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8/5
14/8

Leslie Hinton
Executive Chairman

8 August 2001

Dr Kim Howells MP
Minister for Tourism, Film and Broadcasting
Department for Culture, Media and Sport
2-4 Cockspur Street
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DEPARTMENT FOR CULTURE MEDIA AND SPORT	
NAME	K. HOWELLS
BY	D.K. S. KAHN
REMARKS	As appropriate
SECRETARY (S/S)	[redacted]
FILE NUMBER	13/8. COI 1 12551

Dear Kim

[redacted] I don't
think more than
an acknowledgement
is needed. H. dear

I write further to my letter of 26 July concerning communications reform. As promised I am writing to you today to set out in further detail News International's views on the reform of cross-media ownership and foreign ownership rules.

I understand from our meeting that both of these areas will be open to consultation in the run-up to the publication of the draft Communications Bill.

Cross-Media Ownership

Given the current changes in the media market, a review of the regulatory system governing the media is clearly in order. In formulating new policy in this difficult area, we believe the Government should subject every piece of regulation on the Statute Book, and any proposed new regulation, to a proper cost-benefit analysis. The Better Regulation Task Forces' five tests of transparency, accountability, targeting, consistency and proportionality should be rigorously applied. The questions should be asked: Is this piece of regulation still relevant in today's market? Does this regulation benefit the viewer/reader/listener? What are the costs of this regulation?

We believe that the existing cross-media ownership rules clearly fail these tests. The rules are set out in the attached Annex 1.

In answer to the first question - is this piece of regulation still relevant in today's market? - we believe that the answer is, no. The current cross media ownership rules are outdated and should be repealed. These rules may have been appropriate in the past (although even that is questionable) when spectrum scarcity defined the market and consumers were offered only a limited choice of media products, but they are

certainly not desirable in an era in which the sources of news and entertainment have proliferated and control is highly diffused. The media market in the UK today is increasingly competitive and diverse. Consumers have access to an ever-wider variety of news and views delivered in an increasing number of ways. The only media player with a significant market share in the UK is the BBC.

As to the question of the costs and benefits of cross-media ownership rules, we believe the costs are unacceptably high while any benefits there may have been have long since disappeared. The costs are clear – the rules punish success and stifle innovation and investment. They mean that a company such as News International is restricted in using its skills and capital in new areas, despite the fact that the demand may exist. We publish two of the world's most successful newspapers, yet under the current rules terrestrial television and radio are deprived of our news-gathering expertise and the benefits of our on-going investment in news-gathering. The rules prevent skills and capital from being fully deployed and will prevent Britain from fully exploiting the scope created by convergence – one of the Government's stated aims.

A new regulatory framework is needed. One of the fundamental problems with the current system is that it is based on thresholds. Thresholds are by their nature arbitrary and discriminatory; they deprive the regulatory and competition authorities of the ability to apply their expert judgements to the facts of each case. Thresholds require legislators and ministers to play 'pick a number' based on a guess as to the future contours of the rapidly changing media market – to guess which technologies and which players will prevail. This is clearly undesirable – governments are not in the position to predict technological changes or to pick winners or losers in the market place. Future developments of the media market should be driven by consumer demand and individual business decisions; they should not be second-guessed by a regulator's prediction of the market structure appropriate to future developments. We therefore believe that the Government should avoid any regulatory system based on thresholds.

The desired outcome of any new regulatory regime is a diverse and pluralistic media in which many, different voices feed into the cultural and political life of our democracy. The Government's White Paper on communication reform states that fostering competition is the first step towards promoting plurality in the media. We agree with this and believe strongly that the new, more robust competition rules should be used as the principal test in any proposed merger or acquisition in the media markets. In fact, we believe that the thorough application of competition rules will prove sufficient in by far the majority of cases to assure that neither economic power nor an undue concentration of sources of information and entertainment results.

Competition rules are an excellent tool for this job. In contrast to systems based on thresholds, competition rules are sufficiently flexible to keep up with changing market conditions and the new forms of competition media companies face. The competition authorities also have the duty to ensure that their decisions meet overall public interest requirements. Preserving the right of consumers to choose between competing products, offered by independent sellers, is nothing new for them. They traditionally have to decide whether consumer choice is unduly constrained by allowing producers of different products to merge.

There are those who argue that the media is a special case; that because of its crucial role in a democracy, it cannot be treated like any other product and that backstop powers are therefore necessary to ensure that no one media owner gains undue influence over our society and culture.

We agree that this concern is a serious one. But we feel that the concern is met by preserving the diversity of ownership assured by the vigorous application of the competition laws. Attempts to go further and to regulate influence will inevitably involve the Government in dangerous and unacceptable regulation of content.

If there is to be any further regulation beyond the usual competition rules, we believe there should be a heavy burden on the proponents of such regulation to prove that it is necessary, effective, fair, and does not create the greater danger of a Government capable of suppressing news that it finds unpleasant.

Foreign Ownership

The rules on foreign ownership are set out in the attached Annex 2.

Any repeal of the cross-media ownership rules must go in tandem with a repeal of foreign ownership rules. The removal of cross-media ownership rules while foreign ownership prohibitions are still in place would be counterproductive, as the potential for new entrants to the market would still be restricted. We therefore believe that as a first step the disqualification of non-EC and EEA individuals and bodies from owning broadcasting licences must be removed.

In its White Paper on communications reform the Government justifies the retention of foreign ownership prohibitions, first, on the grounds that other countries have similar rules and, second, on the grounds that "these restrictions play an important role in ensuring that European consumers continue to receive high quality European content". News International does not accept either of these arguments.

Other countries do indeed have restrictions on foreign ownership. But imitation is hardly the basis of sound policy. Leadership in the area of media policy is surely preferable to following? In its White Paper, the Government calls for the UK to be "the world's leading innovative market for convergent communications, software, content and technology" (paragraph 1.2.3). Indeed, it was only by relaxing the rules that Britain positioned itself to become the world leader in satellite television. In any case, foreign ownership prohibitions are increasingly a minority position within Europe; there are no such rules in Belgium, Germany, the Netherlands, Sweden or Norway. In America, the new, market-oriented chairman of the Federal Communications Commission, Michael Powell, has scheduled foreign ownership rules for review; and in Australia, a recent Broadcasting Inquiry recommended that foreign ownership rules should be abolished.

Foreign ownership disqualifications date from an era when scarcity of spectrum and concerns about national security were the prevailing conditions. In today's converging and global media markets, these conditions no longer apply. Indeed, the

rules are so out-dated that they only apply to analogue terrestrial licences. When these signals are switched off in the near future, there will be no sensible policy reason to maintain these prohibitions.

Concerns about non-European ownership and control of the media are based on the belief that non-European proprietors may be less sympathetic to European cultural or political values or to local content and that they would therefore not provide "high-quality European content". But this is clearly nonsense. What could be more British than The Times or The Sun? The objective of any media company operating in the UK must be to be successful within the UK market. It must provide local content that people want, or it will not survive. Nationality of ownership does not drive content - content is determined by the demands of consumers.

In any case, there is already extensive regulation in the Television Without Frontiers Directive setting quotas for European originated content and content provided by independent producers.

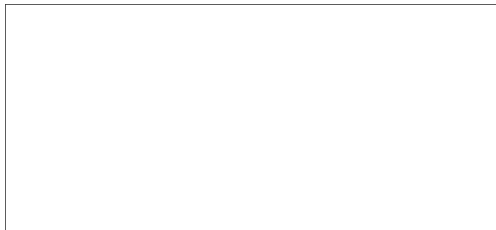
Finally, failure to change these restrictions will leave any future legislation open to action on grounds that it is incompatible with the Human Rights legislation. There is a good case for arguing that the foreign ownership prohibitions are in contravention of Article 10 (concerning freedom of expression) and Article 14 (prohibiting discrimination) of the European Convention on Human Rights.

Foreign ownership prohibitions are unnecessary, anachronistic and discriminatory. Furthermore, they are an insult to those foreigners such as Roy Thomson and Max Beaverbrook, whose contributions made Fleet Street what it was - not to say to those foreigners who are currently active in this industry.

I would be happy to discuss with you any of the issues raised in this letter at any time.

I look forward to seeing you again.

Yours



Annex 1: Cross-Media Ownership Rules

The 1990 and 1996 Broadcasting acts set out the cross-media ownership rules. The following is a summary of the main points relating to the ownership of national and regional newspapers and national and regional television and radio licences:

National Newspapers

1. An owner of one or more national newspapers with combined 20% plus market share cannot
 - (i) hold a licence for a regional or national channel 3 service or channel 5 or any national or local radio service ("the listed services");
 - (ii) have 20% plus interest in a company that holds any such licence.
2. No company holding a licence for a listed service can have a more than 20% interest in a company that runs one or more national newspapers with combined 20% plus market share.
3. No person of any description can hold at the same time both a 20% shareholding in one or more national newspapers with combined 20% plus market share as well as a 20% plus shareholding in a company that holds a licence for a listed service.
4. Any person who owns a national newspaper (with less than 20% market share) will have to satisfy a public interest test before they are allowed to hold a licence for any national channel 3 or channel 5 service or any national radio service or digital sound programme service.

Local Newspapers

1. An owner of a local newspaper with a 50% plus market share cannot hold a local radio licence in the same area unless there is also another competitive local radio service and that owner does not have any other radio service licence that would cover the same area at all.
2. An owner of a local newspaper with 20% plus local market share may not hold three local radio licences with coverage in the relevant area and may only hold two local radio licences with that coverage provided one is an AM licence and the other is an FM licence.

Annex 2: Foreign Ownership Rules

The 1990 Broadcasting Act, as amended by the 1996 Broadcasting Act, disqualifies from holding a licence granted by the ITC or the Radio Authority:

- (i) any individual who is not a national of an EU or EEA State or even if such a national is ordinarily resident outside UK, Channel Islands or Isle of Man; and
- (ii) a company not formed within an EU or EEA State (or in Channel Islands or Isle of Man); and
- (iii) any company controlled by either (i) or (ii).

There are quite a lot of exceptions to this disqualification, but they do not include analogue terrestrial television and radio stations.

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