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HIGHLY MARKET SENSITIVE – NOT TO LEAVE MINISTERS' OFFICES

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Dear John

MEDIA OWNERSHIP RULES

The policy narrative that is published alongside the draft Communications Bill will include firm proposals for the reform of media ownership rules. The version of the policy narrative sent to LP committee did not include these proposals, which were then still being discussed. The policy has now been finalised and is summarised in this letter. Draft clauses will be published for consultation over the coming weeks. We would be grateful for responses to this letter by THURSDAY 2 MAY and apologise for the very tight deadline.

Summary

Existing media regulation is widely regarded as inconsistent and inflexible. It imposes undue costs on businesses and has hampered the sector's ability to respond to the rapid technological and market changes over the last six years. We want UK industries to be able to compete in a changing global market, and we want them to attract new investment and skills.

Our approach will be deregulatory where possible. Deregulation will promote competition, investment and employment, allowing companies to grow, innovate and provide better services to consumers.

However, we recognise the importance of the media to democracy, and will therefore retain a set of simple rules to prevent too great a concentration of media ownership and political influence.

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We will allow significant consolidation within individual media markets (TV, newspapers, and radio). Content regulation should be able to maintain the quality, impartiality and diversity of broadcasting services, and competition law will tend to encourage dispersed ownership and new entry. There will, however, be some minimum 'floors' of plurality:

- At least three separate free-to-air public service TV broadcasters, in addition to cable and digital platforms.
- At least 3 commercial radio operators, in addition to the BBC, in every area with a well-developed range of services
- A more targeted newspaper merger regime, with less onerous burdens for proprietors.

Competition law will not always guarantee the plurality of ownership that democracy demands, however, and we will retain three key rules on cross-media ownership to safeguard the vibrancy of democratic debate in three important ways:

- big players in the national newspaper market will be prevented from owning a significant stake in ITV, the only commercial public service broadcaster with universal access to a mass audience
- a parallel regional rule will prevent anyone owning all the newspapers and the regional ITV licence in any region or major city.
- in almost every local community, there will be a rule to ensure at least 3 commercial local/regional media voices exist (in newspapers, TV and radio) in addition to the BBC.

General disqualifications

There will be no disqualification on the ownership of broadcasting licences by any particular group, unless there are compelling reasons to expect serious adverse effects.

- All rules preventing the non-European ownership of broadcasting licences will be removed.
- Advertising agencies will now be allowed to own broadcasting licences and local authorities will be allowed to own licences to provide information services in their own local areas.
- Political organisations will still be prevented from owning broadcasting licences of any kind. Religious organisations will still be prevented from owning Channel 3 or Channel 5 licences, or any national radio licence (analogue or digital), on grounds of spectrum scarcity.

Television

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Regulatory barriers to the formation of a single ITV company will be removed (though the competition authorities would still scrutinise any merger). The rule preventing the joint-ownership of a national Channel 3 licence and the Channel 5 licence will also be revoked. The existence of the BBC and Channel 4 will ensure there remain at least 3 separate free-to-air public service TV broadcasters, in addition to cable and digital platforms.

The nominated news provider system will be retained, to ensure that a high quality and independent ITV news service provides competition to the BBC. The limit on ownership will be relaxed from 20% to 40%. Channel 3 licensees will be able to own no more than a 40% share in combination or in total. This will reduce the number of owners, and make investment decisions easier, while maintaining editorial independence. Channel 3 licensees will be required to provide adequate funding to the news provider, to ensure the service is of high quality. There will be a power to sunset the whole arrangement if in future a wider range of competing news voices emerge.

Radio

Restrictions on the nation-wide accumulation of radio licences will be removed, as will the rule preventing any company owning more than 1 of the 3 national analogue radio licences. Local radio ownership rules will ensure that there are at least 3 commercial radio operators in every area with a well-developed range of services.

Newspapers

For newspaper mergers, a less onerous and more targeted merger regime will be applied post-acquisition only in cases where there is significant concern on competition or plurality grounds. Criminal sanctions will be removed. Final decisions, at least on plurality grounds, will remain with Ministers.

Cross-media ownership

There will effectively be three cross-media ownership rules:

- 1 A national '20%' rule:
 - (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.

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2. A parallel, regional '20%' 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 on local radio ownership that ensure there are at least 3 commercial media voices (in TV, radio and newspapers) in addition to the BBC, in almost every area.

Restrictions on the joint-ownership of national newspapers and Channel 5 will be removed. There will, however, be a power to introduce a nominated news provider system for Channel 5, to guarantee the quality and editorial independence of the news service if it becomes clear that under new ownership Channel 5 has gained a significant share of the audience for free-to-air news, comparable to ITV's share.

Other rules on cross-media ownership will also be removed. As a consequence there will be fewer restrictions on the joint ownership of newspaper and radio interests, and 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 two or more other radio stations that reach more than 50% of the adult population in the radio station's area)

Review of ownership rules

OFCOM will review all media ownership rules at least every 3 years. They will then make any recommendations for further reform to the Secretary of State, who will be able to amend or remove rules by secondary legislation.

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.

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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.

We are copying this letter to the Prime Minister, other members of DA, members of LP and Sir Richard Wilson.

Yours



TESSA JOWELL



PATRICIA HEWITT