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File Ref			[redacted]	
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CONFIDENTIAL - POLICY

MEDIA OWNERSHIP DECISIONS

1. We are meeting on Tuesday, 5 February, to discuss the final decisions you have to take on media ownership. Those decisions will form the basis of a letter to the Prime Minister at the end of the week.

2. The annexes attached summarise the responses we have had and make some recommendations, based on the consultation responses and on discussions we have had with Ed Richards.

3. Annex A identifies those areas where substantive decisions have already been suggested in the consultation paper. You are asked to confirm those decisions, and one additional detail regarding radio multiplex ownership.

4. The other annexes provide a summary of the consultation responses on topics the paper was less sure of, and makes some recommendations that you are asked to consider. The topics are:

   - B ITV/C5 joint ownership
   - C The ITV Nominated News Provider
   - D Cross-media ownership
   - E Plurality tests/review of rules/sunset clauses
   - F Foreign Ownership

5. Annex G summarises the package of reforms we are suggesting, and the effects they may have on the market. Annex H provides a reminder of the existing rules on cross-media ownership.

6. The reform of the special newspaper regime of the Fair Trading Act is being dealt with by the DTI, and you will be copied a parallel submission to Patricia Hewitt on this issue.

7. You asked for some further background work to be done. This will be provided in a separate submission.

[redacted]

ANNEX A

AREAS WHERE DECISIONS HAVE ALREADY BEEN TAKEN

1. ITV ownership

We will remove the 15% limit on total TV audience share.
We will remove the restriction on joint ownership of the two London ITV licences.

2. Ownership of national radio licences

A. Analogue
There will be no limits on ownership of the 3 national analogue radio stations

B. Digital
There will be no limit on ownership of national digital radio services.

3. Ownership of local radio licences

A. Analogue

We will either: adopt the original Radio Authority/CRCA proposal that there be at least 3 owners, plus the BBC, in each local area with 3 or more stations; or amend these in line with the CRCA's revised suggestion for further deregulation, to ensure at least 2 owners, plus the BBC in each area.

B. Digital

We will adopt the same scheme for local digital services as for local analogue services (ie to ensure either 2 or 3 owners in addition to the BBC in each area).

However, one question remains over multiplex ownership - the Radio Authority and the CRCA suggest that where multiplexes overlap they should be separately owned. Some of the radio groups disagree, and suggest either that there be no limits or that where there are 3 or more multiplexes, ownership is left to competition law. There is no existing limitation on multiplex ownership.

Recommendation

That there should be separate ownership of the first three overlapping multiplexes to be established in any area. Ownership of any further multiplexes should be regulated only by competition law.

Considerations

The owner of a multiplex has a powerful role as digital gatekeeper - they can decide which services run on the multiplex. It is therefore desirable that we provide for plural ownership of multiplexes from the outset of digital radio. At present there are only two areas with more than one multiplex in operation. We expect the numbers to grow, but we are not sure how significantly. 3 separate owners in any area would mirror the Radio Authority's proposals for the ownership of services.

ANNEX B

ITV/CHANNEL 5 JOINT OWNERSHIP

Consultation Responses

1. Channel 4, along with some independent voices (eg Campaign for Press and Broadcasting Freedom, Voice of the Listener and the Viewer), PACT and the Guardian Media Group, suggest that there should be a restriction on the ownership of ITV and Channel 5.

2. All other broadcasters, including Channel 5 and the BBC, maintain there should be no restriction, only competition law.

3. The Competition Commission say they do not consider Channel 5 to be an important part of the TV market in competition terms.

Recommendation

That you remove the existing prohibition on joint ownership of a national ITV licence (GMTV) and Channel 5, and impose no other restriction in its place.

Considerations

1. The existing restriction is only on joint ownership of GMTV and Channel 5. It does not prevent the owner of any other Channel 3 licence buying into Channel 5, although most of the industry think it does. To add a restriction on any joint ownership of the two Channels would actually be more regulatory, and this would probably be spotted in the draft Bill.

2. Channel 5, as the Competition Commission state in their response, has a small market share, suggesting it is not an 'important channel'. On the other hand, if does constitute a separate, if small, source of television news.

ANNEX C

ITV NOMINATED NEWS PROVIDER

Consultation responses

1. ITN's existing shareholders all argued that we should scrap both the nominated news provider system and the ownership limits on the news provider itself, to allow ITV to have control of its own newsroom.

2. ITN management privately suggest we should replace the news provider system with a process that was better able to ensure adequate quality and resources, whilst maintaining ownership rules to prevent ITV from gaining control. Channel 4 agree, and feel our proposals for a 40% limit on ownership are sensible.

3. Some respondents (ITC, Guardian Media Group, BECTU) agreed entirely with our proposals to keep the nominated news provider and raise the ownership limits to 40%.

4. The BBC felt ITV should be able to direct its own news service and thought ownership limits should be removed, although they also stressed the need to ensure adequate financing.

Recommendations

That the nominated news provider system should be kept, but that we should strengthen OFCOM's powers so that it may guarantee an appropriate level of quality and resources.

That the ownership limits on the news provider be lifter to 40%, as in the consultation proposals, but that an additional limit be imposed that ITV licencees may collectively own only 40%.

Considerations

1. We want to allow more dynamic decision-making and investment on the part of ITN's shareholders. At present there are five of them, constrained by the 20% ownership limit. It makes sense to raise this limit to allow a degree of commercial development. However, we need an ownership limit to retain the editorial independence of the BBC's main competitor, and particularly to prevent the ITV companies from gaining complete control. A 40% limit will make sure there are at least 3 owners.

2. A separate limit on ITV licensees of 40% would irritate Carlton and Granada, and if they both retain separate shareholdings it would mean at least 4 owners. However this should provide a balance to significant liberalisation elsewhere in the TV market.

3. The existing system has not supported the resources available to ITV news. ITV consider bids from the nominated consortia without effective regulatory scrutiny of price. The value of the ITV contract has fallen from £89 million to £33 million over the last ten years. ITN suggest in confidence that if it were to fall any further, they would face severe financial consequences.

ANNEX D

CROSS-MEDIA OWNERSHIP

Consultation responses

1. As ever, there was no consensus on this matter whatsoever.

2. Most large companies favour the removal of all rules in favour of competition law. If this is not deemed appropriate some in the industry (including Trinity Mirror, Guardian Media Group, the BBC, Granada, C4) will accept a system of specific rules similar to the current set-up as an alternative. The ITC also consider this the best solution.

3. The BBC and Channel 4 consider that cross-media rules should be enlarged in scope, to include restraints on platform operators' ownership of content services.

4. The Radio Authority suggest that cross-ownership should be allowed as long as three separate providers, in addition to the BBC, survive in the national television market and in national and local radio markets.

5. Radio companies are generally attracted by the 40-30-20-15 'sliding scale' model.[1]

6. SMG have their own unique suggestion, based on share of turnover.

Recommendations and Considerations

<u>General approach</u>

There should be deregulation based on the existing system of specific rules, but tempered by two considerations:
(a) The significant deregulation we are already pursuing in each individual market.
(b) The pervasive editorial influence of newspapers.

1. Alternatives such as Share of Voice and 40-30-20-15% are complex, contentious and have very little support. They would probably also need more time to draft than we have available.

2. We have already stated that we do not believe competition law affords adequate protection to plurality. However we have also stated our determination to be deregulatory, and to make good this promise we need to relax some of the cross-media rules.

3. Given that we are offering significant deregulation in every individual market, we need cross-media rules to establish and prevent any level of concentration that democracy will not bear.

4. Newspapers have a particular editorial styles and political attitudes which would pose significant problems were they to extend, however subtly, into broadcast media. As a

[1] Where any company is limited to 40% of one market, 30% of two markets, 20% of three markets or 15% of four markets. This system would require some existing companies to disinvest if introduced.

consequence, cross-media ownership rules should bite on newspaper owners more than other media companies.

5. The BBC/C4 suggestion that we limit cross-ownership of platforms (distribution) and services (content) is not workable. As we stated in the White Paper, we do not consider vertical integration of content and distribution systems to be a bad thing and we do not therefore wish to prevent it through ownership rules. We are concerned about the competition issues raised by any abuse of a dominant position, but must find other means of addressing these problems.

The three existing rules that together make any purchase of any broadcasting service by any newspaper proprietor subject to a public interest test should be removed.

6. The scope of these tests is not clear and they have not, to our knowledge, been used to prevent any mergers.

7. There is also the perverse effect that the newspaper industry consider the existence of the public interest tests to be a barrier to the sort of consolidation that we might be perfectly happy to allow.

8. Finally, when owners are looking to sell, the threat that a public interest test might be applied to any newspaper bidder, causing a delay to the sale, may distort the bidding process by convincing existing owners to choose a quick sale to a non-newspaper owner.

<u>National media</u>

The rule preventing joint ownership of national TV and radio licences should be scrapped.

1. This rule only applies to joint ownership of GMTV or C5 and national radio licences. To introduce a rule preventing joint ownership of other ITV licences and national radio (to apply to Carlton, Granada or a merged entity) would require a new, more regulatory rule.

2. There are only 3 national analogue radio licences, with a combined share of 8% of the total radio audience. They have little editorial content.

3. We are committed to removing the limits on joint ownership of the national radio licences and relying on competition law in their place. There seems no clear difference between the effect that ownership by an ITV company would have on one or two or even three of these services compared to that of a large radio company

The 20% rules should be retained for national newspaper/TV cross-ownership.

The 20% rules should be removed for national newspaper/radio cross-ownership. It should be replaced with a rule that prevents national newspaper owners from owning any local radio station in an area where less than 3 (or less than 2) such local stations exist.

4. The potential dangers of newspaper cross-ownership are discussed above. For this reason we suggest some limits on the ambitions of national newspaper groups should be retained.

5. Radio stations are mostly focused at the local level and have little editorial content. There seem to be more of an argument, therefore, for removing newspaper/radio cross-ownership that there is for allowing large newspaper corporations to buy into the larger and more influential mass medium of television. Format controls on radio licences, and the existence of independent providers of radio news, should ensure that no newspaper group is able to significantly editorialise output.

6. In local areas, a newspaper proprietor who owned a radio station would be subject to the same radio ownership rules as any other radio owner, ensuring that there remain at least 2 or 3 (depending which we decide is preferable) commercial owners in addition to the BBC. However, in areas where there are fewer than 2 or 3 local radio stations, it might be felt unacceptable on plurality grounds for a national newspaper to control a significant share of that market. Can only own if 2/3 or more

Local media

The existing rules on local newspaper/local radio cross-ownership should be revoked.

In their place we should put a rule preventing any local newspaper proprietor owning a radio station in the same area unless at least (2 or) 3 commercial radio stations exist.

1. The proposed local radio ownership rules will ensure at least 3 (or possibly 2) owners exist in each area with a range of services. Newspaper owners will be subject to these same rules, and the existing cross-media rules that restrict them to 2 stations in some markets and 3 in others will be largely obsolete.

2. A rule preventing local newspapers owning a radio station where very few exist would prevent any company's voice dominating all the local media in any area.

3. Format controls should prevent any attempt by a local newspaper group to increase the amount of editorial opinion that appears on any local radio stations they own.

impartiality ~~controls~~ controls in licences

The rules which state that no one with over 20% of the local newspaper market should also be able to own the regional ITV licence or digital programme service licence should be amended so that the limit is raised to 50%.

The rule that no one can own a local radio licence and the regional Channel 3 licence for the same area should be amended, so that the owner of the Channel 3 licence may own a radio station in the same area where there are at least (2 or) 3 stations in existence.

1. These rules again seek to prevent any complete dominance of the market, whilst allowing a degree of consolidation that may help local operations to share news gathering facilities etc.

2. These changes would allow ITV companies to expand into local radio and newspaper markets. However they would only be able to control up to 50% of any newspaper market, ensuring some significant competition, and they would be limited to owning

radio stations where (1 or) 2 others existed to provide distinct voices. Where there were more than (2 or) 3 radio stations, an ITV company would be able to own as many radio stations as the radio ownership rules allowed (again ensuring at least 2 or 3 owners in every market).

'Control' of licences

The definition of who had de facto control over a service should be expanded to include any company with 'material interests' in that service.

1. The Radio Authority suggest that the current definition of 'control' under the Broadcasting Acts covers only legal structures, and not involvement in day-to-day management, programme management and sales arrangement. They argue that to be effective against techniques such as minority shareholdings that are designed to evade ownership restrictions, the definition needs to be broadened.

2. Such a move would be more regulatory, but would ensure that the slimmed-down set of ownership rules we end up with are properly effective. 'Material interests' is a concept currently used by the OFT to determine control of a company.

Summary - suggested list of reformed cross-media rules

National

1. No one controlling more than 20% of the national newspaper market can hold any licence for Ch 3 or C5.

2. (a) No one controlling more than 20% of the national newspaper market can hold more than a 20% stake in any Ch 3, or C5 service.
(b) A company may not own more than a 20% share such a service if more than 20% of its stock is in turn owned by a national newspaper proprietor with more than 20% of the market.

Local

3. No national newspaper proprietor may own a local radio station in an area with fewer than (2 or) 3 such stations.

4. No owner of a local newspaper in the coverage area of a local radio station may own that station if there are fewer than (2 or) 3 stations in the same area.

5. No one owning the regional Channel 3 licence in the coverage area of a local radio station may own that station if there are fewer than (2 or) 3 stations in the same area.

6. No one owning a regional Channel 3 licence may own more than 50% of the local newspaper market in the same area.

ANNEX E

PLURALITY TESTS/REVIEW OF RULES/SUNSET CLAUSES

Consultation responses

1. Most respondents (Daily Mail and General Trust, Trinity Mirror, ITC, News International, Sky, Guardian Media Group, ISBA) rejected the idea of plurality tests, that could be applied above 'permeable' thresholds. Only Channel 4, Channel 5, the BBC (cautiously) and EMAP (for local cases) supported the idea.

2. On the other hand, the idea of regularly reviewing ownership rules was well endorsed. The major companies would prefer a review to be carried out every 2 years. Others, such as the ITC, the BBC and the IPA, argued that this was too short a time-scale, which might result in continuous lobbying activity and would not allow enough time for the necessary research and consultation. Alternatives suggested were every 3 years and every 4 years.

3. Some independent voices disagreed with the idea of review, as did the Radio Authority, who would prefer limits to be alterable by secondary legislation at any time.

4. Sky were in favour of sunset clauses, which they felt should be introduced in a manner that allowed rules to disappear after two years unless action was taken to renew them.

Recommendation

That all ownership rules should be subject to review by OFCOM no less than every 3 years. OFCOM would report to the Secretary of State, who would be given powers to amend or remove rules by secondary legislation.

Considerations

1. Plurality tests are not well supported by the industry because they are inherently uncertain. Given that we are offering significant deregulatory reforms in most areas, and setting rules only where we feel we need to draw a line at what is acceptable in terms of plurality, there seems little point in offering additional flexibility where it is not wanted.

2. A process of review would give the legislation a balance of certainty in the short term and flexibility in the longer term. If reviews were spaced far enough apart we could avoid the risk of constant speculation and lobbying to some extent.

ANNEX F

FOREIGN OWNERSHIP

Consultation responses

1. All the major British companies (TV and radio) argued for reciprocity. That is they suggested we should only remove foreign ownership rules for companies from countries that impose no restrictions on UK media businesses. Granada suggested that if we were to keep the rules on this basis, there would however need to be a tightening of the definition of 'control' of a company.

2. Foreign companies (News International, Bloomberg, Telewest) called for the rules to be removed. They argued that British industry could only benefit as a result, that the rules were arbitrary in applying only to non-EEA companies, and that the Government might be in breach of the EC Treaty or the European Convention on Human Rights were it to keep the restrictions (we think this is relatively unlikely).

3. Some independent voices (BECTU - the Broadcasting Entertainment Cinematograph and Theatre Union, SACOT - the Scottish Advisory Committee on Telecommunications, the Voice of the Listener and the Viewer) argued that foreign ownership restrictions should be retained or strengthened, to maintain levels of high quality European content.

Recommendation

That you remove the existing restrictions on foreign ownership.

Considerations

1. Tier 1 and 2 requirements will guarantee original production, independent production and UK regional production and programming. Non-EEA companies could bring welcome inward investment.

2. There is arguably no difference in principle between French or German ownership, which we currently allow, and US or Australian ownership, which we ban. To remove the ban is to remove an anomaly. Other European countries (eg. Germany, Spain, the Netherlands) have removed foreign ownership rules without any obvious adverse effect.

3. Foreign owners are already allowed into the newspaper market, where there has been no obvious loss of 'British' content.

4. The Radio Authority argue that foreign ownership will dilute the 'local' nature of services, but there seems no reason why a large US company should have any more reason than a large UK company to degrade the service offered in any local area.

5. Foreign ownership can be difficult to identify, eg in the case of Sky, which the ITC do not consider to be a foreign-controlled company.

6. A position of reciprocity would in effect add up to a ban on American companies, given that the US is extremely unlikely to remove their rules on foreign ownership in the foreseeable future.

ANNEX G

POSSIBLE PACKAGE OF REFORMS

1. TV

- Remove 15% rule
- Remove restriction on joint-ownership of London licences
- Keep nominated news provider, with additional regulation for quality
- Raise ownership rules on nominated news provider from 20 to 40%, with an additional limit of 40% on combined ITV licensee ownership
- Remove all restrictions on ITV/C5 joint ownership
- Power to vary licence on change of ownership to be strengthened to protect regional emphasis
- Regional production guaranteed by tier 2 requirements

2. Newspapers

- Abolish the old regime and put a lighter touch version in its place, but with a more obvious commitment to plurality concerns.

3. Radio

- Either 2 or 3 owners of local services (analogue and digital) in each local area
- No restrictions on ownership of national services
- Possible limit on multiplex ownership - one per area
- OFCOM to be able to vary licence conditions on change of ownership

4. Foreign ownership

- All restrictions to be removed

5. Cross-media ownership

- Existing pattern of rules to be retained, but stripped down to those rules we feel are essential
- Rules that merely stipulate public interest tests to be removed
- Rule on national TV/national radio ownership to be scrapped
- 20% rule retained for national newspaper/TV ownership
- 20% rule to be removed for national newspaper/radio ownership. Replaced with a rule preventing national newspapers owning radio stations in areas with less than (2 or) 3 local stations.
- Rules on local newspaper/local radio ownership to be replaced by a rule preventing local newspapers owning local radio stations where less than (2 or) 3 exist.
- Rules on ITV companies' local ownership limits altered, to allow them no more than 50% of a local newspaper market where they hold the licence and preventing them from owning local radio stations in areas where less than (2 or) 3 exist.

6. Review of ownership rules

- All rules to be subject to automatic review by OFCOM no less than every 3 years
- OFCOM to make recommendations to the SofS, who can amend rules by secondary legislation

Possible effects of the package

- Single ownership of ITV and Channel 5 (as and when the competition authorities allow it).
- 3 or 4 separate owners of ITN, with ITV companies together owning no more than 40%
- A lighter touch newspaper regime that deals more clearly with plurality concerns
- Further consolidated local newspaper markets, where papers could be joint-owned with local radio stations (as long as two or three radio owners existed in addition to the BBC) and ITV regional licences (where less than 50% of the newspaper market was owned).
- 2 or 3 big radio groups, which could be owned by any TV or newspaper company
- At least 2 or 3 separately owned local commercial radio stations in each local area, in addition to the BBC
- Where there are fewer than 2 or 3 local commercial radio stations, they would not be owned by any newspaper group or by the regional ITV company, ensuring a plurality of local news sources (in addition to the BBC).
- A restriction on large newspaper groups and subsidiaries (News International and Sky, Trinity Mirror, and possibly Associated Newspapers in the near future) owning any significant share of ITV or Channel 5 companies.
- Further deregulation (or even re-regulation) an option in 3 years time

One company might eventually own: subject to competition law

- All of ITV and Channel 5
- 40% of ITN
- All 3 national radio licences
- Half the country's local commercial radio stations (though there would be competition in every area)
- Up to 50% of the local newspaper market in any area

ANNEX H

Summary of existing cross-media ownership rules

TV/radio cross-ownership

17. No one can hold the GMTV licence or the C5 licence and a national radio licence.

18. No one can hold a local radio licence (analogue or digital) and the regional Ch 3 licence in the same area.

20% rules on newspaper owners

19. No one controlling more than 20% of the national newspaper market can hold any licence for Ch 3, C5, or any radio service.

20. (a) No one controlling more than 20% of the national newspaper market can hold more than a 20% stake in any Ch 3, C5 or radio service.
(b) A company may not own more than a 20% share such a service if more than 20% of its stock is in turn owned by a national newspaper proprietor with more than 20% of the market. *[This is the so-called 20:20 rule]*

21. No one controlling more than 20% of the local newspaper market in any Ch 3 region may hold the licence for that Ch 3 service.

22. No one controlling more than 20% of the local newspaper market in the area of a digital programme service may hold the licence to provide that digital service.

Limits on local newspaper companies owning local radio stations

23. Anyone controlling more than 50% of the local newspaper market in the coverage area of a local radio station own that station only if: there is another station under different ownership in the same area; the acquisition passes a public interest test. They may own no more than one station in any area.

24. Local newspapers owners controlling more than 20% of the market may own up to two licences for overlapping local radio services if: one is FM and the other is AM; the acquisition passes a public interest test.

25. Local newspapers owners controlling less than 20% of the market can own up to three licences for overlapping local radio services, as long as they pass a public interest test.

Rules that merely stipulate a public interest test

26. Any application by any newspaper owner to hold a licence for GMTV, C5, or any national radio service will be subject to a public interest test.

27. Any application to hold a regional Ch 3 licence or a local radio licence by any national or relevant local newspaper owner will be subject to a public interest test.

28. Digital programme services may not be provided for three months after the award of the licence to a national or relevant local newspaper owner unless a plurality test is met.