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From	[redacted]		
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LOCAL RADIO OWNERSHIP RULES/LOCAL CROSS-MEDIA OWNERSHIP RULES

Issue

You need to make a decision on the future shape of local media ownership rules.

Timing

Urgent. We need to instruct lawyers very soon if they are to have the necessary draft Order ready in time for the Bill's introduction. It would be very useful if you could express an opinion this week. If you want to discuss the matter further, a meeting would need to be arranged early in the week after your return from leave.

Summary

Since the publication of the draft Communications Bill, there has been intense debate between the Radio Authority and the commercial radio companies as to whether our proposals on local radio/cross-media ownership (based on the original CRCA-Radio Authority agreement of 2001) offered sufficient deregulation, and what degree of regulation is really necessary to safeguard plurality. It has taken some time to establish consensus amongst all parties on the factual implications of the proposals in the draft Bill. Now having done so, we recommend several changes to the policy, to bring it more into line with the deregulatory approach we have taken elsewhere.

Recommendations

I Raise the limit on radio ownership to allow one company to own up to 65% of any market (the limit currently proposed is 45%)

[II The 65% limit on its own would represent a '2+1' solution. If you are concerned to retain some element of '3+1' in the system, we could include an additional rule to require at least three owners in the largest markets (the big cities).]

III Retain a tighter restriction on local radio ownership by local newspapers/ITV licence-holders. Such cross-media owners would be restricted to owning 45% of the market wherever there are 3 or more stations. This produces the '3 local media owners' result in most areas.

IV In areas with only 1 or 2 local radio stations, remove all limits on cross-media ownership apart from one simple rule to prevent anyone establishing a monopoly across local newspapers, ITV and radio.

V Remove the specific restrictions on the ownership of local radio by national newspaper groups.

Argument

NB These notes outline the principle arguments behind our recommendations. More detail is provided in an Annex, *an open-ended paper that I put together for officials at an earlier stage in our discussions, and which represents some of the 'working' behind this submission.*

<u>The points limit</u>

1. The draft Bill proposals would prevent any company owning more than 45% of the 'points' in a well-developed market. It is now clear that while this limit is not more restrictive than the existing rules, within most medium-sized markets it is not less restrictive either.

2. The draft Bill <u>does</u> deregulate to a significant degree by allowing companies to consolidate <u>across the UK</u> as a whole. However, the industry is aggrieved that they will not have a great deal of scope to consolidate <u>within</u> most local markets, where they argue larger companies can bring benefits by increasing the diversity of local services and making local news-gathering more efficient.

3. In contrast, local newspapers have been given a relatively free hand to consolidate in particular areas, often controlling around 80% of the market. Newspapers are generally considered to be more influential in forming local opinion, and research shows that <u>38% of people identify the press as their main source of local information</u>, compared with 36% for TV, <u>only 13% for radio</u> and 10% for 'talking to friends and neighbours'.

4. Our original proposals constituted an acceptance of a joint industry-regulator agreement. That agreement no longer exists, and the proposals now look a little over restrictive alongside the rules that will apply to other industries. In light of this, it seems reasonable to raise the points limit.

5. Both the industry and the Radio Authority agree that only by raising the limit to at least 65% will we make the system significantly more deregulatory. A limit of 65% would still make sure there were at least 2 owners of commercial radio in addition to the BBC in every reasonably developed market. It represents a similar limit to that which the competition authorities might be expected to impose in an average market, but would ultimately act as a long-term guarantee of plurality where competition law would not.

Recommendation I: Raise the limit on radio ownership to allow one company to own up to 65% of any market (the limit currently proposed is 45%)

'3+1'

6. The Radio Authority continue to stress the attractions of a '3+1' solution. The third owner in any market, they suggest, keeps the other two 'honest', offers listeners a separate, independent voice (however small) and provides additional avenues for employment and access for local music companies.

7. However, it has become clear during our discussions that the '3+1' scheme in the draft Bill would not very often produce 3 separate, meaningful commercial voices. First, it would actually only apply in markets with 5 or more overlapping stations and there are only 8 such markets in the UK, most of them in the major urban conurbations. In all other areas there could be only 2 owners. Secondly, even in the largest markets, the all-important 'third owner' might not have any presence in the centre of the market, but only in a collection of outlying areas. The additional plurality of a 'third voice' in Manchester might thus consist of several small stations serving Burnley, Stockport, Wigan and Warrington respectively, with only 2 companies operating in the central Manchester market where all the largest and most influential stations are based.

8. A 65% points limit on its own would clearly allow a '2+1' result in every market. If you wished to be seen to accept part of the Radio Authority argument, you could impose an additional rule to retain a '3+1'-type plurality in large markets (as above, defined as those with 5 or more overlapping stations). The rule could work by preventing any acquisition that reduced the number of owners in the area below 3. There would be no way to ensure the third owner had any significant size or influence (even less so than under the existing proposals), indeed competition law would be more likely to protect a sizeable third presence in such a market. It might also seem odd to add a further complication to the points system in order to defend a notion of '3+1' in such a small number of markets. You could present the policy as a guarantee of '3+1' in areas of high population density, where it was more commercially feasible, but this might raise the question of whether cross-media limits should also be stricter in those areas.

9. You may feel, however, that there are some political arguments in favour of 3+1. Without seeming utterly convinced of the arguments in either direction, the Joint Committee recommended the incorporation of a 3+1 rule as long as it was subject to a 'sunset' provision. Some backbenchers may feel more strongly about the issue. Conversely, there is always a risk that the Radio Authority themselves might be disappointed with what could be seen as a 'fudged' solution – if you wanted to adopt this approach, we'd need to float it with them first.

[Recommendation II: If you are concerned to retain some element of the '3+1' principle in the system, we could include an additional rule to require at least three owners in the largest markets. Alternatively, we could keep the same plurality floor (2+1) in all markets, and rely on competition law to deliver three owners in the big cities.]

<u>Local cross-media ownership</u>

10. Tougher restrictions on radio ownership have always applied to cross-media owners. At present, a local newspaper company can only buy <u>one</u> radio station in an area where they control more than 50% of the newspaper market, and to do so they must pass a public interest test. Different, less onerous rules apply to smaller newspaper owners, on a sort of sliding scale.

11. The proposal in the draft Bill was that significant local newspaper owners (those with more than 50% of the market) and the local ITV licence-holder should both be limited to ownership of 45% of the points in any radio market. This rule is simple, deregulatory and makes sure there are at least 3 local media owners in any market. It is sometimes referred to as the '3 local media voices rule'.

12. The difference between this limit and a 65% limit for radio-only companies might prevent newspaper companies from buying radio companies whole, only allowing them to acquire radio assets in a more piecemeal fashion. However, it would still allow cross-media ownership on a much-increased scale, while offering some important protection to plurality, and we recommend its retention.

Recommendation III: Retain a tighter restriction on local radio ownership by local newspapers/ITV licence-holders. Such cross-media owners would be restricted to owning 45% of the market wherever there are 3 or more stations. This produces the '3 local media owners' result in most areas.

13. In one respect, we suggest a significant change to the policy on local cross-media ownership that appeared in the draft Bill.

14. In the smallest radio markets, those with only 1 or 2 stations, the draft Bill policy is to prevent cross-media ownership of local radio stations entirely. The reasoning is that we want to uphold the principle of 3 media owners in every area, and so will only allow cross-media ownership where the market is big enough to <u>ensure</u> 3 owners.

15. There is an alternative point of view, suggesting that small markets are less economically productive and are not able to support so many companies. Those who take this view suggest that there should be no cross-media rules in such small markets, thus allowing a company to offer citizens a decent range of services across newspapers and radio by exploiting synergies in news gathering etc. The Radio Authority have come to accept this argument, and indeed have allowed newspaper-radio cross ownership in very small markets.

16. The draft policy is therefore more regulatory than the existing approach, and has few committed supporters. We therefore suggest that cross-media ownership rules could be removed in the smallest radio markets, abandoning the principle of 'three local media voices'. To ensure at least two local voices, however, we could institute a slightly different rule to prevent monopolistic joint ownership of radio, TV and newspapers.

Recommendation IV: In areas with only 1 or 2 local radio stations, remove all limits on cross-media ownership apart from one simple rule to prevent anyone establishing a monopoly across local newspapers, ITV and radio.

<u>National newspaper groups</u>

17. In terms of local radio ownership, the policy in the draft Bill treats national newspapers in exactly the same way as 'significant' local newspaper owners. The reasoning behind this was that certain national newspaper groups might want to acquire networks of local radio stations and imbue them all with the same editorial agenda.

18. Predictably, the national newspaper groups have objected to this policy. They suggest that local ownership rules should relate only to local media. They point out that the local newspapers and radio stations they do own all display a large degree of editorial freedom, and that all local radio stations are in any case subject to requirements for impartiality in news and current affairs coverage.

19. We are convinced by these arguments. We see no reason why national newspaper groups should not be able to own as many radio stations as the general rules permit.

Recommendation V: Remove the specific restrictions on the ownership of local radio by national newspaper groups.

[redacted]

ANNEX

RADIO OWNERSHIP

The facts

We have reached a position where the Radio Authority and the CRCA roughly agree on the implications of '3+1':

1. The proposed rules are not more restrictive than the existing rules (with some possible exceptions, if Mark Oliver can prove them, and these seem to depend on an assumption that in the present set up companies would always pass a public interest test)

2. Nor are the proposed rules significantly more liberal than the existing rules within local markets, except in large markets. However, it must be remembered that the removal of all UK-wide restrictions will allow significant cross-UK consolidation.

3. Looking at the existing pattern of ownership, there is still a great deal of potential for consolidation under our proposals – owners have often not even reached the existing ownership limits.

4. Under 3+1, the 'third owner' in a large market might not hold one of the most significant, market-wide licences.

   The ownership pattern under 3+1 would depend on the strategies adopted by the larger owners.

   If the strategy of the larger companies was to acquire as many licences as possible, of varying sizes and localities, across a region, the end effect in a large market would probably not be a 45/45/10 split, but something more like a 45/30/25 split. In this scenario the 'third owner' would be left with at least one of the most valuable licences, covering the whole of the city/region.

   However, if two large owners concentrated on acquiring as many of the 'core' licences for, eg. Manchester, they might together come to own all of the Manchester-wide licences, leaving plurality guaranteed by a number of outlying stations that made up the rest of the points – eg Wigan, Stockport, Warrington and Bolton. Plurality (in terms of 3 owners) would therefore be guaranteed in each of these smaller areas, but not in the centre of Manchester itself.

   To represent the 'plurality' for a large market, however, any outlying stations would have to be overlapped by the larger, more central stations, by at least 50%. In effect, therefore, they would have to serve areas that were to some extent part of the larger area, not separate, distinct places. If there was no such 50% overlap, there would be no restriction on joint ownership at all, even if it meant one company ended up owning more than 45% of the points in an area. An overlap of the Liverpool market, for example, could not provide the plurality for Manchester and there would be nothing to stop a company owning licences for both cities, even if they overlapped by 20%.

They also agree that to make any significant difference to the extent of local consolidation, the points limit would have to be raised from 45 to 65%.

Options

If we assume that we cannot rely on the competition authorities for a solution (since they are mainly concerned with advertising markets, and are liable to alter their opinions on what is acceptable) there are four options:

1. Stick to our original proposal – a 45% limit (providing some degree of '3+1')

For	Against
Originally agreed by both RAu and CRCA Backed by Joint Committee Lifts some barriers to consolidation at local level, especially in large markets Compared to existing ownership patterns, allows significant consolidation Represents what the Rau think is an appropriate limit on ownership – 45% makes sense in that it would kick in before competition law Provides a third voice in some form	Now opposed by the industry Does not allow significantly more consolidation within most local markets than the existing rules 'Third voice' might be limited to the peripheral areas of large markets.

2. Raise limit to 55% (2+1)

For	Against
Simpler than 45%, leaving 2 commercial owners everywhere. No complications about the third owner Still prevents one company owning eg 3 out of 4 stations	Still wouldn't allow the largest owner in an most areas to own more of the major stations Likely to be opposed by radio companies as a fudge, and by others as a 'cave in' Smaller 3rd voice lost completely

3. Raise limit to 65% (2+1)

For	Against
Would allow significantly more consolidation in local markets than the existing rules May therefore create a greater diversity of services (although there are arguments both ways) Mirrors more the approach to local newspapers	Barely restrictive at all Might allow one company to own all the major, market-wide licences in a large market. Would almost certainly be superseded as a limit by competition law.

4. Raise limit to 65% but still insist on 3 owners in large markets

For	Against
More flexible - allows one owner to consolidate while still ensuring two other owners for plurality's sake	Would again probably be more lenient than competition law, in theoretically allowing one company to own all the best licences in a large market The third owner might be of even more negligible influence. Adds a further (!) complication to the system

Cross-media ownership of local radio

The proposal in the draft Bill was to apply the same 45% limit to cross-media owners, but more strictly. Rather than only applying the limit when an owner was buying their third overlapping licence, it would be applied in all circumstances, to all acquisitions.

Imagining that we altered the radio-only rule, there would be two options for the cross-media rule:

- Keep the limit at 45% for cross-media owners (ie apply a stricter points limit than that for radio only, in addition to applying it in a greater number of circumstances)
- Raise the limit for cross-media owners in line with whatever the new radio-only limit was.

Implications

The effect of the cross-media 45%, rigorously applied, is that whatever consolidation occurs in the radio industry, most areas will have three local/regional media owners in some combination, since newspapers and ITV couldn't divide up all the stations between the two of them.
If the cross-media limit was raised, we could no longer claim to operate a 'three local media owners' policy. The radio market could be completely bought up by TV and newspaper companies, forming two dominant blocks of ownership in every area.

If we retain a different percentage for radio and cross-media owners, there are a variety of possible outcomes:

Radio companies might be able to protect themselves from acquisition by building up concentrations of ownership that would not be permitted for cross-media companies – so that a straight takeover of an enlarged radio group by a newspaper group might not be possible without divestments. The result might be one large radio-only group and one smaller cross-media owner, with the third voice provided by a press-only or TV-only owner.

Alternatively, cross-media owners might divide most of the radio market between them, disinvesting as necessary. In that scenario, the nature of the third voice remains problematic – it might constitute a major station but could equally be made up of various peripheral voices.

Other cross-media questions

1. Small markets

Our policy at present is to prevent cross-media ownership of local radio stations in areas with only 1 or 2 licences. The reasoning is that we want 3 media owners in every area, and so will only allow cross-media ownership where the market is big enough to ensure 3 owners. There is an alternative point of view, suggesting that small markets are less economically productive and are not able to support so many companies. Those who take this view suggest that there should be no cross-media rules in such small markets, thus allowing a company to offer citizens a decent range of services across newspapers and radio by exploiting synergies in news gathering etc. The Radio Authority have come to accept this view, and indeed have allowed newspaper-radio cross ownership in very small markets.

Question – do we want to remove all limits on radio ownership in markets with 1 or 2 stations?

2. National newspapers

Our proposals treat national newspapers in the same way as 'significant local newspapers' – they are subject to the same application of the 45% rule. The thinking behind this is that national newspaper groups may want to buy up a range of local radio stations and impose an editorial agenda on them. The groups concerned (DMGT in particular) protest otherwise, and point to the freedom they give their local newspapers to follow whatever agenda local readers demand. National newspapers are not 'local voices' they argue, and should not be treated as a part of local plurality. The Radio Authority have never found a national group's acquisition of a local station to be against the public interest.

Question - should we remove the rules limiting national newsapers' ownership of local radio?

Alternatively, we could make the rule specific to groups with more than 20% of the national newspaper market (thus only excluding News International, Trinity Mirror and DMGT and mirroring the TV/newspapers cross-ownership rule)