Report to the Secretary of State (Culture, Media and Sport) on the Media Ownership Rules

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Contents

One page summary

Parliament has put in place media ownership rules for television, radio and newspapers. In the interests of democracy, the rules aim to help protect plurality of viewpoints and give citizens access to a variety of sources of news, information and opinion.

Ofcom has a statutory duty to review the operation of, and recommend any changes to, the media ownership rules, including the media public interest test. We must report to the Secretary of State (Culture, Media and Sport) at least every three years. Our last review was in November 2006.

In Government's Digital Britain Final Report, Government asked us specifically to consider the impact of the current local media ownership rules on the sustainability of local media.

On 31 July 2009 we published a Consultation Document which set out our proposed recommendations. Consultation responses were generally supportive of these recommendations. This report sets out our final recommendations to the Secretary of State (Culture, Media and Sport), taking into account all consultation responses.

We have found that even though consumers are increasingly using the internet as an alternative source of news, there is still strong reliance on television, newspapers and radio. However, these industries are facing significant economic changes. These are most acute in local media. Some relaxation of the local ownership rules will benefit citizens and consumers by helping to ensure that local content continues to be commercially provided. Therefore, we recommend:

- Removing the local radio service ownership rules and the local and national radio multiplex ownership rules. This would reduce regulation on an industry facing difficult market conditions and increase the likelihood that stations continue to be viable. Research also shows a majority of consumers are not concerned about single ownership within local commercial radio.
- Liberalising the local cross media ownership rules so that the only restriction is on owning all three of: local newspapers (with 50% plus local market share); a local radio station; and a regional Channel 3 licence. This liberalisation will increase the flexibility of local media to respond to market pressures. Consumers still rely on television, radio and press for news so we are not recommending complete removal of the rules.

There is little current evidence of change since Parliament put in place media ownership rules that affect the operation of the remaining rules. Therefore, we do not recommend changes to:

- The national cross media ownership rules which restrict cross ownership of Channel 3 and national newspapers, as they both remain significant sources of news.
- Ownership restrictions which apply to television and radio broadcasting licences to guard against undue influence, as these media can still influence society.
- The appointed news provider rule which helps ensure national and international news on Channel 3 is independent of the BBC and adequately funded, as Channel 3 remains the most watched alternative source of broadcast news after the BBC.
- The media public interest test which continues to provide a backstop for Government to intervene to prevent media mergers on public interest grounds, including for the protection of plurality, as Parliament's original rationale is unaffected.

It is now for Government to consider what action to take and ultimately for Parliament to make any changes through secondary legislation.

Summary of the media ownership rules

Type	Principle	Geographic application	Media
Local radio ownership rules	Detailed rules about the number of analogue and digital radio licences one person can own in specified geographical areas (the **local radio service ownership rules**) and limits on ownership of local DAB multiplexes whose coverage overlaps (the **local radio multiplex ownership rules**).	Local	Radio
Local cross media ownership rules	Rules which prevent one person from owning different types of local media over specified market share levels.	Local	Radio, television (Channel 3) and newspapers
National cross media ownership rules	Rules which prevent one person from owning a Channel 3 licence and one or more national newspapers with an aggregate market share of 20% or more. Also prevents the owner of one or more national newspapers (with an aggregate market share of 20% or more) owning more than a 20% interest in a company which holds a Channel 3 licence.	National	Television (Channel 3) and national (UK-wide) newspapers
National radio multiplex ownership rules	A rule that one person can't own more than one national radio multiplex	National	Radio
Restrictions on holding broadcast licences	Rules which prevent or limit control of television and radio by certain owners whose influence might cause concern. (E.g. political parties and religious bodies.) There are also a number of qualified restrictions (e.g. Channel 4 and S4C may not hold Channel 3 or Channel 5 licences).	Both local and national (depending on specific rule)	Radio and television
Appointed news provider rules	Rules for the provision of national and international news to Channel 3 by an independent news source independent of the BBC, not under the control of political or religious bodies and suitably well funded.	National	Television (Channel 3)
Media public interest test	Rules which mean that for media mergers the Secretary of State (BIS) may intervene on "public interest grounds". These grounds include media plurality. Ofcom's role in these cases is to provide advice as appropriate.	Both local and national	Radio, television and newspapers

Section 1

Executive summary

Media ownership rules help ensure people can access diverse viewpoints

1.1 Parliament has put in place media ownership rules to govern the ownership of television, radio and newspapers. Their aim is to help protect plurality – allowing citizens access to a variety of sources of news, information and opinion.

1.2 The media ownership rules are separate from the merger regime, which applies to all sectors including media. The merger regime aims to prevent consolidation which would lead to a substantial lessening of competition in particular markets. Although not its primary purpose, the merger regime may indirectly protect plurality by preventing too much consolidation in a particular market on competition grounds.

1.3 The media public interest test was introduced by Parliament to allow the Secretary of State (Business, Innovation and Skills)[1] to intervene, at his or her discretion, in newspaper, broadcasting and cross media mergers if he or she believes they raise public interest considerations. These include the need to ensure the accurate presentation of news, free expression of opinion and plurality.

1.4 The ability of the Secretary of State (BIS) to use this test is important, as it can act as a mechanism for protecting plurality which is the main objective of the media ownership rules.

Ofcom has a duty to regularly review the media ownership rules

1.5 Parliament gave Ofcom a duty to review the operation of the media ownership rules (including the media public interest test) at least every three years. The duty does not include review of the merger regime, except for the media public interest test. We completed our first review in November 2006.

1.6 Ofcom's duty is to provide a report to the Secretary of State (Culture, Media and Sport)[2] on the operation of the rules and any recommendations for change. It is then for Government to consider what action to take and ultimately for Parliament to make any changes through secondary legislation.

1.7 In carrying out this review, we have considered whether the media ownership rules are still operating effectively in delivering the purposes Parliament intended. We have taken into account Parliament's reasons for putting the rules in place and the assumptions about the media environment the rules were based on.

1.8 We have considered a range of factors that might have changed these assumptions, including consumer behaviour, and whether the rules are stopping industry from adapting to economic pressures. We have focussed on changes since 2003, when Parliament last significantly amended the media ownership rules.

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[1] Hereafter referred to as Secretary of State (BIS).
[2] Hereafter referred to as Secretary of State (CMS).

1.9 On 31 July we published a Consultation Document on our Media Ownership Rules Review.[3] We have not previously, and are not required to, consult on our media ownership rules review before we provide our report to the Secretary of State (CMS). However, given the changes in local media, we chose to consult on this occasion.

1.10 The Consultation Document set out an overview of the rationale for the media ownership rules and an explanation of the context and approach for our review. It also set out for consultation our evidence about the changing media landscape and our proposed recommendations to the Secretary of State (CMS).

1.11 We received 14 responses to our consultation. Consultation responses were generally supportive of our proposed recommendations. This report takes into account all consultation responses in making our final recommendations to the Secretary of State (CMS).

While use of the internet is growing, the large majority of people still consume news through television, radio and newspapers

1.12 In our Consultation Document, we set out evidence supporting our proposed recommendations to the Secretary of State (CMS). Since 2003, we have seen significant growth in digital media. Consumers can now access news content across a variety of digital platforms. The most significant change is in broadband take-up. Across the United Kingdom (UK), take-up has increased from 4% in 2003, when the current rules were enacted, to 68% in early 2009.

1.13 The internet is a growing source of news and gives its users new ways to access and engage with news content. Despite the increased choice of platforms and content, consumer behaviours have not changed as quickly as might have been expected. Radio, television and newspapers remain important sources of news for consumers.

1.14 Television remains by far the most popular medium for UK news, with 74% of people in the UK using it as their main source of UK news. There are indications that television may have become even more important over recent years. Newspapers, radio and the internet are considered to be the main source of UK news by a broadly similar number of consumers (8%, 7% and 6% respectively).

1.15 For local news and information, television (49%), newspapers (24%) and radio (12%) remain the main sources. The internet is used by 4% as a main source of local news.

Economic challenges are having an impact, with significant pressures on local media

1.16 While consumption through traditional platforms remains important, structural changes are underway in the newspaper, television and radio industries. They stem from both emerging changes in consumer behaviour, and the arrival of new competition for audiences and advertising revenue arising from the growth of digital platforms.

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3 http://www.ofcom.org.uk/consult/condocs/morr/morrcondoc.pdf

1.17 These changes create opportunities for businesses but they also create challenges. The recession heightens these challenges as the overall amount of money spent on advertising has fallen significantly. Meanwhile, online advertising is taking an increasing share of the remaining revenues.

1.18 National newspaper circulation figures have been slowly declining for a number of years. The current economic environment adds to the pressure on newspaper businesses as it also affects advertising revenues.

1.19 Commercial radio is also challenged by these trends. At the time of writing, the most pessimistic forecasts have suggested that commercial radio's revenues could decline by 20% over 2009. There have also been trends towards consolidation in radio since our first review of the media ownership rules, with Global Radio and Bauer emerging as the largest groups.

1.20 In television, Ofcom's Second Public Service Broadcasting Review demonstrated that advertising funded broadcasting is facing significant structural pressures brought about by the migration to a fully digital market and that the impact of this is being exacerbated by the current economic downturn.

1.21 Some of the most significant pressures are being seen in local media. Local and regional newspapers rely more heavily on advertising, particularly classified advertising, than their national counterparts. Our analysis also suggests that commercial radio stations serving smaller areas are particularly vulnerable.

Consultation responses generally supported our proposed recommendations

1.22 We have taken consultation responses into account and set out in this report our final recommendations to the Secretary of State (CMS). We are recommending that some rules be changed and others kept as they are. Below we explain the reasons for each of the proposed changes, the issues and concerns raised by consultation responses, and our response to those issues.

1.23 To summarise, our recommendations are:

Rules	Recommendations
Local radio ownership rules	Removal
Local cress media ownership rules	We recommend liberalisation so that the only restriction is that a person can't have a radio licence and 50% or more market share of local newspapers and the regional channel 3 licence.
National radio multiplex ownership rules	Removal
National cross media ownership rules	No change
Appointed news provider rules	No change
Restrictions on holding broadcast licences	No change
Media public interest test	No change

We recommend removal of the local radio multiplex and service ownership rules

1.24 After Ofcom's Future of Radio Review in 2007, we recommended that the Secretary of State (CMS) consider simplifying the radio ownership rules. In its Digital Britain Final Report, Government accepted these recommendations. However, it has now asked us to review whether the local analogue and DAB service rules (the local radio service ownership rules) are needed at all.

1.25 In our Consultation Document, we recommended that the local radio service ownership rules be removed because of the financial pressures that stations face. Stations may be made more viable under common ownership in given local markets. We also took into account research showing that a majority of consumers are not opposed to single ownership in local commercial radio. We suggested that there is a risk that the rules could reduce consumer choice in local markets.

1.26 In putting forward this recommendation, we hope to further the interests of citizens and consumers by removing any potential for the rules to cause commercial failures, thereby resulting in a lessening of plurality. Some relaxation could help to ensure local radio content continues to be commercially provided.

1.27 If the rules are removed, the BBC's local radio services and the community radio sector will continue to play a role alongside commercial local radio.

1.28 We received six consultation responses that supported removing the local radio service ownership rules. One response was against, suggesting that removing the rules would mean insufficient guarantees of plurality, and argued that there is no evidence that the rules are challenging the sectors viability or are disproportionate. Other responses we received agreed that removing the rules might afford some stations the chance of making cost savings.

1.29 In 2007 we recommended simplifying the local radio multiplex rules, and noted that there might also be a case for their abolition. We suggest here that in view of Government's stated policy of digital upgrade for radio, retaining the rules could be a barrier to investment in the DAB platform. We also suggest they do little to guarantee plurality of voice, as ownership of a multiplex need not be linked to ownership of stations and it is the latter which provide plurality.

1.30 We recommend that the local radio service level ownership rules and the local multiplex ownership rules are removed.

We recommend liberalisation of the local cross media ownership rules

1.31 The local cross media ownership rules are designed to ensure plurality across the three most influential local media - newspapers, radio and television.

1.32 The local media industry is facing significant change. Cross media business models are one way the sector could respond. There may be limited instances, for example between press and radio, where synergies may provide consumer and industry benefits. Removal of the local cross media ownership rules could reduce barriers to achieving these synergies.

1.33 Research published in our Consultation Document shows that television (49%), newspapers (24%) and radio (12%) remain the main source of local news for most people, with indications that television may have become even more important over recent years. The internet has yet to become the main source of news for many people (4%).

1.34 Because consumer behaviour is still centred on the use of television, radio and newspapers there is still a risk that complete removal of all the local cross media ownership rules could reduce protections for plurality. This is an interest Parliament considered was important when the rules were enacted. If total removal occurred, it would allow one commercial provider in a local area to operate alongside the BBC. The merger regime and the media public interest test would still operate, but they provide a less clear protection for plurality.

1.35 But we recognise that the local media industry is under pressure and changes to the rules now could help local media businesses respond. Giving industry the opportunity to respond is in the interests of citizens and consumers as it helps to ensure that local media continues, contributing to plurality. Some relaxation could help to ensure local content continues to be commercially provided, which would benefit citizens and consumers.

1.36 Research also shows that 67% of adults believed that local cross media ownership of television, newspapers and radio would not matter as long as they retained at least one of: a choice of national media; alternative sources from the BBC; or local news and information online.

1.37 As a result, we consulted on recommending that current rules are liberalised so that the only restriction would be on ownership of all three of: local newspapers (with 50% or more local market share); a local radio station; and the regional Channel 3 licence.

1.38 Consultation responses were generally supportive of our proposed recommendations to liberalise the rules. Eight respondents supported liberalisation. Of these, the Newspaper Society and the Guardian Media Group advocated complete removal. Three respondents – BECTU, Professor Hutchison and Ofcom's Advisory Committee for Scotland – argued against liberalisation.

1.39 The Broadcasting Entertainment Cinematograph and Theatre Union (BECTU) and Professor Hutchison from the Glasgow Caledonian University argued against liberalisation because of concerns about the implications for local media plurality. We have taken these arguments into account in putting forward our recommendation to liberalise, rather than remove, the rules. We proposed liberalisation rather than removal to strike a balance between enabling flexibility of industry to adapt to change while still retaining some protections for plurality.

1.40 Consumer Focus Scotland and Ofcom's Advisory Committee for Scotland raised concerns about the implications for plurality in Scotland. This issue has been raised by stakeholders in Scotland but we note that it would equally apply in the other devolved nations of Northern Ireland and Wales.

1.41 Liberalisation of the rules would allow a greater degree of consolidated ownership in Scotland, as in all the devolved nations. We also consider that some relaxation of local ownership rules benefits citizens and consumers by helping to ensure that local content continues to be commercially provided by enabling industry to adapt business models to respond to current challenges. However, in recommending

liberalisation, rather than complete removal of the rules, we recognise the need to retain some protections for plurality.

1.42 Protections for plurality would continue to be provided in several ways. A protection for plurality across media would still be provided by the remaining restriction on the ownership of all three of the main sources of news (television, newspapers and radio) at the local level. The BBC would continue as an alternative source and the media public interest test and the merger regime (which may indirectly affect plurality by limiting consolidation on competition grounds) would continue to operate. The national media ownership rules would prevent a person from owning the regional Channel 3 licences if that person also runs one or more UK wide newspapers which have a UK wide market share of more than 20%.

1.43 If the Secretary of State (CMS) chooses to implement our recommendations, we will continue to monitor the operation of the rules in the devolved nations as part of our ongoing duty to review the media ownership rules at least every 3 years. The issue of plurality in the nations is also part of our general duty to secure a sufficient plurality of providers of different television and radio services.

1.44 Therefore, on balance, having taken into account the consultation responses, we consider that liberalisation is the appropriate recommendation to make. We recommend that the local cross media ownership rules are liberalised so that the only restriction is that one person can't own all three of: a local radio licence, local newspapers (with 50% or more local market share) and the regional Channel 3 licence.

1.45 In making this recommendation we draw the Secretary of State's (CMS) attention to the submissions by Scottish stakeholders. If our recommendations are implemented, we will continue to monitor the operation of the rules in the devolved nations as part of our ongoing duty to regularly review the media ownership rules.

We recommend removal of the national radio multiplex rules

1.46 The national radio multiplex rules prohibit one person from owning more than one national DAB multiplex.

1.47 In our Consultation Document we proposed recommending removal of the national multiplex rules as they do little to guarantee plurality. Further, Government's stated policy priority in respect of DAB is to achieve a digital upgrade with the target date of 2015. We suggested that it may also wish to remove the national multiplex rule from this point of view, in case there is a tension between placing restrictions on multiplex ownership and encouraging investment in DAB transmission.

1.48 We received five supportive consultation responses. One response voiced competition concerns. We are satisfied that these are addressed by competition law and other regulation, including the specific provision within multiplex licences for fair and effective competition.

1.49 We recommend that the national multiplex rules are removed.

We recommend retaining the national cross media ownership rules

1.50 Parliament's purpose in enacting the national cross media ownership rules was to prevent individuals from accumulating too great a share of the national media voice by having significant interests across television and newspapers.

1.51 Evidence published in our Consultation Document suggests that television remains an important main source of news. We also looked at audience share of television news.

1.52 Since our last review in 2006, ITV1 viewing share has declined from 25.9% in 2006, to 21.7% of total news hours watched in 2008. Despite this, ITV1 remains the most watched national news provider after the BBC and still reaches a significant proportion of viewers.

1.53 Overall circulation of national newspapers has also declined since our last review, although circulation levels still remain significant. Consumers still say that newspapers are their second most used main source of news. In addition, newspapers retain an important role in setting the news agenda.

1.54 Given this, we concluded that there has not yet been such significant change in national media to mean that the current national ownership rules are no longer appropriate to achieve the purpose intended by Parliament. We therefore consulted on recommending no change to the national cross media ownership rules.

1.55 Two responses, from BECTU and Guardian Media Group, were supportive of our proposal to recommend retention. Guardian Media Group submitted that the rules should be extended to cover non-traditional media (for example, the internet). Our research shows that the internet has not yet become a main source of news for most.

1.56 Sky argued against this proposal, suggesting our analysis of the national and general media ownership rules was inadequate. We consider this in more detail in this report.

1.57 We recommend that the current national cross media ownership rules are retained.

We recommend retaining the restrictions on holding broadcast licences

1.58 Parliament placed restrictions on holding television and radio broadcast licences to protect against undue influence through television and radio by owners (including political parties and religious bodies) whose influence might cause concern.

1.59 In our Consultation Document, we set out evidence which shows that despite the growth of digital media, television and radio remain influential. Therefore we proposed not to recommend any change to these restrictions because the original rationale for Parliament setting the rules remains.

1.60 We received three consultation responses supporting our proposed recommendation to retain the current broadcasting licence restrictions from BECTU, the Newspaper Society and Ofcom's Advisory Committee for Scotland.

1.61 The Newspaper Society believed stronger restrictions upon public authorities' media activities should be put in place. This review relates to the restrictions Parliament put in place on radio and television broadcasting licences. We note that Government has

asked the Audit Commission to undertake a specific inquiry into the impact on newspapers of local authorities in taking advertising to support information sheets.

1.62 We recommend the current restrictions on broadcast licences are retained.

We recommend retaining the appointed news provider rule

1.63 The aim of the appointed news provider rule is to ensure that the provision of national and international news to Channel 3 is appropriately funded and provides effective competition to the BBC.

1.64 The evidence in the Consultation Document shows that Channel 3 is still the most watched source of broadcast news after the BBC, as it was when the rules were liberalised in 2003. As a result, we consulted on retaining the appointed news provider rule in its current form because the original rationale for Parliament setting the rules remains.

1.65 We received three responses agreeing with our proposed recommendation from BECTU, Ofcom's Advisory Committee for Scotland and Channel 4. Channel 4 highlighted its support for the arguments against extending this rule further to cover all of the commercial public service broadcasters.

1.66 We recommend that the appointed news provider rule is retained.

We recommend retaining the media public interest test

1.67 Since our last review in 2006, the Secretary of State (BIS) has intervened in the public interest over Sky's acquisition of a 17.9% stake in ITV. The case was appealed to the Competition Appeal Tribunal and more recently to the Court of Appeal.

1.68 In our Consultation Document we explained that the media public interest test continues to play an important backstop role, giving the Secretary of State (BIS) the ability to intervene to prevent media mergers on public interest grounds, including safeguarding plurality. We consulted on recommending retaining the media public interest test in its current form.

1.69 Three responses supported our proposed recommendation to retain the current test, from BECTU, Ofcom's Advisory Committee for Scotland and Guardian Media Group.

1.70 Ofcom's Advisory Committee to Scotland raised concerns about the operation of the test through a London-based government minister, noting that "the formal involvement of the devolved institutions is required for decision making sensitive to the political diversity of the UK". We consider that this is a matter for the Secretary of State and Parliament to decide upon and we note these comments to the Secretary of State (CMS).

1.71 The Newspaper Society proposed complete removal of the media public interest test as the test has not been used for local mergers and given the large number of information sources a test to prevent local mergers on plurality grounds is not required. However, we believe that the media public interest test is an important backstop to protect public interest considerations. We note the test would not be automatically triggered in the case of a local merger; it is only invoked at the Secretary of State's (BIS) discretion.

1.72 We recommend that the media public interest test is retained.

Given the changes occurring in the media landscape, it will remain important for us to review the rules regularly, in accordance with our statutory duty

1.73 It is now for Government to consider what action to take and ultimately for Parliament to make any changes through secondary legislation.

1.74 As we noted in our Consultation Document, the longer term evolution of the media landscape is uncertain and there are a number of factors which might impact on whether the rules remain appropriate and effective.

1.75 Given the rapid changes underway in media consumption and the media industry, it will remain important for Ofcom to regularly review whether the ownership rules continue to operate to protect plurality, in accordance with our statutory duty.

Section 2

Our approach to this media ownership rules review

Introduction

2.1 In this section we explain our approach to this media ownership rules review, summarising the background set out in our Consultation Document. We consider consultation responses about our approach to this review and about evidence about the changing media landscape.

The key points covered in this section are:

- We published our Consultation Document in July.
- The rationale for the media ownership rules is to help protect plurality.
- This review fulfils Ofcom's duty to report to the Secretary of State at least every three years on the rules.
- We received 14 consultation responses which we consider in this report.
- To assess whether the rules are still appropriate we have considered the current media landscape.
- The majority of consultation responses did not comment on the evidence presented about the media landscape.

We published a Consultation Document on our media ownership rules review in July

2.2 On 31 July we published a Consultation Document on this media ownership rules review.[4]

2.3 The Consultation Document set out an overview of the rationale for the media ownership rules and an explanation of the context and approach for our review. It also set out for consultation our evidence about the changing media landscape and our proposed recommendations to the Secretary of State. We summarise the key points from the Consultation Document in this section.

2.4 The consultation period for this review closed on 17 September. We received 14 responses to our consultation. A list of respondents is set out in Annex 1. The responses are published on our website, subject to confidentiality.[5]

2.5 We consider these responses in this report and have taken them into account in determining our final recommendations to the Secretary of State.

[4] http://www.ofcom.org.uk/consult/condocs/morr/morrcondoc.pdf
[5] http://www.ofcom.org.uk/consult/condocs/morr/responses/

Media ownership rules help ensure people can access diverse viewpoints

2.6 In our Consultation Document, we explain in detail why Parliament put the media ownership rules in place.

2.7 In summary, Parliament has put in place media ownership rules to govern the ownership of television, radio and newspapers. Their aim is to help protect plurality – allowing citizens access to a variety of sources of news, information and opinion.

2.8 The rules reflect a balance between:

- ensuring a range of viewpoints are available in national and local media; whilst
- allowing companies to innovate and have sustainable businesses.

2.9 The first is important for democracy because it helps encourage a culture of debate. The second benefits citizens by helping markets to deliver higher quality content. It helps consumers by encouraging thriving markets to deliver content with greater innovation.

2.10 Ownership is used as a proxy for viewpoints because media owners are assumed to be in a position to influence what is said by the media they own and how it is said. They do this by having editorial control and being able to affect the news agenda.

2.11 The rules are underpinned by several key assumptions that Parliament made about the media landscape. These are set out in paragraph 2.22 of the Consultation Document.

Ofcom has a duty to regularly review the media ownership rules and make recommendations to the Secretary of State

2.12 In Section 3 of our Consultation Document, we explained that Parliament gave Ofcom a duty to review the operation of the media ownership rules (including the media public interest test) at least every three years. The duty to review does not include the merger regime, except for the media public interest test.

2.13 This is our second review of the media ownership rules. We completed our last review in November 2006.

2.14 This responsibility stems directly from Parliament's liberalisation of the media ownership rules in 2003. Many prohibitions were removed at the time because Government believed that the rules were outdated and not flexible enough to accommodate changes happening in the media.

2.15 Parliament anticipated that in the future, further changes to the media ownership rules would be required as digital media grew. Changes in technology and behaviour could challenge the need to have the rules at all or could mean that their further relaxation is appropriate.

2.16 Our duty is to provide a report to the Secretary of State (CMS) on the operation of the rules and any recommendations for change. It is now for Government to consider what action to take and ultimately for Parliament to make any changes through secondary legislation.

The media ownership rules act in parallel to the merger regime, which can indirectly protect plurality

2.17 The media ownership rules are sector specific and separate from the merger regime, which applies to all sectors including media. The two statutory regimes operate in parallel. However, as they have different purposes, they may produce different outcomes depending on the facts of each case.

2.18 The purpose of the merger regime is to prevent consolidation which would lead to a substantial lessening of competition in particular markets. Although not its primary purpose, the merger regime may indirectly protect plurality by preventing too much consolidation in a particular market on competition grounds.

The media public interest test gives the option to intervene if a merger raises public interest considerations

2.19 The media public interest test was introduced by Parliament to allow the Secretary of State (BIS) to intervene, at his or her discretion, in newspaper, broadcasting and cross media mergers if he or she believes that they raise public interest considerations. These public interest considerations include the need to ensure the accurate presentation of news, free expression of opinion and plurality.

2.20 The ability of the Secretary of State (BIS) to use this test is particularly important, as it can act as a mechanism for protecting plurality which is the main objective of the media ownership rules.

Since our last review there have been a number of policy developments

2.21 Our first review of the media ownership rules was in 2006. We did not recommend any changes because we did not find that there had been any significant problems in applying the rules. We found that while the media landscape was changing rapidly, the assumptions underpinning the rules remained valid. The exception was the local radio service ownership rules, which we recommended be amended in our Future of Radio Review in 2007.[6]

2.22 Since our last review there have been a number of policy developments relevant to the media ownership rules which we have taken into account as part of the context for our review. Explained in full in the Consultation Document, these include:

- The House of Lords' Communications Committee Inquiry into the Ownership of the News;
- The Culture, Media and Sport Select Committee Inquiry on the Future for Local and Regional Media;
- Government's Digital Britain Report;[7] and
- The Conservative Party's Creative Industries Review.

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[6] The Future of Radio: Localness on analogue commercial radio and stereo and mono broadcasting on DAB, Statement, 7 February 2008: http://www.ofcom.org.uk/consult/condocs/futureradio07/statement/statement.pdf

[7] http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf

Our approach to this review

2.23 Our aim in this review has been to consider whether the media ownership rules are still operating effectively in delivering the purposes Parliament intended.

2.24 To do this we have taken into account Parliament's reasons for putting the rules in place and the assumptions made about the media environment when it enacted them.

2.25 We have considered a range of factors that might have changed these assumptions, including consumer behaviour and whether the rules are stopping industry from adapting to economic pressures.

2.26 Our approach is based on the current media landscape. However, we recognise that there are a number of ways that the media landscape could evolve. We considered a number of future scenarios in our Consultation Document[8].

2.27 In its response, Sky noted the shorter than normal period for our consultation in this review (7 weeks). We had a shorter than average consultation period to enable us to meet our statutory deadline to report to the Secretary of State (CMS). We do not usually consult before we provide our report on the operation of the media ownership rules to the Secretary of State. However, given the changes in local media, we chose to consult on this occasion.

To assess whether the rules are still appropriate we have considered the current media landscape

2.28 The state of the media landscape is an important factor in determining whether the ownership rules are appropriate. The current ownership rules were set to address Parliament's concerns in the context of the media landscape as it was in 2003[9]. To determine whether the rules still strike the correct balance between intervention to ensure plurality and allowing companies the freedom to innovate, we began our review with an analysis of the current state of the media landscape.

2.29 As our duties stem directly from Parliament's liberalisation of the media ownership rules in 2003, we use 2003 or 2004 as the relevant point for many metrics in the report.

2.30 Sky questioned the approach that we took to this review; noting that Ofcom should have undertaken a 'thorough review, from first principles'. It argued that if we had done this, we would have concluded that 'the existing UK and competition rules, including merger control rules, are sufficient to achieve Parliaments' objectives'.

2.31 Ofcom's statutory obligation is to review the operation of, and recommend any changes to, the media ownership rules including the media public interest test. We have carried out this duty in the manner described above.

2.32 As noted in paragraphs 2.17 - 2.18 above, the merger regime may indirectly protect plurality by preventing too much consolidation in a particular market on competition

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8 See section 10 of our Consultation Document, 'Factors to consider in the longer term'.
9 See paragraph 2.22 of our Consultation Document.

grounds. However, we note that is not the primary purpose of the merger regime. The media ownership rules operate in parallel with the merger regime and they may produce different outcomes depending on the facts of each case.

2.33 In our Consultation Document in section 4, we set out a detailed analysis of the changing media landscape in the UK. A summary of our key findings, supported by research and data, is below.

The internet is a growing source of news, but the traditional platforms of television, newspapers and radio remain important as main sources of news

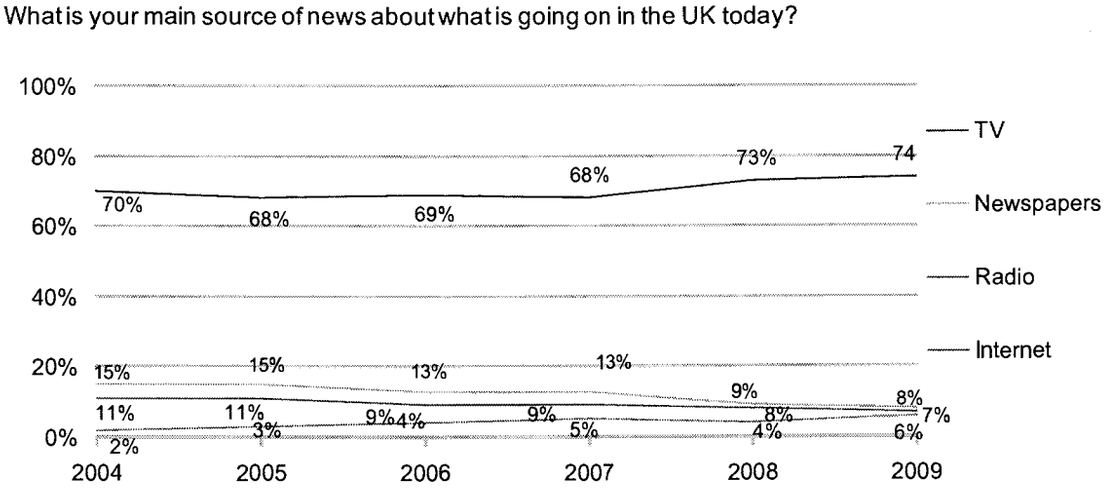
2.34 In our Consultation Document, we set out our research showing that since the rules were enacted in 2003 there has been significant growth in digital media. Consumers can now access news content across a variety of digital platforms. The most significant change we have seen since our last review is in broadband take-up. Across the UK, take-up has increased from 4% in 2004 to 68% in early 2009.

2.35 The internet is a growing source of news and gives its users new ways to access and engage with news content. However, despite the increased choice of platforms and content, behaviours in consuming news have not changed as quickly as might have been expected. A key finding from our research was that radio, television and newspapers remain important main sources of news.

2.36 As shown in Figure 1 below, television remains by far the most popular medium for UK news, with 74% of people using it as their main source of UK news in 2009. In 2004 this figure was 70%. This suggests that television may have become even more important over recent years.

2.37 Newspapers, radio and the internet are considered to be the main source of UK news by a broadly similar number of consumers (8%, 7% and 6% respectively), with the internet growing from 2% in 2006. There are indications that the internet has grown in importance since 2004, while use of newspapers and radio have declined.

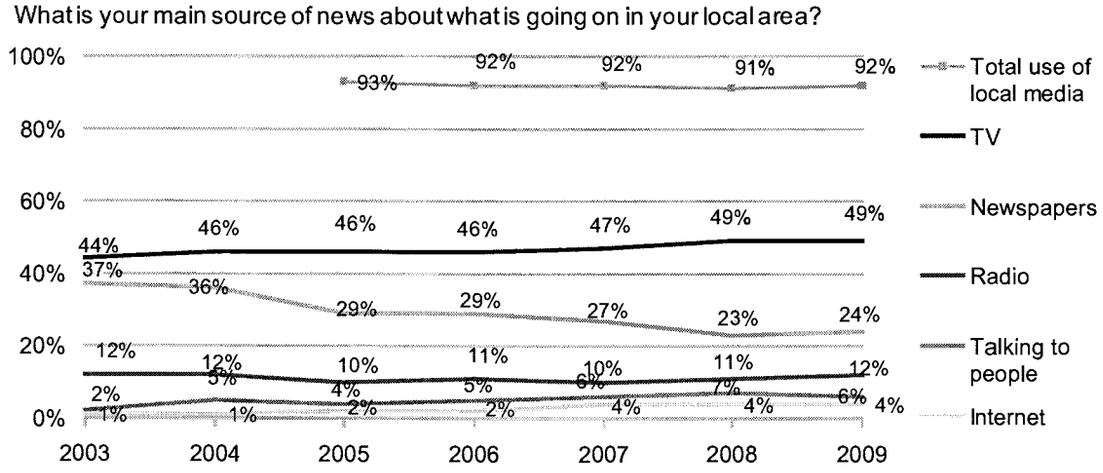
Figure 1: Consumers' main source of UK news, 2004-2009



Source: Ofcom media tracker, April 2009.
Note: Data not available for 2003. 2004 – 2008 based on rolled yearly data, not directly comparable with 2009 data. Figures for 2009 may change as further data is gathered this year.

2.38 As shown in Figure 2 below, the landscape is very different for local news and information. Here, television (49%), newspapers (24%) and radio (12%) are the main sources of local news for people in the UK. The internet is used by 4% as a main source of local news.

Figure 2: Consumers' main source of local news, 2004-2009



Source: Ofcom's Media Tracker, rolled data from April and October 2008, April 2009 data
Base: 2046 UK adults aged 15+

But the economics of supplying news content through radio, television and newspapers have changed

2.39 While consumption through traditional platforms remains important, structural changes are underway in the newspaper, television and radio industries. They stem from both changes in consumer behaviour, and the arrival of new competition for audiences and advertising revenue arising from the growth of digital platforms.

2.40 These changes create opportunities for businesses but they also create challenges. The recession heightens these challenges as the overall amount of money spent on advertising has fallen significantly. Meanwhile, online advertising is taking an increasing share of the remaining revenues.

The most immediate challenges are being seen in local media, although there are also challenges being felt at the national level

2.41 National newspaper circulation figures have been slowly declining for a number of years. The current economic environment adds to the pressure on newspaper businesses as it threatens advertising revenues.

2.42 Commercial radio is also challenged by these trends. The most pessimistic forecasts suggested that commercial radio's revenues could decline by 20% over the course of 2009. There have also been significant trends towards consolidation in radio since our first review of the media ownership rules, with Global Radio and Bauer emerging as the largest groups.

2.43 In television, Ofcom's Second Public Service Broadcasting Review demonstrated that advertising funded broadcasting is facing significant structural pressures brought about by the migration to a fully digital market and that the impact of this is being exacerbated by the current economic downturn.

Media ownership patterns have not changed substantially in delivering national news content, except in radio

2.44 The media ownership rules assume that ownership is a proxy for viewpoints. Significant changes in ownership will have a bearing on the continued relevance of the media ownership rules. We conducted a high level analysis of the major changes in ownership within the media landscape, set out in the Consultation Document at paragraphs 4.60 – 4.70.

2.45 The greatest change at the national level is that there has been consolidation in the radio sector, with Global Radio and Bauer emerging as the largest radio groups. In addition, BSkyB has acquired a 17.9% stake in ITV plc. In 2007 the Competition Commission ruled that Sky must sell down this stake to below 7.5%. BSkyB has appealed this decision and the legal process is ongoing.

2.46 In contrast, there has been significant merger and acquisition activity in local media, resulting in the creation of some large groups. For example: since 2006, most of the main newspaper groups have acquired or disposed of titles or groups of titles. Consolidation has been primarily within a single media platform, although there is some cross media ownership between regional newspapers and radio (for instance, Guardian Media Group and Tindle), and between regional television and radio (UTV).

Most consultation responses did not comment on the evidence presented about the media landscape

2.47 In our Consultation Document, we welcomed further evidence on our assessment of the media landscape, including key examples of international regulatory best practice that might be relevant to the review.

2.48 The majority of consultation responses did not comment on our evidence. We received comments from Ofcom's Advisory Committee for Scotland, the Radio Centre and Sky. No examples on international best practice were put forward.

Comments from the RadioCentre

2.49 The RadioCentre's response elaborated on our summary of the economic difficulties facing local commercial radio. It agreed with our data, and also pointed to two pieces of their own research, one showing the proportions of stations currently in a loss-making position, and the other analysing profitability over the last five years. We agree that the situation is difficult for local commercial radio and in our parallel consultation on Localness regulation, have discussed this more extensively.[10]

2.50 RadioCentre's response also highlighted the changes in consumption of radio, as a factor furthering the case for relaxation of radio ownership. We emphasise that the

[10] See Radio: the implications of Digital Britain for localness regulation, http://www.ofcom.org.uk/consult/condocs/radio/condoc.pdf, sections 5.41 to 5.53 (p. 29-33)

evidence here is mixed. On one hand, radio is less likely to be a sole or primary source of news, as our evidence and the RadioCentre's response notes. On the other hand, we discussed types of local radio content in our Localness consultation, and noted research which found that news is rated by consumers as the one of the most important types of content on local commercial radio.[11]

Comments from Ofcom's Advisory Committee for Scotland

2.51 Ofcom's Advisory Committee for Scotland noted that it found our research on consumer use of local media informative and valuable. But it raised a concern that that only one Scottish sample (Glasgow).

2.52 This refers to the qualitative research that we conducted to inform our review of local media provision in the UK. As part of this we looked at consumers' attitudes to ownership of local media. This research was carried out at seven locations across the UK, including one group in each of the devolved nations. As the Advisory Committee noted, we held the Scottish group in Glasgow.

2.53 Alongside this qualitative research, we also drew on two main sources of quantitative research. These were our Media tracking study, and research we conducted for this review and our 'Local and Regional Media in the UK' discussion document.[12] We designed the samples of both these surveys to be nationally representative of the UK, and to be representative of the constituent nations of the UK, including appropriate rural and urban breaks.

2.54 Additionally, our Media Tracking study asked consumers in Scotland, Wales and Northern Ireland what their main source of news for their (devolved) nation was. In the case of Scotland, responses were almost identical to responses on the main source of news for national (i.e. UK-wide) news.

Comments from Sky

2.55 Sky made two main points on the evidence we presented in our Consultation Document.

2.56 First, it suggested we should take into account other sources of news accessed by individuals.

2.57 We recognise that use of secondary sources of news is important, however, the focus in our review was on the use by consumers of their main source of news because this is the point at which greatest influence can be exercised and which is therefore most significant when considering the media ownership rules.

2.58 We also recognise that a number of people do not actively watch television news. For example, Sky noted that Figure 6 of the Competition Commission's report[13] shows that in 2007 a third of the population did not actively watch television news. This is consistent with our analysis.

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[11] See Radio: the implications of Digital Britain for localness regulation, http://www.ofcom.org.uk/consult/condocs/radio/condoc.pdf, p. 23-24.
[12] See http://www.ofcom.org.uk/research/tv/reports/lrmuk/.
[13] http://www.competition-commission.org.uk/rep_pub/reports/2007/fulltext/535ai.pdf

2.59 Figure 4 of the Consultation Document[14] shows that in 2007 32% of people did not consider television to be their main source of UK news. Since 2007 the number of people who say that television is not their main source of news has fallen to 26%. This indicates that television is becoming more important as a main source of news.

2.60 Secondly, Sky suggested we update the international benchmarking exercise conducted in our previous review in 2006.[15]

2.61 International benchmarking is helpful to understand any trends or radical reviews taking place. When we conducted our last review, our conclusion was that, of the countries reviewed, those with ownership rules had not apparently moved to abolish them, and those countries without rules had not moved to introduce rules.

2.62 Since we published our Consultation Document, we have asked regulators in the eight countries reviewed in 2006 to provide a brief update on their respective countries media ownership rules to see whether there have been any significant developments and relevant amendments to those rules.[16]

2.63 From the reports, four out of the eight countries have conducted either a full or partial review of their media ownership regime - these were Australia, the US, the Netherlands and France. The primary motivation to review existing rules seemed to be to take account of technological developments and the growth of new media (e.g. France, Australia), though the US has a duty to conduct a quadrennial review of ownership rules.

2.64 From our analysis there has been no radical scaling back of ownership rules. However, there continues to be a steady trend towards liberalisation including in particular, of local cross media ownership.

2.65 In Australia, for example, it is now possible for any company or individual to own or control two out of three traditional media platforms in a particular local market. Cross media ownership on two platforms is allowed, but not on three.

2.66 Some of the other countries we looked at continue to have minimal or limited rules (Denmark, Finland, Sweden, and Luxembourg) and these have not changed since 2006.

2.67 In putting forward this analysis, we note that Ofcom's statutory obligations relate to reviewing the media ownership rules as they operate in the UK. It is also difficult to make direct comparisons between jurisdictions when considering media ownership rules because each country has a very different market profile and history of media regulation, and often has differing political, cultural or local reasons for introducing rules.

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[14] Figure 4, consumers' main source of UK news, 2004-2009, p. 25 of Consultation Document.

[15] Annex 2, Review of Media Ownership Rules 2006: http://www.ofcom.org.uk/research/media_owners/rulesreview/rules.pdf

[16] There are numerous and varying indicators used in Member states to protect and preserve pluralism and diversity in the media such as for example programme specific obligations, and specific local licensing policy, which we have not looked at for the purposes of this consultation.

Section 3

Local media ownership rules

introduction

3.1 This section considers local radio ownership and local cross media ownership rules – the most complex and detailed ownership rules. It analyses the consultation submissions made about our recommendations on the local radio service ownership rules and the local cross media ownership rules and sets out our recommendations to the Secretary of State (CMS) on these rules.

The key points covered in this section are:

The local radio service ownership rules

We recommend removal of the local radio service ownership rules (sometimes called the 'points system') and the local multiplex ownership rules

- It would reduce regulation on an industry facing difficult market conditions
- Research shows a majority of consumers are not concerned about single ownership within local commercial radio.
- Most respondents agreed with or did not comment on this proposal.

The local cross media ownership rules

We recommend liberalisation of the local cross media ownership rules so that the only restriction is on ownership of all three of: local newspapers (with 50% or more local market share); a local radio station; and a regional Channel 3 licence

- Liberalisation could give the industry more flexibility to respond to pressures and remove potential barriers to the longer term sustainability of the sector. However, we consider that, based on consumer behaviour, some rules are still needed to protect plurality.
- Liberalisation will benefit citizens and consumers by helping to ensure that local content continues to be commercially provided.
- Most respondents agreed with our proposed recommendations, although some concerns were raised about the implications for plurality at the local level. We have considered these responses and, based on our analysis, consider that on balance liberalisation strikes the correct balance between allowing greater flexibility for industry while retaining protections for plurality.

The local ownership rules were put in place to ensure plurality in local media

3.2 Parliament put in place the local radio service ownership rules and the local cross media ownership rules to ensure that people can access diverse viewpoints and participate in local democracy in an informed way.

3.3 As we explain in our Consultation Document (paragraphs 5.14 – 5.22) we have found that people value local content, particularly local news. As we considered in detail in

our discussion document on Local and Regional Media in the UK,[17] the local media sector is facing significant challenges. These result from structural changes in the media sector, which are being exacerbated by the current economic climate.

3.4 In the Digital Britain Final Report, Government asked us to look at all local ownership rules, including consider specifically:

- the impact of the current local ownership rules on the long term sustainability of the local media market; and
- whether the current radio ownership 'points system' (i.e. the local radio service ownership rules) are any longer desirable or sustainable.

3.5 Government noted that it believed that a case could be made for greater flexibility in the local cross media ownership and radio ownership rules to allow greater consolidation which could contribute to the sustainability of local voices alongside the BBC.

Local radio service ownership rules

The local radio service ownership rules limit the number of radio licences in an area that can be held by a single person and restrict local DAB multiplex ownership

3.6 The local radio service ownership rules limit:

- the number of analogue radio licences that one person can own in a local geographical area; and
- the number of local DAB multiplexes whose coverage overlaps that one person can own.

The rules are intended to ensure plurality in local radio

3.7 The restrictions on radio analogue licences effectively guarantee that where there are more than two commercial radio services in addition to the BBC, at least two will be owned by different entities. This is sometimes described as the '2+1' rule, the '1' signifying the BBC.

3.8 The multiplex rules are also intended to ensure plurality of local radio voice.

When we last reviewed the local media ownership rules we recommended some changes to the local radio service ownership rules and no changes to the local cross media ownership rules

3.9 In our 2006 review we stated that we would consider the rules which affect radio in our subsequent Future of Radio – the Next Phase consultation.[18] This was because we felt it was important to consider the media ownership rules which affected radio in

[17] http://www.ofcom.org.uk/research/tv/reports/lrmuk/

[18] http://www.ofcom.org.uk/consult/condocs/futureradio07/nextphase.pdf - see discussion of ownership beginning p, 50.

the context of other changes to the structure, licensing and regulation of commercial radio as a whole.

3.10 Following the Future of Radio – the Next Phase consultation we recommended that the Secretary of State (CMS) consider:

- simplifying the local analogue and DAB services rules by bringing together the local analogue and DAB services rules into a single set of rules; and
- simplifying the local DAB multiplex ownership rules and noted that there may be a case for their abolition.

3.11 We concluded that, in the context of the sector at that time, the local cross media ownership rules should not be removed because they were still important for plurality in local media. [19]

3.12 Our recommendations have not been implemented by Government to date, but in its Digital Britain Final Report Government stated that it accepted our recommendations to simplify the local radio service ownership rules.[20]

We consulted on recommending removing all the local radio specific ownership rules

3.13 In our Consultation Document we considered the arguments in favour and against total removal of the local radio service ownership rules.

3.14 We considered that it was reasonable to recommend that the local radio service ownership rules be removed because:

- The financial pressures that stations face may provide some evidence to remove the rules, if stations might be made more viable by being under common ownership in given local markets. Alternative regulation of ownership might allow some cost reductions beyond those currently possible. This could lead to consumer benefits if stations were more viable. The opportunities for consolidation could be increased if the rules were removed rather than merely simplified as we previously recommended.
- The rules are detailed and complex regulation on an industry that is facing financial difficulties.
- New research shows that a majority of consumers are not opposed to single ownership in local commercial radio. If the rules are removed, the BBC's local services and the community radio sector will continue to play a role alongside commercial local radio.
- There is a risk that the application of the rules could act to reduce choice for consumers in local markets. This could occur in cases where the operation of the rules requires station disposal and a buyer cannot be found for stations that must be disposed of. This risk could be heightened in the current economic climate.

[19] See Ofcom's The Future of Radio: The Next Phase: Statement and further consultation, 22 November 2007, p. 65. paragraphs.4.99 to 4.101.
[20] Government's Digital Britain Final Report, Chapter 5, paragraph 76.

- The Secretary of State (BIS) will retain the discretion to intervene in the public interest if he believes that a merger raises public interest considerations, including plurality.

3.15 In 2007 we recommended simplifying the local radio multiplex rules, and noted that there might also be a case for their abolition. We suggest here that in view of Government's stated policy agenda for radio, the proposed digital upgrade, retaining the rules could be a barrier to investment in the DAB platform. We also suggest they do little to guarantee plurality of voice.

3.16 The full evidence which supports our analysis is set out in paragraphs 5.26 – 5.52 of section 5 of our Consultation Document.

Consultation Responses

3.17 We had six consultation responses that supported removing the local radio service ownership rules (including Folder Media, Guardian Media Group, Ofcom Advisory Committee for Scotland, RadioCentre and Sunrise). A further four (Arqiva, Consumer Focus Scotland, Dr Hutchison and the Newspaper Society) did not comment on this proposal; and one response, from BECTU, argued against our proposal.

3.18 Removal was endorsed or unchallenged by industry respondents, including non-station owners who would not be directly affected, and by four non-industry respondents.

BECTU argued that removing the rules would result in an insufficient guarantee of plurality

3.19 One response, from BECTU, argued against our proposal. It suggested that removing the rules would mean an insufficient guarantee of plurality, and suggested that there is no evidence that the rules are challenging the sector's viability, or are disproportionate.

3.20 We considered a number of reasons for removing the rules. Viability was one of these: this argument was supported by several of our responses from the radio industry, including from the industry body RadioCentre. There were further reasons, set out in 4.14 above. No further evidence was offered against our suggestion that the current rules are complex and the radio rules are disproportionate relative to the size of radio as a sector.

3.21 In putting forward this recommendation, we hope to further the interests of citizens and consumers by removing any potential for the rules to cause commercial failures, thereby resulting in a lessening of plurality. Some relaxation could help to ensure local radio content continues to be commercially provided.

3.22 Having considered this response, we believe it remains appropriate to recommend removal of these local radio service ownership rules. We also note that the BBC would still provide a source of news independent from commercial radio.

3.23 The merger regime and the media public interest test would still operate, but they provide a less clear protection for plurality.

One response commented on the local radio multiplex rule

3.24 In our consultation we suggested that (but did not explicitly consult on) the local multiplex ownership rules should be removed. We received one response which commented on this rule. The argument made was very similar to one made in response to our proposal to remove the national radio multiplex rule, and is therefore addressed below.

Our recommendation to the Secretary of State (CMS) is to remove all radio specific local ownership rules

3.25 Taking into account consultation responses, our recommendation to the Secretary of State (CMS) is that all radio specific local ownership rules are removed.

Recommendation 1

We recommend that the:

- **local radio service ownership rules are removed; and**
- **the local multiplex ownership rules are removed**

Local cross media ownership rules

The current rules limit the cross ownership of local media in three ways

3.26 At the moment there are three local cross media ownership rules. One person cannot own:

Regional Channel 3 licence and local newspapers

- a regional Channel 3 licence AND one or more local newspapers that have a local market share of 20% or more in the coverage area of that regional Channel 3 licence.

Local radio licences and local newspapers/Channel 3 licence

- local radio licence(s) (where there are overlapping radio licences) with more than 45% of the radio points in the radio coverage area AND one or more local newspapers with 50% or more of the local market share in the radio coverage area OR the regional Channel 3 licence where at least 50% of the potential audience of the radio licence reside within the coverage area of that regional Channel 3 licence.

Local radio licences and local newspapers and regional Channel 3 licences

- a local radio licence AND one or more local newspapers with a local market share of 50% or more in the radio coverage area AND the regional Channel 3 licence the potential audience of which includes at least 50% of the potential audience of the radio licence.

The aim of the local cross media ownership rules is to ensure plurality

3.27 The aim of the local cross-media ownership rules is to ensure plurality and protect against the dominance of the main sources of local news by one person.

We consulted on recommending liberalising the rules

3.28 In our Consultation Document we identified three main possible recommendations we could make to the Secretary of State (CMS) about the local cross media ownership rules:

- removing all the rules;
- keeping the rules as they are; and
- liberalising the rules.

3.29 We proposed recommending liberalising the rules to remove the first two of the three local restrictions outlined above (paragraph 3.26), so that the only remaining rule is the one which puts limits on the ownership of all three platforms: local radio licences, local newspapers and the regional Channel 3 licence.

3.30 The key arguments for liberalisation, as opposed to completely removing or keeping the current rules, set out in our Consultation Document are:

- Consumer behaviour has not yet significantly changed. People still rely on television, newspapers and radio as their main source of local news and that means that owners of these sources can still exert influence in local news. This option retains a minimum protection for plurality. This is an interest that Parliament felt was important when the rules were enacted.
- We recognise the local media industry is under pressure and some liberalisation, if proportionate, could help local media respond. Evidence suggests the greatest potential for synergies exists between cross consolidation of local press and radio.
- Research shows a majority of people are not concerned about local cross media ownership.
- Liberalising the rules so that they allow greater consolidation between two different media but still restricting ownership of all three media could be the appropriate balance between the two policy aims of ensuring a minimum level of plurality and allowing companies the freedom to innovate.

3.31 The key arguments against this option are that:

- Evidence suggests there is little immediate commercial appetite to consolidate across media and current trends are to consolidate within the newspaper and radio industries.
- While it is uncertain how developments in local media will progress, if cross media models are pursued, this option may not be sufficiently flexible to allow

industry to adapt. In that case, complete removal might be a more appropriate option.

3.32 The full evidence which supports our analysis is set out in paragraphs 5.68 – 5.86 of section 5 of our Consultation Document.

Consultation responses were generally supportive of liberalisation

3.33 Consultation responses were generally supportive of our proposed recommendation to liberalise the rules. Eight respondents supported liberalisation. Three respondents – BECTU, Professor Hutchison and Ofcom's Advisory Committee for Scotland – argued against liberalisation.

3.34 The Newspaper Society and Guardian Media Group went further than liberalisation and advocated complete removal. Guardian Media Group noted that while "any steps to reduce regulatory burdens and encourage owners to consider M&A activity within the local media sector" were "welcome", and that they supported the recommendation to liberalise local cross-media ownership rules; "this partial liberalisation of local cross-media ownership rules will present only limited opportunities for synergies and therefore limited commercial benefits to media owners." Guardian Media Group concluded that our proposals were "a helpful and positive step", but that it would "not transform the position of local media organisations."

3.35 We agree with Guardian Media Group's submission that deregulation will provide the industry greater flexibility to respond to these pressures.

3.36 The benefits of deregulation must be weighed against the need to protect plurality. In particular, we note that based on current consumer behaviour, it is clear that a majority of consumer's continue to use television (49%); newspapers (24%) and radio (12%) as their main source of local news.[21] Therefore, we believe that it is necessary to retain some protection for plurality in local media, and that total removal of the local media ownership rules is not appropriate.

3.37 Other responses provided conditional support for our proposal to liberalise the local cross media ownership rules. Sunrise Radio (Yorkshire) submitted that a local newspaper and local radio should not be allowed to merge when they are the only services in the area.

3.38 ISBA proposed a different system from our proposals setting out limits based on advertising revenue share. We note that ISBA's suggestion focuses on the advertising market, which is relevant to the level of competition in the market and is not an appropriate test for plurality of viewpoints available to consumers.

It is helpful to clarify how the proposed liberalised rules might operate

3.39 Responses indicated that it would be helpful to clarify how the liberalised rules would operate.

3.40 The proposed liberalisation is not based on any new legislation. We are recommending that existing elements of the rules at the local level could be

[21] Figure 8, p.28 of the Consultation Document, using data from the Ofcom media tracker, April 2009.

removed.[22] It is for Government and ultimately Parliament to decide if and how to implement Ofcom's recommendations on the media ownership rules.

3.41 If the local radio service level ownership rules are also removed as we recommend above, then there will be no limits - under the revised media ownership rules - on the total number of radio stations that a person can own. The merger regime, including the media public interest test, would still apply to any consolidation within the radio industry.

3.42 The proposed liberalisation of the local cross media ownership rules means that there would be no restrictions under the ownership rules (as distinct from the merger regime) on:

- one person owning multiple local radio services and all local newspapers;

or

- one person owning the regional Channel 3 licence and all local newspapers;

or

- one person owning the regional Channel 3 licence and multiple local radio services.

3.43 As outlined above, if our recommendations were implemented the combined effect of the proposed removal of the local radio service ownership rules and the liberalisation of the local cross media ownership rules is that the only remaining ex-ante restriction on local media ownership is that one person could not own in a local radio coverage area:

- a local commercial radio licence; AND
- the regional Channel 3 licence the potential audience of which includes at least 50% of the potential audience of that radio service; AND
- one or more local newspapers with 50% or more of the local market share in that radio coverage area.

3.44 The merger regime, including the media public interest test, would still apply to local ownership changes in accordance with the current provisions.

Submissions against liberalisation raised concerns about plurality

3.45 Four responses (BECTU, Professor Hutchison, Consumer Focus Scotland and the Advisory Committee for Scotland) raised concerns about the implications of liberalisation for plurality.

3.46 BECTU submitted that all the rules should be kept as they are because people still rely on television, newspapers and radio and there is no evidence that the rules have hindered development in the sector.

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[22] These specific rules are at: section 1(2), Schedule 14 of the Act, and section 6(1)-(6), Part 2 of the Media Ownership (Local Radio and Appointed News Provider) Order 2003 ("the Order"). The remaining cross platform local rule which we recommend is retained is at section 6(7), Part 2 of the Order.

3.47 Professor Hutchison from the Glasgow Caledonian University raised concerns about the potential for real "local monopolies" in local news if local newspapers and radio merged. He argued that restrictions that apply only when a Channel 3 licence is also owned are not sufficient protection.

3.48 In putting forward the recommendation to liberalise the local cross media ownership rules, we took into account consumer research which shows that television is the most frequently cited main source of local news for consumers. Figure 8 in the Consultation Document[23] shows that 49% cite this as their main source of local news.

3.49 We also recognised that the implication of liberalisation is that there is greater potential for consolidation, particularly across local newspapers and radio.

3.50 We balanced the potential for this to occur against the fact that the liberalisation would enable local media the opportunity to develop new business models, needed in the current economic climate. This could give local media the opportunity to adapt and to ensure a level of local commercial media continues to be commercially provided.

3.51 We also took into account the fact that research shows that consumers still use television, radio and press as a main source of local news. We agree with BECTU's point on this matter.

3.52 As a result, we proposed recommending liberalising the rules, rather than removing them completely, because we recognise the need to maintain a minimum protection for plurality in local media. We do not believe the arguments raised causes us to change our recommendations.

Implications for the nations

3.53 Specific concerns were raised by Consumer Focus Scotland and Ofcom's Advisory Committee for Scotland about the implications of liberalisation for plurality in Scotland.

3.54 Consumer Focus Scotland was cautiously supportive of liberalisation but asked that Ofcom consider how it can monitor the impact on plurality in content in Scotland.

3.55 Ofcom's Advisory Committee for Scotland noted that while they "appreciated and understood the logic" of liberalisation, they were concerned that it could allow one owner to dominate the news agenda in Scotland at the "local, regional and pan-Scottish level". They put forward as an example that one person could own all the "major" press titles, radio stations and internet local news providers in Scotland. They submitted that this would not be in the public interest.

3.56 They also raised concerns that it could be argued by some that the protection for plurality provided by the media public interest test may not operate effectively in the Scottish context as the decision to intervene is made by the Secretary of State (BIS), sitting in Westminster. We address this in our section on the media public interest test at paragraph 8.14.

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[23] Figure 8, Consumers' main source of local news, 2004-2009, Consultation Document, p. 28.

3.57 If the local cross media ownership rules are liberalised as we propose, then they will permit a greater level of consolidation among television, radio and newspapers providers in Scotland, as in all the nations. However, there would still be a number of protections for plurality.

We are proposing that a restriction be retained that prevents one person from potentially dominating the news agenda across all three platforms of radio, "local" newspapers (with a 50% or more market share) and Channel 3 television. This would mean that, as in all the nations of the UK, there would still be a restriction on one person owning in each local radio coverage area in Scotland:

- a commercial local radio licence; AND
- the regional Channel 3 licence the potential audience of which includes at least 50% of the potential audience of that radio service;[24] AND
- one or more "local" newspapers with 50% or more of the local newspaper market share in that radio coverage area.

3.58 The liberalised local cross media ownership rules would therefore continue to provide a level of protection for plurality across the three main sources of Scottish news in Scotland.

3.59 We note the Advisory Committee's reference to internet local news providers as set out in paragraph 4.48 above. However we have found that in Scotland, as in the rest of the UK, the internet has not yet supplanted television, newspapers and radio as the main source of local and Scottish news.[25]

3.60 In addition to the remaining restriction on local cross media ownership, other protections for plurality in Scotland would be provided by:

- The BBC, which would continue to provide an alternative source for news on television[26] and radio. We acknowledge the Advisory Committee's point that Radio Scotland – the BBC's radio service in Scotland - predominately provides Scottish wide coverage. However, we nonetheless consider that this provides an alternative voice in the local media landscape.
- The media public interest test, which would continue to be a back stop protection (we note and address the Advisory Committee's concerns about the operation of the test in paragraph 8.14).
- The merger regime, which may also (indirectly) affect plurality by limiting consolidation in a particular market for competition reasons.

3.61 We also note that the national media ownership rules (which we recommend are not changed, refer section 5) would prevent a person who runs one or more "national" newspapers which have a UK wide market share of more than 20% from also holding

[24] In Scotland, this would be the regional Channel 3 services provided by STV, which covers most of Scotland, or ITV 1 Border, Cumbria, North Cumberland and the Scottish Borders in the Scottish Borders region.
[25] According to the Ofcom media tracker 2008, 1% of people in Scotland use the internet as their main source of news for what is going on in Scotland and 1% of people used the internet as their main source of new for what is going on in their local area.
[26] This includes the BBC Alba television service, which caters largely for Gaelic speakers.

any licence to provide a Channel 3 service. This would apply to the regional Channel 3 licences that cover Scotland.

3.62 Ofcom's Advisory Committee for Scotland has specifically raised concerns about how ownership of the "major agenda-setting quality press" may evolve under the liberalised rules. Under the current rules and the proposed liberalised rules, whether a newspaper is a "local" or "national" newspaper, will depend on the circumstances of the case. This has an impact on whether the newspaper comes within the scope of the remaining local ownership restriction or the national cross-ownership restriction. If a newspaper is not clearly "local" or "national", it is for Ofcom to determine in light of its circulation and influence in the UK, or part of the UK, at the time of the change in ownership which category the newspaper should be in for the purposes of the rules.

3.63 Regional newspapers that cover large sections of Scotland, pan-Scottish newspapers that cover all of Scotland and Scottish editions of UK wide newspapers all may fall within the "local" or "national" category. Ofcom will determine this on a case by case basis, taking into account each newspaper's circulation and influence throughout the UK, or in a part of the UK (including Scotland or a local area).

3.64 We appreciate the concerns raised by some of our Scottish stakeholders and draw the Secretary of State's (CMS) attention to these submissions. Having taken these into account, we still consider it appropriate to recommend liberalisation.

3.65 This is because local media is facing significant challenges across the UK. Liberalisation which permits greater cross media consolidation may give the industry more flexibility to respond to these pressures while still retaining some protections for plurality. We also consider that some relaxation of the local ownership rules benefits citizens and consumers by helping to ensure that local content continues to be commercially provided by enabling industry to adapt business models to respond to current challenges.

3.66 This issue has been raised by stakeholders in Scotland but we note that it would equally apply in the other devolved nations of Northern Ireland and Wales.

On balance we believe liberalisation is the appropriate recommendation

3.67 On balance, having taking into account the consultation responses, we consider that liberalisation is the appropriate recommendation to make to the Secretary of State (CMS).

3.68 Liberalisation ensures some rules are still in place while protecting a minimum level of plurality in local media. It limits cross-media ownership of all main sources of local news which consumer research demonstrates are still relied upon by consumers for news.

3.69 On the other hand, liberalisation gives industry some flexibility for limited instances of cross media consolidation to occur, which may help industry respond to market pressures. This will benefit citizens and consumers by helping to ensure that local content continues to be commercially provided.

3.70 In the medium to long term, further changes to the local cross media ownership rules may be appropriate as the market develops and cross media businesses emerge – however it is not yet clear how this will develop. Changes in consumer behaviour,

and the way that local media businesses are developed will need to be taken into account. Changes in ownership under the rules in the nations will also be relevant.

3.71 If Ofcom's proposals are implemented by the Secretary of State (CMS), we will monitor the impact of liberalisation of the local cross media ownership rules on plurality in content in Scotland and the other nations as part of our ongoing duty to review the media ownership rules at least every three years. The issue of plurality in the nations is also part of our general duty in section 3 of the Communications Act to secure a sufficient plurality of providers of different television and radio services.

Our recommendation to the Secretary of State (CMS) is to liberalise the local cross media ownership rules

3.72 Taking into account consultation responses, our recommendation to the Secretary of State (CMS) is that the local cross media ownership rules are liberalised so that the only restriction is that one person cannot own all three of: a local radio licence, local newspapers (with 50% or more local market share) and the regional Channel 3 licence.

3.73 In making this recommendation, we draw the Secretary of State's attention to the submissions by Scottish stakeholders. If our recommendations are implemented, we will continue to monitor the operation of the rules in the devolved nations as part of our ongoing duty to regularly review the media ownership rules.

Recommendation 2

We recommend that that the local cross-ownership rules are liberalised so that the only restriction is that one person cannot own all three of: a local radio licence, local newspapers (with 50% or more local market share) and the regional Channel 3 licence.

Section 4

National cross media ownership rules

Introduction

4.1 This section considers the consultation submissions made about our recommendations on the national cross media ownership rules and the national radio multiplex rules and sets out our recommendations to the Secretary of State (CMS) on these rules.

The key points covered in this section are:

The national cross media ownership rules

We do not recommend any changes to the national cross media ownership rules

- National free-to-air television and newspapers are still important sources of national news and ITV1 remains the second most significant free-to-air national news provider after the BBC.
- The majority of responses that commented on our proposed recommendation were supportive.

The national radio multiplex ownership rules

We recommend removing the national mutiplex ownership rules

- Multiplex ownership is a poor proxy for voice, and it may potentially conflict with Government's stated policy for digital migration on radio. Only one response objected to this proposal, and this response raised competition concerns which are separately regulated for, these not being the issue behind ownership regulation. It therefore did not cause us to change our proposed recommendation.

National cross media ownership rules

The national cross media ownership rules prohibit cross-ownership of Channel 3 and national newspapers

4.2 The national cross media ownership rules prevent:

- one person owning both a Channel 3 licence and one or more national newspapers that have an aggregate market share of 20% or more; and
- the owner of one or more national newspapers (with an aggregate market share of 20% or more) owning more than a 20% interest in a company which holds a Channel 3 licence.

4.3 'National', in the context of these rules, means UK-wide.

4.4 The national cross media ownership rules operate separately from the merger regime and the media public interest test.

The rules allow some cross media ownership but at the same time protect plurality in national media

4.5 Parliament made the national cross media ownership rules to stop individuals owning significant interests across different types of media because this could give individuals too great a share of the national media voice.

4.6 The current rules apply to the Channel 3 licences and national newspapers because Parliament considered these media to have a high potential level of influence.

We consulted on recommending that the national cross media ownership rules be retained as they are

4.7 In our Consultation Document we identified three main possible recommendations we could make to the Secretary of State (CMS) about the national cross media ownership rules:

- removing all the rules;
- keeping the rules as they are; and
- liberalising the rules.

4.8 Our proposed recommendation was option 3 – retaining the rules as they are. This was because we thought that it was reasonable to conclude that Parliament's rationale for putting the rules in place is still applicable. This is because of the evidence that the way people consume national news has not yet changed significantly, and in particular the two key pieces of evidence that:

- National free-to-air television and newspapers are still important sources of national news; and
- ITV1 remains the second most significant free-to-air national news provider after the BBC. This remains the case despite a decline in ITV1's share of total national news viewing hours. This fell from 25.9% in 2006 to 21.7% in 2008.[27]

4.9 The full evidence which supports our analysis is set out in paragraphs 6.7 – 6.22 of section 6 of our Consultation Document.

Of the consultation responses which commented on this issue, the majority were supportive

4.10 The majority of responses did not comment on this proposal. Two were supportive (BECTU and Guardian Media Group) and Sky argued against the proposal.

[27] Figure 26 and paragraphs 6.18 – 6.20 of the Consultation Document.

Guardian Media Group and Sky submitted that we should take account of the growth of non-traditional media

4.11 Guardian Media Group and Sky both submitted that we should take more account of the growth of non-traditional media (like the internet). Guardian Media Group submitted that the rules should be extended to cover non-traditional media. Sky suggested that the evidence did not support retaining the rules. It also made several comments about our approach to the review, which are considered above at paragraphs 2.55 to 2.59.

4.12 As we discuss at paragraphs 2.34 to 2.38, evidence indicates that while the internet is having a significant impact, it has not yet replaced television and newspapers as a main source of UK and local news. Indeed, there are indications that television has grown in importance as a main source of news.

4.13 Sky also submitted that our analysis downplayed the decline of national newspapers. We acknowledge that newspapers have declined in importance as a main source of UK news since the rules were last changed - from 15% of people in 2004 to 8% in 2009. However, consumers still say that newspapers are their second most used main source of news. In addition, they retain an important role in setting the news agenda.

4.14 As a result, we believe that, in this review, retaining the rules in their current form remains an appropriate recommendation.

Our recommendation to the Secretary of State (CMS) is to keep the national cross media ownership rules as they are

4.15 Taking into account consultation responses, our recommendation to the Secretary of State (CMS) is that the national cross media ownership rules are kept as they are.

Recommendation 3

We do not recommend any change to the national cross media ownership rules.

National Radio Multiplex rules

The national radio multiplex rules limit the ownership of national multiplexes

4.16 The national radio multiplex rules prohibit one person from owning more than one national DAB multiplex.

We consulted on removing the national radio multiplex ownership rules

4.17 In our Consultation Document we considered that it was reasonable to recommend that the rules be removed because:

- In the case of multiplexes, ownership is not a direct proxy for voice. In the case of the television multiplexes, there is no ownership restriction. It is therefore not clear that the rule achieves the purpose it is intended to.

- In the national digital radio market, Government's primary policy is one of digital migration, and ownership may be a secondary consideration to this, indeed the rule could be a possible disincentive to investment in the DAB platform.

4.18 The full evidence which supports our analysis is set out in paragraphs 6.35 – 6.46 of our Consultation Document.

Consultation Responses

4.19 We received five consultation responses that supported our proposal to remove this rule (including Arqiva, Guardian Media Group, Ofcom Advisory Committee for Scotland and RadioCentre). Five did not comment on the proposal (BECTU, Folder Media, Professor Hutchison, ISBA and the Newspaper Society). One of the supportive responses emphasised that it is desirable to have a range of DAB services.

4.20 One response was against removal, voicing competition-oriented concerns. It stated that: "[removal] could create a carte blanche for monopolies and unfair competition... [multiplex owners] could dictate who the programme providers would be possibly to the detriment of innovative newer operators".

4.21 These competition concerns are addressed by separate (and, we suggest, adequate) law and regulation. In addition to general competition law, there is a specific provision within multiplex licences for fair and effective competition (see Section 316 of the Communications Act, and Section 54 (1) of the 1996 Broadcasting Act).

4.22 In response to the point made about range of services, we are strongly in agreement with this, and in our currently open radio consultation make proposals for increasing the number of national DAB services.

Our recommendation to the Secretary of State (CMS) is that the national multiplex rules are removed

4.23 Taking into account consultation responses, our recommendation to the Secretary of State (CMS) is that the national radio multiplex rules are removed.

Recommendation 4:

We recommend that the national radio multiplex rules are removed.

Section 5

Restrictions on broadcast licences

Introduction

5.1 This section looks at the general disqualifications and qualified restrictions on broadcast licences and considers the consultation responses which we received in response to our proposed recommendations. It then sets out our recommendation to the Secretary of State (CMS) to retain these rules in their current form.

The key points covered in this section are:

We recommend retaining the restrictions on broadcast licences in their current form

- In our Consultation Document we found that the rationale for the restrictions on broadcast licences remains unchanged. Parliament set ownership restrictions for television and radio broadcasting licences to guard against undue influence, as these media can still influence society. This remains the case.
- We received three responses, all of which agreed with our proposed recommendation.

There are rules which limit who can hold a broadcast licence

5.2 Under the media ownership rules, a broadcast licence is a licence granted under the Broadcasting Act 1990 or the Broadcasting Act 1996 for independent television services, independent radio services, digital terrestrial television broadcasting and digital terrestrial sound broadcasting.

5.3 The media ownership rules restrict broadcast licensing in two ways:

- General disqualifications for those who are prohibited from holding all types of broadcast licence:
    - local authorities[28];
    - political bodies;
    - advertising agencies;
    - persons who, in Ofcom's opinion, are subject to undue influence by a disqualified person such as to act against the public interest;
    - the BBC and Welsh Authority (who are licensed separately); and
    - any organisation or individual who is named as a restricted person under Part II, Schedule 2 of the Broadcasting Act 1990.
- Qualified restrictions for those who are prohibited from holding certain types of broadcast licence:
    - religious bodies;

[28] "Subject to the provisions of s.142 Local Government Act 1972 which allows authorities to broadcast information relating to their activities."

- publicly funded bodies; and
- broadcasting bodies.

5.4 The restrictions are complex and apply differently to different organisations and licences. They are explained in detail in sections 7.9 – 7.28 of our Consultation Document.

The aim of the rules is to protect against undue influence and to ensure plurality

5.5 Parliament introduced rules to prevent or put restrictions on certain people holding a broadcasting licence because these people may exercise undue influence.

5.6 Further details on Parliament's rationale for restrictions are set out in sections 7.5 - 7.28 of the Consultation Document.

We consulted on keeping the rules as they are

5.7 As outlined in sections 2.23 to 2.25 in this report, our approach in this review has been to consider whether the media ownership rules are still operating effectively in delivering the purposes which Parliament intended.

5.8 In our Consultation Document we identified and assessed the arguments in favour and against three possible options for the rules on broadcast licence restrictions.

- Keeping the rules as they are;
- Removing some of the restrictions; and
- Removing all of the restrictions (general and qualified).

5.9 The main arguments in favour of retaining the rules in their current form were that:

- Research suggests television and radio continue to be influential media; and
- Despite a significant rise in the number of multichannel homes in the UK, Channel 3 and Channel 5 continue to attract significant audience share and remain influential.

5.10 The key argument for removing some or all of the restrictions was that the growth in online content might mean that the influence of television and radio had reduced, as a greater number of sources of news and information are now available online.

5.11 On balance, as outlined in sections 7.32 – 7.43 of our Consultation Document, evidence did not show that conditions have changed so that we should recommend that the Secretary of State (CMS) relax the general and qualified restrictions on who can hold a broadcast licence.

We received three consultation responses which all supported our proposed recommendation to retain these restrictions

5.12 Three respondents commented on our proposals to retain the broadcasting licence restrictions in their current form - BECTU, the Newspaper Society and Ofcom's Advisory Committee for Scotland.

5.13 Ofcom's Advisory Committee for Scotland supported our proposal to recommend that the general and qualified restrictions on broadcasting licences are retained.

5.14 BECTU specifically supported the current restrictions which apply to advertising agencies and to religious bodies, on the grounds that they favour restrictions which promote plurality and prevent excessive concentration of ownership.

5.15 The Newspaper Society strongly supported the retention of restrictions on broadcasting licences in respect of local authorities, stating that there should be stronger restrictions upon public authorities' media activities.

5.16 In response to this issue, under the existing rules local authorities are prohibited from holding a broadcasting licence for television or radio as Parliament believed that they might influence the editorial content and the agenda of broadcasters.

5.17 As outlined in paragraph 6.2 above, the media ownership rules only relate to television and radio broadcasting licenses and do not extend to newspapers or online media.

5.18 We note that in the Digital Britain Final Report, Government asked the Audit Commission to undertake a specific enquiry into the adverse impact on local newspapers of the increasing role of local authorities in taking paid advertising to support local authority information sheets.[29]

Our recommendation to the Secretary of State (CMS) is that the restrictions on broadcast licences are retained

5.19 Taking into account the consultation responses which we received, our recommendation to the Secretary of State (CMS) is to keep the broadcast licence restrictions as they are.

Recommendation 5:

We do not recommend any change to the restrictions on broadcasting licences.

[29] Government's Digital Britain Final Report, June 2009, p. 154.

Section 6

Appointed news provider rule

Introduction

6.1 This section examines the appointed news provider rule and considers the responses which we received in response to our proposed recommendation that this rule should be retained. It then sets out our recommendation to the Secretary of State (CMS) on this rule.

The key points covered in this section are:

We recommend that the Secretary of State (CMS) retain the appointed news provider rule.

- In our Consultation Document we found that the rationale for the rules remains unchanged, as the Channel 3 licence holders remain the largest commercial television providers in terms of audience share.
- We received four responses to this during the consultation period, three of which supported our proposal.

Channel 3 licence holders must get their news from a source that is independent of the BBC and suitably well funded

6.2 The aim of the appointed news provider rule is to ensure that the provision of national and international news to Channel 3 is appropriately funded and provides effective competition to the BBC.

6.3 The key elements of the appointed news provider rule are that:

- All regional Channel 3 licence holders must get their news from a single body that is suitably well-funded and independent of the BBC;
- The limits and disqualifications on holding a Channel 3 licence also apply to the appointed news provider;
- The appointed news provider is subject to restrictions on having interests in newspapers; and
- The Secretary of State (CMS) may require the Channel 5 licence holder to source its news from an appointed news provider if he or she is satisfied that the audience share of Channel 5 is broadly the same as that of Channel 3.

6.4 The rule is explained in detail in the Consultation Document in paragraphs 8.3 – 8.6.

Channel 3 has a significant role to play in ensuring plurality of news provision

6.5 Channel 3, as the largest commercial television channel, has an especially important role to play in ensuring plurality in news provision.

6.6 In terms of audience share, ITV 1[30] is the largest commercial alternative to the BBC, and as such it plays an important role in ensuring that there is adequate plurality in news provision.

We consulted on keeping the rule in its current form

6.7 In our Consultation Document we identified and assessed the arguments in favour and against three main possible options for our recommendations:

- Removing the rule entirely;
- Maintaining the rule in its current form; or
- Extending the rule to give Ofcom powers to check the resourcing of Channel 4 news.

6.8 The key argument in favour of retaining this rule was that the rationale set by Parliament for this rule remains unchanged, as:

- Our research shows that a majority of people continue to use television as their main source of news; and
- Channel 3 remains the main news provider in terms of audience share, after the BBC.

6.9 The main argument in favour of removing the rule entirely was that the growth in the number of multichannel homes meant that there are an increasing number of alternative channels to the BBC which viewers could choose to access for news provision.

6.10 The other option we proposed in the Consultation Document was to extend the scope of the existing rule so that Ofcom checks the resourcing of Channel 4 news as well as the appointed news provider for Channel 3. This argument was put forward by the House of Lords Select Committee Report on 'The Ownership of the News'.[31]

6.11 On balance, based on the evidence and analysis set out in our Consultation Document, we concluded that it was appropriate to propose recommending retaining the rule in its current form. Evidence supporting this can be found at paragraphs 8.11 – 8.15 of our Consultation Document.

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[30] See Figure 29, p. 69 of Consultation Document for ITV 1's (including STV and UTV) audience share,
[31] http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcomuni/122/12202.htm

We received four responses to our proposal on this rule in the Consultation Document

6.12 Four respondents commented on this rule in their submissions – BECTU, Ofcom's Advisory Committee for Scotland and Channel 4 agreed with our proposal. Sky made general comments against.

6.13 BECTU supported our recommendation to retain the rule in its current form, noting that Channel 3 continues to be a significant and popular source for national news and stressing that "especially in the current climate of uncertainty for commercial public service broadcasting in the UK", it believed it was "essential that the current system requiring an appointed news provider be retained."

6.14 Ofcom's Advisory Committee for Scotland also supported our proposal to retain the appointed news provider rule.

6.15 Channel 4 responded to a proposed option put forward in the Consultation Document to give Ofcom powers to check the resourcing of Channel 4, as well as the appointed news provider for Channel 3.

6.16 In agreeing with a proposed option to extend the rules to cover Channel 4 highlighted that news "sits at the heart of its public service delivery", and that it "remains committed to plurality in news provision". Channel 4 therefore submitted that there was no case for extending the appointed news provider rule to cover it as well as Channel 3, stressing that, nevertheless, "it will play its part in maintaining a sustainable alternative source of UK-wide and international news to the BBC."

6.17 In our Consultation Document, we did not put forward this proposal as our preferred option because we noted that, based on Channel 4's current audience share[32] and on the current roles of the commercial public service broadcasters, we do not believe that there is a case for change at present.

6.18 Sky submitted that we had "played down the significant increase in the use of the internet as a main source of news and the relative decline in the use of national newspapers." This point was raised more generally in relation to the appointed news provider rule as part of the national television media ownership rules as a whole, and as such we have addressed the concerns raised by Sky in greater detail in paragraphs 2.55 to 2.59 above.

6.19 Therefore, having examined each of the arguments put forward in the responses to this section of the Consultation Document, we recommend that the appointed news provider rule is retained.

Our recommendation to the Secretary of State (CMS) is that the appointed news provider rule is retained in its current form.

6.20 Taking into account consultation responses, our recommendation to the Secretary of State (CMS) is that the appointed news provider rule is retained in its current form.

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[32] Channel 4 and S4C viewing to national news annually is 4% of the total hours watched annually, compared to ITV1's total share of 21.7% and BBC at 53.8%.

Recommendation 6:
We do not recommend any change to the appointed news provider rule.

Section 7

The media public interest test

Introduction

7.1 This section considers the media public interest test as it applies to mergers. We consider consultation responses on our preferred recommendation that the test should be retained in its current form and set out our recommendation to the Secretary of State (CMS).

The key points covered in this section are:

We recommend retaining the media public interest test in its current form

- The purpose of the media public interest test is to safeguard media ownership and we have found that the rationale has not changed.
- Most responses to the consultation did not explicitly comment on the recommendation to retain the media public interest test, although several made general comments about the ongoing need to protect plurality of media ownership.

The Secretary of State (BIS) may intervene in media mergers if there are "public interest" considerations

7.2 The Secretary of State (BIS) may choose to intervene in the following types of media mergers on the public interest grounds set out:

- Newspaper mergers – the media public interest test assesses whether the merger might affect the need for:
    - the accurate presentation of the news;
    - the free expression of opinion;
    - a sufficient plurality of views in newspapers, to the extent reasonable and practicable
- Broadcasting and cross media mergers – the media public interest test assesses the relevance to the merger of the need for:
    - plurality of people controlling the media;
    - availability throughout the UK of broadcasting of high quality and wide appeal;
    - people in control of the media to have a genuine commitment to the broadcasting standard objectives set out in the Communications Act (e.g. due impartiality of news).

7.3 The provisions and the process, involving the Secretary of State (BIS), Ofcom and the Competition Commission are set out in detail in our Consultation Document at paragraphs 9.10 – 9.18.

One of the purposes of the media public interest test is to protect plurality in media ownership

7.4 The media public interest test was put in place as a safeguard to prevent undue concentration of ownership in broadcasting and newspapers, and in the case of newspaper mergers, to prevent a merger going ahead which may raise concerns about editorial interference in the accurate presentation of news. It allows the Secretary of State (BIS) to take into account factors other than competition issues which may be relevant to the merger, such as impartiality and free expression of opinion, which may act against the public interest.

We consulted on keeping the rule in its current form

7.5 In our Consultation Document we identified and assessed the arguments in favour of and against two main possible options for our recommendations: removal or retention of the current media public interest test.

7.6 We concluded that it is appropriate to recommend making no changes to the current media public interest test because it plays an important role as a final safeguard that can be invoked by the Secretary of State (BIS) should he or she feel the need arises, for example, in order to protect plurality in the event of a media merger and we believe the rationale for Parliament's decision to include a media public interest test has not changed.

7.7 In addition, we suggested that if other media ownership rules are relaxed the role of the test in acting as a safeguard of the public interest, for example in plurality, could become more important.

7.8 We considered that there may be arguments for removing the media public interest test if its existence currently deters potential media mergers or if competition in media markets automatically delivers plurality and diversity.

Three respondents agreed with our proposed recommendation to retain the media public interest test

7.9 Most responses to the consultation did not explicitly comment on the proposed recommendation to retain the media public interest test, although several made general comments about the ongoing need to protect plurality of media ownership.

7.10 Three responses explicitly supported our proposed recommendation to retain the current tests (BECTU, Ofcom's Advisory Committee for Scotland and Guardian Media Group). In offering this support, two responses ralsed issues.

Ofcom's Advisory Committee for Scotland and the Guardian Media Group indicated more clarity is needed in the way that the test applies to local or regional mergers

7.11 Guardian Media Group suggested there should be more clarity about the circumstances under which a test would be used. Similarly Ofcom's Advisory

Committee for Scotland indicated that more clarity is required about how the test applies in local or regional mergers and how devolved institutions could be involved in the process. Its response raised concerns that the protection for plurality provided by the media public interest test may not operate effectively in the Scottish context as the decision to intervene will be made in Westminster.

7.12 As noted in our Consultation Document, Ofcom will consider if it is appropriate to revisit our guidelines on the operation of the media public interest test to see if they can be usefully updated in light of our increased understanding of the process when the legal appeals process in the case of Sky's acquisition of a stake in ITV is concluded.

7.13 Since the Secretary of State (BIS) is responsible for initiating the media public interest test process, Ofcom cannot comment on the circumstances under which a test would be used. We note these concerns to the Secretary of State (CMS).

Ofcom's Advisory Committee for Scotland noted that the test depended on application in Westminster rather than in Scotland

7.14 We note Ofcom's Advisory Committee to Scotland's concerns about the lack of an explicit role for the involvement of devolved authorities in a public interest decision. We consider that whether or not to review the involvement of the devolved authorities is a political decision for the Secretary of State and Parliament to decide upon. However, we note these comments to the Secretary of State (CMS).

The Newspaper Society proposed complete removal of the media public interest test

7.15 The Newspaper Society proposed complete removal of the media public interest test. This view was based on the fact that the media public interest test has not been used for local mergers and under the previous regime local newspaper mergers were rarely blocked on plurality public interest grounds. In addition it argued that, given the large number of information sources, a test to prevent local mergers on plurality grounds is not required. The Newspaper Society proposed, however, that there is a need for rules to facilitate local consolidation to enable the survival of local newspapers.

7.16 In response to this we note that the test would not be automatically triggered in the case of a local merger, rather only at the Secretary of State's (BIS) discretion. We also note that the public interest test does not just apply to local mergers; it plays an important role as a backstop to protect media ownership plurality more broadly.

7.17 Finally, on the need for rules to facilitate local consolidation we note that Government's Digital Britain Final Report concluded that the existing merger regime is flexible and is capable of taking into account potential positive aspects of local mergers, including avoidance of failing firm arguments, efficiencies and customer benefits. Ofcom will play a role in the merger process, providing the OFT with a Local Media Assessment covering relevant factors to the merger, including relevant information about the potential positive effects of a local newspaper merger.

7.18 For this reason we do not believe it is necessary to consider recommending that new rules to facilitate local newspaper consolidation are required. Taking into account

consultation responses, our recommendation to the Secretary of State (CMS) is to retain the media public interest test in its current form.

Our recommendation to the Secretary of State (CMS) is that the media public interest test is retained in its existing form

7.19 Taking into account consultation responses, our recommendation to the Secretary of State (CMS) is to recommend that the public interest is retained in its current form. In doing so, we note Ofcom's Advisory Committee for Scotland's concerns about the lack of an explicit role for the involvement of devolved authorities in a public interest decision.

Recommendation 7:

We do not recommend any change to the media public interest test.

Annex 1

List of respondents

Arqiva

Broadcasting Entertainment Cinematograph and Theatre Union (BECTU)

Channel 4

Consumer Focus Scotland

Folder Media

Guardian Media Group

Professor Hutchison (Glasgow Caledonian University)

ISBA

Newspaper Society

Ofcom's Advisory Committee for Scotland

RadioCentre

Sunrise Radio (Yorkshire)

Sky

UTV (confidential response)

Annex 2

Glossary

Channel 3 is the 15 regional ITV licensees and one licensees (GMTV) providing the national breakfast-time services (see also ITV 1, below).

Communications Act refers to the Communications Act, 2003.

Consultation Document is our Media Ownership Rules Review Consultation Document, published on 31 July 2009: http://www.ofcom.org.uk/consult/condocs/morr/morrcondoc.pdf

ITV 1 is how 13 of the 15 regional Channel 3 licensees are branded on-air. The three licensees that are branded differently are UTV, North of Scotland and Central Scotland.

Local and Regional Media in the UK is the Discussion Document, published on 22 September 2009: http://www.ofcom.org.uk/research/tv/reports/lrmuk/lrmuk.pdf

The Localness Consultation is our consultation on Radio: the implications of *Digital Britain* for localness regulation, published on 31 July 2009: http://www.ofcom.org.uk/consult/condocs/radio/condoc.pdf

Secretary of State (CMS) is the Cabinet Minister responsible for the Department of Culture, Media and Sport.

Secretary of State (BIS) is the Cabinet Minister responsible for the Department of Business, Innovation and Skills.