there are no additional costs to be calculated. The third rule will be part of the new local radio ownership scheme, as described above.

All other existing rules on cross-media ownership will be removed. As a consequence many new forms of cross-holding will be allowed:

- ~~Joint-ownership of national TV and national radio licences~~
- Joint ownership of a regional Channel 3 licence and a local radio licence in the same area (as long as there are if there are two or more other radio stations that reach more than 50% of the adult population in the radio station's area)
- Ownership of more than 20% of the national newspaper market and Channel 5.

In addition, the complicated rules on cross-ownership of local newspapers and local radio services will be simplified and relaxed, to allow joint-ownership as long as there are two or more other radio stations that reach more than 50% of the adult population in the radio station's area; and the newspaper owner stays within the 'points' limit established by the local radio ownership scheme.

There are currently a set of rules that together stipulate the application of a public interest test to any acquisition of any broadcasting licence by any newspaper owner. These rules will be removed.

Purpose and intended effect

The new rules should constitute a simple and coherent framework, placing limits on the market at key points to ensure plurality of voice at national, regional and local level. In particular, it is felt that significant joint ownership of newspapers (the most editorially influential medium)

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and Channel 3, (the only public service television service with universal access to a mass audience, at national and regional levels) would dilute plurality to an unacceptable extent. It is also vital that local communities continue to have access to a variety of sources of local news and opinion, and the radio ownership scheme is designed to that end.

Significant deregulation should bring significant economic benefits (see below) and the new rules will also provide certainty, without the burdens of time and cost imposed by public interest tests.

Benefits

For cross-media ownership in particular, there are significant but unquantifiable social/democratic benefits (discussed above) to be had from preserving the plurality of media voices that can safeguard a democratic society, at national, regional and local level.

In economic terms, there are benefits to be had from the significant deregulation that we propose - potential savings of 0.5% to 1.5% of turnover for the companies involved in any merger. The potential for any consolidations to be refused on general competition policy grounds must be set against this potential cost saving.

The removal of rules that stipulate public interest tests will remove the significant risk for businesses of spending a great deal of time and resource putting together merger proposals that are subsequently rejected.

Costs

No additional costs will be imposed - the rules that we will retain either already exist or (in the case of local markets) they are deregulatory.

Implementation

Rules 1 and 2 will simply be retained. The local radio ownership scheme will be established by Order of the Secretary of State, on advice of OFCOM.

Review of media ownership rules

Proposed Measures

OFCOM will be required to review all media ownership rules, no less than every three years. They will make any recommendations for further reform to the Secretary of State, who will be able to amend or remove rules by secondary legislation.

Purpose and Effect

In the medium term, the rules on media ownership are clear, consistent and predictable, to provide certainty for business. In the longer term, however, there remains the flexibility to

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revise the rules to adapt to rapidly changing market conditions, provided that the expert regulator advises that the time is right and the Secretary of State agrees.

Benefits

Businesses can plan their growth with the certainty that specific ownership rules allow. In the longer term, however, the economy should not be held back by rules that are no longer necessary, if the growth in choice and competition in media services provides plurality without the need for market intervention.

Costs

Some might consider there to be a democratic cost in allowing important laws to be amended quickly by secondary legislation, without full parliamentary scrutiny. Given that any secondary legislation in this area would be heavily debated, the Government feels the benefits of flexibility outweigh any such cost.

Overall competition assessment for media ownership policy

Within every media market our proposals deregulate, by removing or relaxing the current ownership rules. Cross-media ownership rules will also be scaled down considerably. These measures are generally considered to be pro-competitive since they should enhance the process of competition in all media markets. Relaxation of the existing rules will allow markets to function more freely and efficiently, which should be good for UK productivity, innovation and growth. Furthermore, the removal of foreign (non EEA) ownership rules should also enhance competition by increasing the pool of potential entrants into UK media markets.

In some media markets, especially free-to-air broadcasting markets, the barriers to entry for small and medium-sized enterprises may still be quite high. However, such companies can and do operate in local radio markets. There are currently some 70 different owners of Independent Local Radio licences. Our proposals to ensure that there are 3 commercial operators in each market (slightly above the likely competition law thresholds in some markets) should help to sustain a competitive environment for these businesses.