Department for Culture, Media and Sport

BBD6/1/2/2)

To	Tessa Jowell Patricia Hewitt	cc	Kim Howells Andrew Ramsay [redacted] Peter de Val [redacted]	Bill Bush [redacted]
From	Alex Towers			

Date 5 March 2002

RESTRICTED - POLICY

LETTER TO THE PRIME MINISTER - MEDIA OWNERSHIP

Issue

The letter that we will send to the Prime Minister in advance of your 18 March meeting to discuss media ownership.

Recommendation

That you approve the attached letter and its annexes, and take a decision on which, if any, option for reform of the newspaper merger regime should be recommended to the PM.

Timing

Urgent - you wanted to send the letter on Friday, to give the Prime Minister time to consider the issues raised.

Considerations

1. The detail of the letter should now reflect last week's decisions. The only remaining uncertainty surrounds the nature of your proposals on the reform of the newspaper merger regime. This issue is still presented in terms of the options in Annex 10. You may wish to offer the Prime Minister a choice between these two options. Alternatively you may wish to recommend one - a tentative preference was expressed last week for a bespoke regime. When a decision is taken we will be able to alter the detail of the letter and annexes accordingly.

2. A new paragraph of narrative has been added to the front page of the letter, giving some idea of the relationship between the consultation paper, the responses we received and our final proposals.

3. A new Annex 8 is included, explaining how tier 2 (for television) and the radio licensing system (for local radio) work to protect levels of local and regional content, and suggesting ways in which this regulation could be strengthened. Stuart Brand is providing a separate note explaining the Radio Authority's proposals for protecting 'localness' in more detail.

4. If you decide to strengthen the tier 2 requirements, there may be a need for some further discussion - given that the proposed system was originally imagined to be independent of ownership considerations, there could be some reservations about changing it.

[redacted]

~~LETTER TO THE PRIME MINISTER - FINAL DRAFT~~

MEDIA OWNERSHIP RULES

The Communications Bill, when it is published in draft in April, will contain our proposals for the reform of media ownership rules. The consultation exercise on this issue has now ended, and having considered the responses, we are writing to outline the steps we are proposing to take. We are to meet on March 18 to discuss the detail, which must if possible be decided very soon thereafter if a draft Bill is to be published on time. In essence, our proposals are deregulatory, but suggest the retention of certain limits on consolidation, to make sure the media retain the range of different voices and views that make democracy work. The possible effects of the changes we suggest are summarised in annex 3. This letter and its annexes are copied to Sir Richard Wilson.

Our consultation paper made clear our two main policy aims: to retain a diversity of content from a plurality of sources; and to promote the most competitive market possible. There is a delicate balance to be struck between these two aims - deregulation promotes competition at the expense of plurality. Responses to the consultation paper varied widely in their assessment of where to strike the balance. Some large media businesses suggested that competition law alone would be enough to protect the vibrancy of democratic debate. Other, more independent voices called for tighter restrictions on media companies than currently exist. We suggest that there should be significant deregulation <u>within</u> individual media sectors, where we are content to rely on competition law above minimal plurality 'floors' (such as 3 separately-controlled public service television broadcasters, or 3 local commercial radio operators in each area). However, we agree with those consultation respondents who identified a need for specific rules on <u>cross-media</u> ownership. We suggest that although these rules should be scaled down there is a continuing need for restrictions on the joint-ownership of newspapers (the medium with the greatest editorial influence) and television (the most widely-consumed medium).

We recommend that you accept the detailed proposals in annex 2. These include:

1. Television – allowing, subject to competition rules, a single ITV while protecting regional production; keeping the nominated news provider requirement (the "ITN" rule)

2. Newspapers – introducing a less onerous and simpler regime to be applied post-acquisition only in cases where there is significant concern on competition or plurality grounds. Criminal sanctions would be removed.

3. Radio – removing all restrictions except competition law on ownership of national commercial stations; allow local consolidation down to a floor of three operators (four if the BBC local service were included).

4. Foreign ownership – removing all restrictions

5. Cross media ownership – removing most media-specific rules, leaving it to competition rules to prevent undue dominance; maintaining restrictions on significant cross-ownership of newspaper and TV assets; relying on the floor of 3 commercial radio operators to prevent a local paper dominating any local radio market.

6. Review of regulation – making all regulations subject to an automatic review by OFCOM no less than every three years.

Political Summary

We believe that the case for deregulation is powerful. There has been an explosion of media choice in recent years giving people a wide range of sources of news, information, entertainment and other services. Meanwhile the existing rules have hampered some companies from expanding and developing while others find themselves much freer. These anomalies are not good for investment, jobs or diversity of products for the consumer.

However we also believe that the media are different from other industries, which means that Competition law alone is insufficient. They are a uniquely powerful force in democracy and debate and there is a long history of some media owners using national newspapers in particular to promote their views. We need a significant degree of plurality of ownership for democracy to work, and competition law can't guarantee this for us. Our line is therefore to regulate ownership on top of competition law, but only where absolutely necessary - imposing a simple set of barriers to excessive concentration.

We are therefore proposing substantial deregulation both within each media sector (radio, TV, local newspapers, and national newspapers) and also between them, subject to retaining reduced but still significant controls on cross-ownership of national newspapers and major terrestrial TV channels.

Our proposed changes are listed in Annex 2. Potential beneficiaries are outlined in Annex 4.

The overall package is a major deregulation of the industry. We would expect significant consolidation to then take place, subject to normal competition regulation and our remaining controls.

Political pressure will be significant and is likely to centre on four issues:

(i) Scrapping Foreign Ownership rules – There are three logical options, to keep controls as they are, to allow foreign ownership on a reciprocal basis, or to allow foreign ownership on the same basis as other industries.

We believe the case for scrapping the rules is strong. Why should Bertlesmann, Kirch, Vivendi or Berlusconi be able to be active here when AOL/Time Warner, Viacom, Disney and News Corporation are constrained? We will be accused of "giving in to Murdoch", but in fact there will still be major controls on his activity because his dominant position in national newspapers will trigger the Competition Authorities, and because we are keeping significant controls preventing owners of newspapers from buying terrestrial TV. There is a further, wider point. We will also seek in the Communications Bill to impose duties on Sky (as with all broadcast platforms) to carry Public Service Broadcast channels. We are also allowing the BBC to develop a strong digital and online presence. So overall our package offers Sky/News International/News Corp some movement, but also some challenges. Viewing all our changes together we can be confident that we are acting fairly and rationally, and in a way that is proprietor-neutral and which does not allow any large company to become over-mighty.

(ii) Modernising Cross-Media Rules – as you can see from annex 3 our proposals would make it possible for large cross-media companies to consolidate rapidly. It would mean for example, that in many towns and cities the Daily Mail and General Trust could own a high-selling national daily, a significant local newspaper, a local commercial radio station, one or more national radio stations, own digital TV and radio channels (possibly Channel 5), and have minority interests in ITN and in the regional ITV licence. It could mean that News International and Sky (not one company, but linked in most people's minds) could also expand, perhaps into

~~local press and into commercial national and local radio.~~

The Draft Bill is intended for publication at the end of April, a week before the local elections, when the issue of local voice will be prominent. Many MPs may find the potential for consolidation somewhat threatening. Our defence would be that local voice would still be dynamic. There would be a minimum of four local voices in most places (the rural fringes can support fewer commercial players anyway), many of the media potentially being taken over have little debate in their formats (especially true of commercial radio), and we would retain content and format controls on TV and radio. We are also persuaded of the argument that local papers do not have editorial lines imposed on them even when owned by opinionated national proprietors.

We are also considering the potential for encouraging the introduction of good corporate governance. The incentive to the companies would be that adoption and implementation of a code would become a material factor in judging whether local "voice" was at risk when mergers were being considered.

(iii) Allowing consolidation of local media – some MPs may feel nervous at the prospect of national and especially local newspapers owning local commercial radio stations. However, such consolidation may help keep local papers afloat and improve quality via more investment, we will impose a statutory floor to maintain a minimum number of local "voices", and we will retain radio and TV licence conditions that impose balance and impartiality on output.

(iv) Allegations that we are still too regulatory – most companies, especially the major players constrained by Competition rules (News International, Trinity Mirror, Daily Mail and General Trust, Carlton and Granada) will say that we have not gone far enough. However, we can point to a package that contains substantial deregulation and to a regime that requires review of all remaining regulation at three-year intervals. They will be balanced by many who will say that we have gone too far.

It is important to remember that content regulation will continue to protect quality and diversity, and we are considering a number of options to extend the protection afforded to local and regional content. A summary is provided in Annex 8.

The process of scrutiny and consultation of the Draft Bill allows opportunities to change if we believe it right and necessary, but we think it right to offer Parliament a draft which is truly deregulatory while protecting the democratic essentials. We would welcome an early decision from you, after our meeting on 18 March, so that we can publish the Draft Bill by the end of April.

[signed, Tessa Jowell and Patricia Hewitt]

List of Annexes

1. Our principles and arguments
2. Summary of our proposals
3. The possible effects
4. Potential winners and losers
5. Likely critics and supporters
6. Who owns what now
7. Industry trends
8. Ensuring adequate regulation of content
9. The existing rules on cross-media ownership
10. Summary of options for the newspaper regime
11. Summary of consultation responses

ANNEX 1: THE PRINCIPLES WE USE AND THE ARGUMENTS SUPPORTING OUR PROPOSALS

Principles:

We are determined to:

- accept that the media are different from other industries because of their intrinsic importance in setting the terms of national and local debate;
- accept that the increase in the range of active media voices allows the removal of unwieldy and unnecessary regulation;
- deregulate where possible to promote investment and quality;
- rely on competition law wherever possible;
- protect plurality and diversity in any area where there is a justified concern that competition law may be insufficient;
- regard ownership of national newspapers and terrestrial television licences as the most sensitive in establishing the national agenda for debate;
- reduce regulations within media sectors as much as possible, but to retain some cross-media ownership restrictions where there is danger of excessive concentration of market power;
- seek improvements in content and format regulation where possible, and to improve corporate governance to inhibit abuse by owners.

Argument

There is a difficult balance to be struck in this area between the interests of democracy and those of a competitive market. There are passionately held views on either side of the debate which are sure to be aired inside and outside Parliament when the Bill is published. However, many of the existing regulations have no economic justification, were arrived at for reasons of political expediency alone, and neither protect debate nor assist business.

The proposals we are putting forward are deregulatory. They aim to allow businesses the chance to grow, invest and innovate, and bring cheaper and better services to the consumer. Despite this, the need remains for some media ownership rules - the media are vital to democratic debate in a way that other industries are not, and media owners will use their assets to promote their views, not simply to make profits. Competition law alone cannot guarantee sufficient plurality of ownership to maintain the culture of debate and dissent that we receive from our local and national media. We therefore want to build a system of simple, coherent and predictable rules, with the flexibility for further reform at relatively regular intervals. If, as we propose, regulation is made subject to review every three years, it will be possible to deregulate further as the market develops. Conversely, ground given up at this stage will be much harder to recover.

Proceeding with Deregulation

The growth in media outlets is of itself increasing plurality and diversity, and we do need to allow companies to develop and build their businesses. In individual media markets (television, radio and the press) we propose to place very few limits on ownership. We will rely on content regulation to maintain diversity. Minimal ownership restrictions (or 'plurality tests' in the case of newspaper mergers) will be supplemented by competition law to provide an adequate degree of plurality within each market. The BBC and Channel 4 will continue to provide an additional guarantee of diversity in broadcasting.

We are also proposing some deregulation of cross-media ownership rules at a local level. We consider that it is possible to provide the essential protection needed for proper debate while allowing some consolidation. This could lead to an increase in the number of local papers with an interest in local radio stations. While we believe that debate will still be sufficiently protected we should also be aware that many MPs will have strong views to the contrary.

Given the extent of the proposed deregulation, it is important that some cross-media ownership rules are retained, to prevent the sort of concentration of influence that democracy will not bear and that competition law will not preclude. In particular, we suggest that cross-media rules must take account of the particularly pervasive and often owner-led editorial influence of newspapers, by impinging on the extent to which newspapers proprietors can extend their influence through the mass medium of television.

There is no doubt that the two main vehicles for debate and discussion are the national press and terrestrial television. Even though most people say they take their news from TV the newspapers are much more opinionated and routinely set the TV agenda. That is why we intend to more cautious about extending cross-ownership in these areas.

Such deregulation as we do allow will inevitably create a hostile reaction. Newspaper owners, particularly News International, Trinity Mirror and the Daily Mail and General Trust, will say that it is too little. Everyone else will say it is too much, and that we are caving in to aggressive press barons. The fact that neither of these is correct will not stop them being asserted and we can expect to have difficulty in both Houses.

Consultation on the Draft Bill will be extensive, and we will particularly want to ensure that views are sought in Scotland, Wales and Northern Ireland. Although communications issues are reserved, each of the three markets has special features that will require separate scrutiny.

~~ANNEX 2: OUR PROPOSALS~~

Summary

TV

- Remove 15% rule
- Remove restriction on joint-ownership of London licence
- Keep nominated news provider, with additional licence conditions to ensure adequate financing
- 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 programming and production guaranteed by tier 2 requirements

Newspapers

- a less onerous regime that is applied post-acquisition only to cases of significant concern on competition or plurality grounds. The Competition Commission will make recommendations to the Secretary of State on this basis.

- OFCOM to have a duty to undertake and consider effective tests of local opinion. This would require them to undertake consultation through citizens' juries or equivalent.

Radio

- At least 3 owners of local services in each local area, plus the BBC
- No restrictions on ownership of national services
- Separate ownership of digital multiplexes in areas where they overlap
- OFCOM to be able to vary licence conditions on change of ownership to ensure local character of service is preserved

Foreign ownership

- All restrictions to be removed

Cross-media ownership

The existing pattern of rules to be stripped down to those rules we feel are essential:

- A rule preventing those with more than 20% of the national newspaper market buying a significant stake in Channel 3 or Channel 5.
- A rule preventing joint ownership of a regional ITV licence and more than 20% of the local/regional newspaper market in the region.

Other rules to be removed:

- Rules that stipulate public interest tests for any acquisition of any broadcasting licence by any newspaper company to be scrapped
- Rule preventing national TV/national radio joint-ownership to be scrapped

At the local level, the radio ownership rules will protect plurality:

- 20% rule to be removed for national newspaper/radio ownership. Replaced by radio ownership rules that will prevent national newspapers owning local radio stations in any area with less than 3 separate commercial owners in addition to the BBC.
- Rules on local newspaper/local radio ownership to be removed. Replaced by radio ownership rules that will prevent local newspapers with more than 50% of the market owning a local radio station in the same area if there are less than 3 separate commercial owners in addition to the BBC.
- Removal of the rule banning joint ownership of ITV regional licence/local radio licence for the same area. The new radio ownership rules will prevent such joint ownership where there are less than 3 separate commercial owners in addition to the BBC.

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

Detailed Proposals

1. Television

Within the television market, we propose to deregulate and rely on competition law to provide a plurality of commercial providers in addition to Channel 4 and the BBC. Diversity will be retained through content regulation, and we will continue to make special arrangements for the provision of an independent news service to ITV.

We propose:

- to remove the rule that imposes a limit of 15% on any company's share of the TV audience; and
- to remove the rule that prohibits joint ownership of the two London ITV licences.

These two changes are now widely expected, having been proposed in both the Communications White Paper and the more recent consultation paper. Their effect will be to allow the possibility of a single ITV company, at a point when the competition authorities are satisfied that such a company will not unduly dominate the advertising market. ITV is made up of 14 regional licences, and each licence will retain requirements for original production, independent production and UK regional production and programming. Single ownership will not dilute the regional emphasis. Requirements will also be retained for due accuracy and impartiality in the reporting of news and any political or industrial controversy.

- to remove the rule that prevents joint ownership of GMTV and Channel 5.

Many in the industry wrongly interpret this rule as a ban on the joint ownership of any ITV licence and Channel 5. There is no such prohibition and we do not advocate imposing one, but would rather remove the existing rule, which has only a limited actual effect. The BBC, Channel 4 and existing commercial competitors in digital and cable markets will make sure there continues to be a diversity of content and a plurality of views available from television.

- to keep the nominated news provider system for ITV;
- to give Ofcom greater powers to intervene to ensure the news provider is adequately financed, to ensure that the news is of a high standard; and
- to raise the the existing 20% limit on ownership to be raised to 40%, allowing a minimum of three owners, but that a 40% cap is put on the share that may be owned collectively by the ITV companies themselves, to make sure the news retains its editorial independence.

We believe that these changes will ensure that an independent news service of high quality is maintained, and deal with the problem of the steady decline in resources available to ITN under the present rules (its budget has fallen from £80m to £36m pa)

At some point in the future it may be that the need for a nominated news provider on ITV will disappear, as competition widens in the market for high quality news. As we said in the White Paper, we will therefore include a sunset provision in the Bill, to allow the news provider system to disappear at this point, on the advice of OFCOM.

2. Radio

Most commercial radio is local radio, and whilst we plan to allow consolidation within the market as a whole, to allow the companies involved to grow, rules will be kept to ensure that listeners retain a choice of local voices.

We propose:

- that there be no restriction (other than Competition Law) on the joint ownership of the three national radio licences, nor on ownership of national digital radio services;

National services (Classic FM, Virgin and talkSPORT) account for only 8% of listeners, will continue to be clearly demarcated (one is required to be non-pop and one predominantly speech) and contain little editorial content. We consider, on balance, that it may not be necessary to keep them in separate hands.

- that at the local level, OFCOM should set up a system to ensure that in every area there are at least 3 owners of local analogue radio services and 3 owners of local digital radio services in addition to the BBC.
- We also suggest that where local commercial digital radio multiplexes overlap they should be separately owned.

These rules should allow a degree of consolidation that allows large radio companies to provide a diverse range of music services, whilst making sure that at least three distinct local 'voices' exist.

Plurality in radio ownership is more important at the local level. The majority of airtime tends to be devoted to music, but it is local news, opinion and features that often provide the basic character and appeal of a station. Licences will continue to require all radio stations to report news with due accuracy and impartiality, and prevent local radio stations giving undue prominence to any particular opinion in areas of political or industrial controversy. When a local licence changes hands, the regulator will be allowed to vary the format controls that are applied, to ensure that the local nature of the service is preserved.

3. Newspapers

[A less onerous regime that is applied post-acquisition only to cases of significant concern on competition or plurality grounds. The Competition Commission will make recommendations to the Secretary of State on this basis.

OFCOM should have a duty to undertake and consider effective tests of local opinion. This would require them to undertake real consultation, through citizens' juries or equivalent.]

~~4. Cross-media ownership~~

It is important that some cross-media ownership rules are retained, to establish and prevent the sort of concentration of influence that democracy will not bear and that competition law will not preclude, both at national and local level. In particular, we suggest that cross-media rules must take account of the particularly pervasive and often owner-led editorial influence of national newspapers, by impinging on the extent to which proprietors can extend their influence into national television. We also want to make sure that there is a plurality of outlets for opinion across the local media in any area.

We propose the rules should state that:

- no one controlling more than 20% of the national newspaper market may hold any licence for Ch 3 or Ch5;
- no one controlling more than 20% of the national newspaper market may hold more than a 20% stake in any Ch 3, or C5 service;
- a company may not own more than a 20% share in such a service if more than 20% of its stock is in turn owned by a national newspaper proprietor with more than 20% of the market;
- no one owning a regional Channel 3 licence may own more than 20% of the local/regional newspaper market in the same region.

(NB licensing arrangements will make sure that these restrictions will also apply to Channel 3 and Channel 5 as broadcast in their new digital terrestrial form.)

The changes from the current system are that:

- The ban on newspaper or TV owners holding national radio licences will be removed. The 3 existing national radio licences are not sufficiently important to public discourse to justify the preservation of this rule.

- The ban on national newspaper companies or ITV companies holding local radio licences will be removed. Instead, the rules on ownership of local radio stations will ensure that in they cannot buy into areas with very few (less than 3) radio services. The complicated rules on local newspaper/local radio cross-ownership will also be removed - again, local newspapers will now be allowed to buy radio stations, but only where they are one of at least 3 separate owners. This will allow newspaper and TV companies to make significant savings through the cross-ownership of radio services with joint news-gathering facilities in large markets. Format controls on local radio services, and the music-driven nature of such services, should ensure that they retain a distinct character under any ownership, but these rules will prevent any one company dominating all the outlets for local news in areas where few such outlets exist.

- The three existing rules that together make any purchase of any broadcasting service by any newspaper proprietor subject to a public interest test will be removed. The scope of these tests is not clear; they discourage newspaper owners from attempting levels of consolidation that would not necessarily dilute plurality; and they distort the market by encouraging existing owners who wish to sell to accept bids from non-newspaper owners who will not have to wait to pass a public interest test (a parallel may be drawn with the recent purchase of the Express newspapers by a non-newspaper owner who was not subject to any test under the special newspaper regime).

5. ~~4.~~ Review of ownership rules

One of the problems with the existing media ownership rules is that, with some exceptions, they are alterable only by primary legislation. We want to introduce more flexibility. One way of doing this would be to allow acquisitions that exceeded any ownership limits, as long as they passed some form of plurality test. This idea is not popular in the industry, where it is regarded as too unpredictable. A far more popular suggestion for flexibility is that ownership rules should be subject to review, and possible reform, at regular intervals.

We propose

- that all rules should be reviewed by OFCOM no less than every three years;
- that OFCOM should report its findings to the Secretary of State for Culture, Media and Sport, who would be given powers to amend or remove rules by secondary legislation.

A shorter review period of two years was considered but that was felt to be too likely to result in the instability of permanent lobbying for change. The proposal for the use of secondary legislation may cause concern in Parliamentary circles, where it is sometimes suggested that such changes are so important that they should be made only through primary legislation.

6. ~~5.~~ General disqualifications on ownership

We wish to deregulate by removing general prohibitions on ownership by any particular group where there are likely to be no adverse effects. We are also concerned to make sure that where we keep prohibitions they are consistent with the European Convention on Human Rights.

Certain individuals and bodies have in the past been disqualified from holding any broadcasting licence.

We propose

- to remove the disqualification on foreign ownership.

The existing rule is inconsistent, in applying only to non-EEA companies, and is difficult to apply, given that it depends on a somewhat subjective judgement on whether foreign interests 'control' a given company. Non-EEA companies should bring welcome inward investment, and allow the UK to benefit rapidly from new ideas and technological developments, aiding efficiency and productivity. Requirements will remain for original production, independent production and UK regional production and programming, and foreign companies will arguably have to produce 'British' content to attract a British audience.

- to remove disqualifications on local authorities (subject to regulatory safeguards preventing any politically-orientated abuse of this freedom, or damage to the competitive environment) and advertising agencies (provided the competition authorities are content).

- to retain the prohibition on ownership by political organisations.

- ~~to remove the anomaly that prevents religious organisations owning local digital radio~~ licences even though they can own local analogue stations. However we will retain the prohibition on religious ownership of any national broadcasting licence or any licence to control a multiplex (as long as we are permitted to do so by the European Convention on Human Rights).

There is not enough national spectrum available to allow for adequate freedom of expression of all religious views, and a religious organisation should not be given the power to control, through a multiplex, which other organisations may broadcast what type of services through that multiplex. In general, the established Churches share some of these concerns about religious ownership, but the more evangelical wing of the Church have instigated a widespread campaign for the removal of all prohibitions, and we have received some 9,000 letters in support of this view.

ANNEX 3: THE POSSIBLE EFFECTS OF THESE CHANGES

The changes we are proposing would encourage inward investment and would allow significant growth in the size of UK TV and radio companies, to allow them to compete more effectively internationally. The rules that remain would maintain the restrictions that prevent a large newspaper group or its subsidiary from controlling a terrestrial television station, and should ensure that no company comes to dominate the local debate in any area.

Some of the possible effects of the reforms could be:

- 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%.
- [The exclusion of most local newspapers from the special merger regime, and the inclusion of any non-newspaper owners making a significant acquisition.]
- Further consolidation in local newspaper markets, where papers could be joint-owned with local radio stations (as long as three radio owners existed in addition to the BBC).
- 3 big radio groups, which might be owned by TV or newspaper companies.
- At least 3 separate owners of local commercial radio stations in each local area where 3or more stations exist, in addition to the BBC. Where there are fewer than 3 local commercial radio stations, none could be owned by any national newspaper group, an ITV company or by any local newspaper with more than a 50% share of local circulation.
- A continuing 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. Other newspaper groups, with less than 20% of the national market, would now be able to invest in terrestrial TV without the acquisition having to pass a public interest test.
- A parallel restriction on joint-ownership of significant local/regional press and ITV interests in the same region, which should prevent any one company dominating the Scottish or Welsh market.
- Further deregulation (or even re-regulation) as an option in 3 years time.

~~ANNEX 4: POTENTIAL COMMERCIAL WINNERS AND LOSERS~~

This note tries to assess who will benefit from the changes we propose and who will not, by suggesting how each company's possible share of the market could change.

BIG WINNERS - TERRESTRIAL TV COMPANIES; MOST NON-EEA COMPANIES; THE BIGGEST RADIO GROUPS; THE SMALLER NATIONAL NEWSPAPER GROUPS.

Carlton and Granada:

- will be able (eventually) to merge, and to buy C5 (they could actually buy C5 now but don't seem to realise it);
- will be free to buy all three national analogue radio stations;
- could acquire stakes of up to 50% in local newspaper markets;
- will be able to acquire around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- would be restricted to their existing combined share of 40% in ITN.

If they grew to the maximum possible size (and competition law imposed no restraint) they might control:

- 29% of the total TV market (48% of the commercial TV market, 56% excluding C4);
- 22% of the total radio market (roughly 44% of the commercial radio market);
- 19% of the national newspaper market;
- 50% of the local/regional newspaper market.

Scottish Media Group (SMG):

- will now be able to buy into local radio markets;
- could also buy the other two national radio stations (they already own Virgin);
- might acquire stakes of up to 50% in local radio markets, to add to the Glasgow Herald (counted as a national paper);
- could eventually attain the same maximum share as Carlton and Granada as part of a single ITV.

If, as seems likely, SMG started by buying out Scottish Radio Holdings, they would have:

- 5% of the total radio market (roughly 10% of the commercial market)
- 3% of the total TV market (5% of the commercial market)
- 1% of the national newspaper market

This would amount to a significant position across Scotland (potentially 25% of the commercial TV market, 44% of the commercial radio market and one of the most influential Scottish national/regional newspapers, *The Herald*). However the rules on local cross-media ownership will ensure that in each separate local area there continues to be a plurality of at least 4 separate voices for local news and opinion.

Bertelsmann:

- might buy the whole of ITV, to add to Channel 5;
- could also buy into other media to exactly the same extent as Carlton or Granada.

GWR, Capital Radio and EMAP:

- as the three largest existing radio companies might be best placed to expand. They could between them come to control all local services, analogue and digital. Alternatively they may face competition from newspaper and TV companies in larger markets.
- could own all 3 national radio licences (any single company could own all 3);
- might merge with a local or national newspaper company or an ITV/C5 company if they shared the radio market with a third company.

A radio-only company could grow to control:

- 22% of the total radio market (44% of the commercial market)

A radio company that merged with a TV or newspaper company could eventually control the same maximum share as ITV, ie:

- 29% of the total TV market (48% of the commercial TV market, 56% excluding C4);
- 22% of the total radio market (roughly 44% of the commercial radio market);
- 19% of the national newspaper market;
- 50% of the local/regional newspaper market.

Daily Mail and General Trust:

- will be able to buy around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- will be able to buy as many national radio licences as they like;
- as long as their share of the national newspaper market stays below 20%, will be able to buy Channel 5;
- as long as their share of the national newspaper market stays below 20%, will be able to invest in ITV companies, although they won't be able to hold licences or control the licence-holding company in regions where the Northcliffe Press control more than 20% of any local newspaper market;
- will no longer need to pass a public interest test to buy any broadcasting interests;
- would be able to double the size of their ITN stake if they wished (we don't think they do).

They could ultimately end up as part of a company controlling:

- 4% of the total TV market (roughly 7% of the commercial market)
- 22% of the total radio market (roughly 44% of the commercial radio market);
- 19% of the national newspaper market;
- 50% of the local/regional newspaper market.

NB - In practice, DMGT's share of the national newspaper market looks set to rise above 20% in the relatively near future, limiting their ambitions to those of News International (see below).

Northern and Shell:

- could buy whatever TV interests they wanted;
- could buy a significant slice of local radio markets.

If they retained their existing share of the national newspaper market and invested heavily in radio they might come to own:

- 12% of the national newspaper market
- 22% of the total radio market (44% of the commercial market)

AOL Time Warner, Disney, Viacom, ClearChannel, Austereo:

- can now move into terrestrial broadcasting markets if they wish, buying into ITV, Channel 5 and analogue radio.

A big foreign cross-media company would not be held back from investing any more than a British company. They could therefore own the same maximum combination, unless the competition authorities prevented it:

- 29% of the total TV market (48% of the commercial TV market, 56% including C4);
- 22% of the total radio market (roughly 44% of the commercial radio market);
- 19% of the national newspaper market;
- 50% of the local/regional newspaper market.

It seems particularly likely that ClearChannel, the American radio group, may wish to invest in British radio markets, where they might own up to

- 22% of the total radio market (roughly 44% of the commercial radio market).

SMALLER WINNERS - THE LARGEST NATIONAL NEWSPAPER GROUPS AND THEIR SUBSIDIARIES; THE REGIONAL-ONLY NEWSPAPER GROUPS.

News International and Sky:

- will be able to buy into national radio, to own all 3 licences;
- will be able to acquire around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- will no longer need to pass a public interest test to buy any radio interests;
- will be frustrated in any attempt to buy into ITV or Channel 5.

If Sky bought as many radio stations as possible, they might control:

- 8% of the total TV audience (13% of the commercial audience)
- 22% of the total radio market (roughly 44% of the commercial market)

This in addition, of course, to News International's 33% share of the national newspaper market. Sky Global Networks, a different subsidiary of News Corporation (News International's parent), have a 36% share in BskyB.

Trinity Mirror:

- will be able to buy as many national radio licences as they wish;
- will be able to acquire around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- will no longer need to pass a public interest test to buy any radio interests;
- if they maintain more than a 20% share of the national newspaper market, they will be frustrated by any attempt to buy into ITV or Channel 5.

So Trinity Mirror, if they bought as many radio stations as possible, might end up owning:

- 23% of the national newspaper market
- 23% of the total newspaper market (including local/regional press)
- 22% of the total radio market (roughly 44% of the commercial market).

The Johnston Press and Newsquest:

- should be able to continue their consolidation in the local press;
- will be able to acquire around a third of most local radio markets (only acquiring in markets with at least 3 local radio services);
- would not need to pass any public interest test for any acquisition.

If Newsquest bought as many radio stations as possible to add to their current press holdings they might eventually control:

- An 11% share of total UK circulation;
- 22% of the total radio audience (44% of the commercial market).

If Johnston Press bought as many radio stations as possible to add to their current press holdings they might eventually control:

- A 5% share of total UK circulation;
- 22% of the total radio audience (44% of the commercial market).

TREADING WATER

No one - there should be an opportunity for every different type of company to expand in some direction, although there is no way of knowing which companies will take their opportunities and which will not.

LOSERS?

Anyone who gets bought out. This is impossible to predict with any accuracy but the most likely candidates in the immediate future would seem to be the smaller radio companies - Chrysalis, Scottish Radio Holdings, the Wireless Group.

ANNEX 5: LIKELY CRITICS AND SUPPORTERS

Below is an assessment of who is likely to support and oppose each of the rules we propose (and, where appropriate, what the likely reaction will be to the absence of some of the existing rules) based on the responses we received to the consultation document. Where there are markedly different reasons for such support or opposition these have been identified.

Since our consultation paper did not provide any detailed options for reforming cross-media ownership rules, the analysis for changes in that area is less certain, but we have predicted what reactions will be to the general approach of the package of cross-media rules.

A glossary of acronyms is provided.

General Disqualifications (this assumes Foreign ownership rules will be scrapped)

- No religious organisation may own any national broadcasting licence or any licence to provide a multiplex service

For	Radio Authority; BECTU; some established Church groups
Against	9,000 individual Christians, evangelical Christian groups and broadcasters

- *No foreign ownership rules*

For	News International, Bloomberg, Telewest
Against	(on grounds of reciprocity) CRCA, EMAP, C5, SMG, Carlton, Capital, GMG, GWR, Radio Authority
(completely against) BECTU, SACOT, VLV

Television

- ITV news must come from a nominated news provider. The value of the contract must meet with OFCOM's approval

For	ITC, [redacted], C4
Against	Carlton, [redacted], BBC

- The nominated news provider system may be sunset by the Secretary of State on OFCOM's recommendation when they are satisfied that there exist a sufficient number of additional high quality competitors to the BBC

For	(If there has to be a nominated news provider) Carlton, [redacted]

- No one may own more than a 40% share in the nominated news provider
- The ITV licensees may collectively own no more than a 40% share in the nominated news provider

For	ITC, [redacted], C4, GMG, BECTU
Against	Carlton, [redacted] BBC

- *No other rules on ITV ownership*

For	Carlton, [redacted]
Against	Advertisers (PACT also have concerns about how the network would work)

Radio

- In each local market, there must be at least 3 separate commercial owners of both analogue and digital local services, in addition to the BBC.

For	Radio Authority
Will accept	(although would rather have a '2 + BBC' rule) CRCA, GWR, EMAP, Scottish Radio Holdings
Against	(would much rather have a '2 + BBC' rule, if not competition law) Capital Radio

- In areas where multiplexes overlap, they must be in separate ownership.

For	Radio Authority
Against	(too much of a restriction) Capital Radio, GWR, CRCA

Newspapers

- [a less onerous regime, applied post-acquisition only to significant cases, making clear plurality is a serious concern and with stipulation to take heed of 'citizens councils' or equivalent.
  <u>DTI</u> - for and against?]

Cross-media ownership

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

- (a) No one controlling more than 20% of the national newspaper market may 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.

- No one owning a regional Channel 3 licence may own more than 20% of the local/regional newspaper market in the same region.

For	ITC, Radio Authority, EMAP, SRH, [redacted] SACOT, BECTU, VLV (as the best option if there have to be rules) Trinity Mirror, GMG
Against	(prefer competition law) News International, [redacted] Telewest, DMGT, C5, Carlton, Bloomberg, Capital (prefer a 'sliding scale' 40-30-20-15 scheme) CRCA, GWR (have their own schemes) SMG, IPA, [redacted] (want limits on cross-ownership of platforms and content) C4, BBC (want stricter rules) CPBF

Review of ownership rules

- OFCOM should review all media ownership rules no less than every 3 years, and may make recommendations to the Secretary of State to reform or remove them. The Secondary of State may then use secondary legislation for this purpose.

For	CRCA, ITC, BBC, SACOT, DMGT, [redacted] Capital, C4, GWR, IPA, [redacted]
Against	BECTU, CPBF (not often or quick enough - prefer sunsets) [redacted], Carlton (too uncertain) Radio Authority

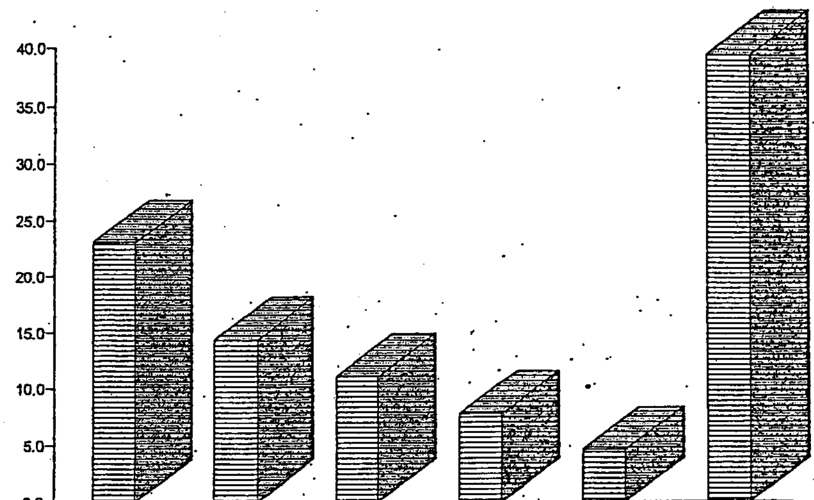
Glossary of acronyms

BECTU	Broadcasting Entertainment Cinematograph and Theatre Union
CPBF	Campaign for Press and Broadcasting Freedom
CRCA	Commercial Radio Companies Association
DMGT	Daily Mail and General Trust
GMG	Guardian Media Group
IPA	Institute of Practitioners in Advertising
[redacted]	
PACT	Producers Alliance for Cinema and Television
SACOT	Scottish Advisory Committee On Telecommunications
VLV	Voice of the Listener and the Viewer

ANNEX 'O'

NEWSPAPERS

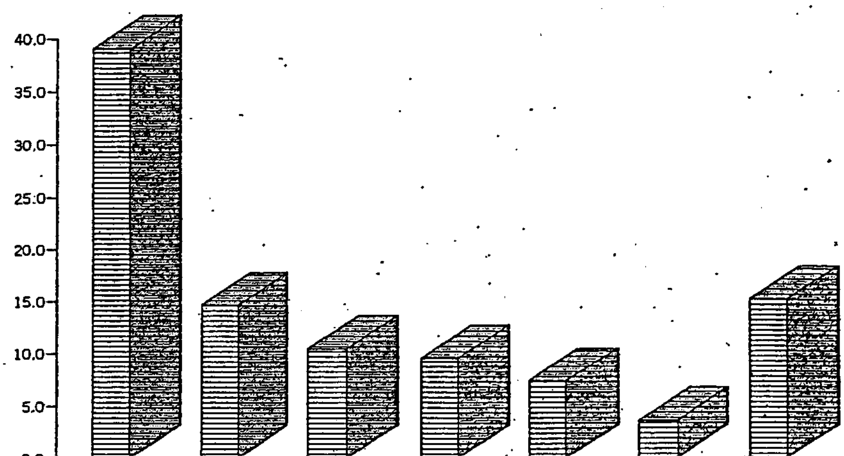
National, regional, local



	TRINITY MIRROR	NEWS INTERNATIONAL	NEWSQUEST	ASSOCIATED NEWSPAPERS	JOHNSON PRESS	OTHERS
Circulation Share UK All Papers	23.1	14.3	11.1	7.7	4.5	39.3

TELEVISION

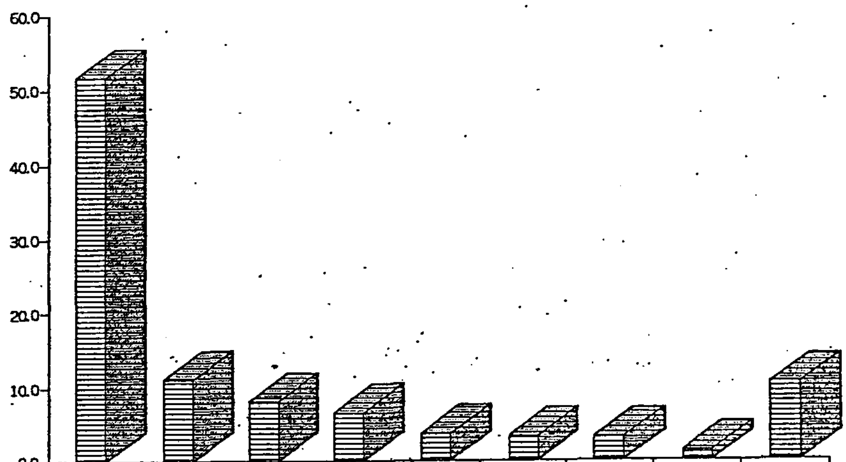
(all UK)



	BBC	GRANADA	CARLTON	CHANNEL 4	BSKYB	RTL	OTHERS
TV Viewing Share UK (%)	39.0	14.7	10.5	9.6	7.4	3.6	15.2

RADIO

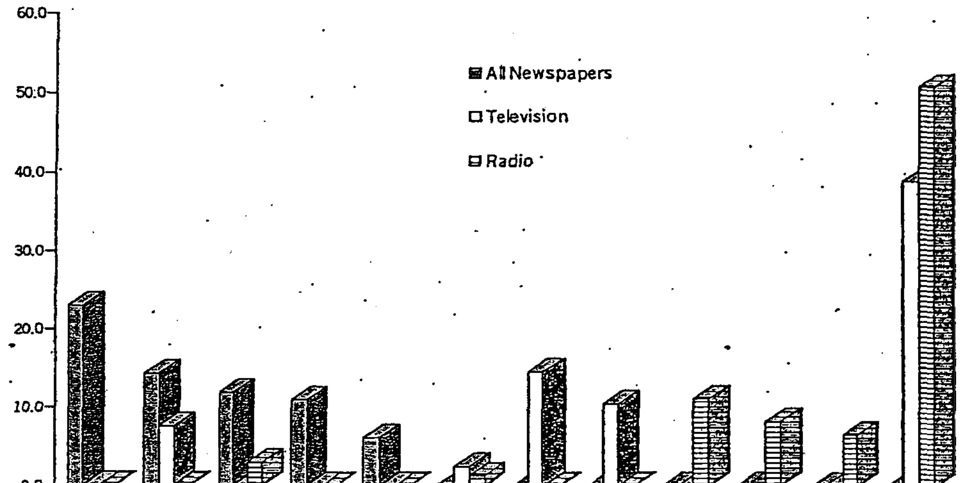
(all UK)



	BBC	GWR	CAPITAL RADIO PLC	EMAP	CHRYSALIS	SCOTTISH RADIO HOLDINGS	WIRELESS GROUP	SMG	OTHERS
Listening Share UK Radio (%)	51.7	11.2	8.2	6.6	3.7	3.3	3.2	1.4	10.6

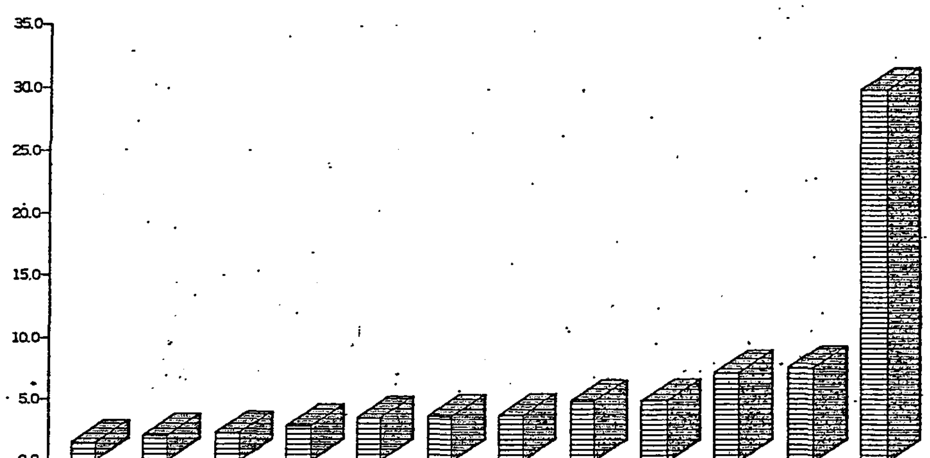
CROSS MEDIA

Counting all national newspapers approximate percentage shares - Q1 2001



	Trinity Mirror	News Intl.	Daily Mail	Newsquest	Telegraph Grp.	SMG	Granada	Carlton	GWR	Capital	EMAP	BBC
All Newspapers	23.1	14.3	12.0	11.1	6.2	0.4	0.0	0.0	0.0	0.0	0.0	0.0
Television	0.0	7.6	0.0	0	0.0	2.6	14.7	10.5	0.0	0.4	0.3	39.0
Radio	0.0	0.0	3.0	0	0.0	1.4	0.0	0.0	11.2	8.2	6.6	51.0

SHARE OF VOICE

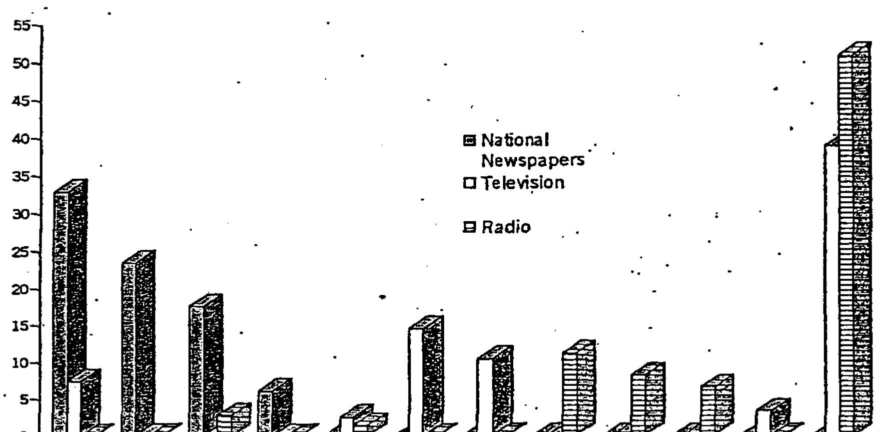


	SMG	Telegraph Grp.	EMAP	Capital	Carlton	Newsquest	GWR	Granada	Daily Mail	News Int.	Trinity Mirror	BBC
Simple Share of voice	1.5	2.1	2.3	2.9	3.5	3.7	3.7	4.9	5.0	7.3	7.7	30.0

Calculation – no explicit exchange rate between media, simple summation of percentage shares in national radio, TV, newspaper markets expressed as percentage of theoretical maximum

XMO SHARES

(National papers only, excluding regional/local)



	News Intl.	Trinity Mirror	Daily Mail	Telegraph Grp.	SMG	Granada	Carlton	GWR	Capital	EMAP	SRH	BBC
National Newspapers	32.8	23.5	17.6	6.2	0.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Television	7.6	0.0	0.0	0.0	2.6	14.7	10.5	0.0	0.4	0.3	3.3	39.0
Radio	0.0	0.0	3.0	0.0	1.4	0.0	0.0	11.2	8.2	6.6	0.0	51.0

ANNEX 7: INDUSTRY TRENDS

The expansion of media outlets

Medium	1980	2002
National terrestrial TV	3 stations	5 stations
National analogue radio	4 stations	8 stations
Local analogue radio	26 stations	over 250 stations
Satellite and cable TV	none	over 200 channels
National digital radio	none	12 stations
Local digital radio	none	43 stations
National newspapers	30 daily/Sunday titles	30 daily/Sunday titles
Local and regional press	[DTI?]	nearly 1,300 titles

In addition:

- there looks likely to be a new raft of access radio and TV to supplement existing arrangements at community level - for university and hospital radio etc.
- Internet provision continues to expand, and nearly half of all households are now connected.

Converging and developing technologies

Some quotes from the White Paper, *A New Future for Communications*, 2000:

> "British viewers could choose from 300 hours of television in a week in December 1980. Today they could choose from over 40,000 hours."

> "Thirty million people in Britain have mobile telephones, which is double the number two years ago and up from only one million a decade ago. Mobile telephone networks already carry more data - in the form of text messages and images - than conversations. The volume of data traffic over traditional telephone lines is doubling every ten months. Much of this is in the form of documents speeding across the Internet, images being downloaded and people listening to the radio through their computers.

> "In the UK about 3.8% of consumer spending goes on telecommunications, television and other communications services - more than is spent on beer."

"~~The boundaries of industries are blurring: telecommunications companies~~ want to become broadcasters, while broadcasters increasingly are moving into e-commerce, and Internet Service Providers are offering television channels."

"The pace of change is accelerating. It was 38 years before 50 million people were listening to the radio in the US, for example. Broadcast television took 13 years to reach 50 million users; personal computers took 16. But the Internet reached that level of usage in just four years."

"The explosion of information has fuelled a democratic revolution of knowledge and active citizenship. If information is power, power can now be within the grasp of everyone. No government can now rely on the ignorance of its population to sustain it. We are richer as citizens thanks to the expansion of modern media."

ANNEX 8: ENSURING ADEQUATE REGULATION OF CONTENT

1. In light of our proposals for deregulatory reform of media ownership rules, it becomes even more important to ensure that content regulation works well. In particular, we want to be sure that if TV or radio licences are bought by giant, international, cross-media companies, there will be no dilution of local, regional or UK content. The Bill already includes provision for licensing and regulatory arrangements that should work to prevent such denudation. We are also considering further options to tighten OFCOM's control. Details are provided below.

RADIO

Licences

2. At present, obligations for the 'localness' of local radio services are achieved by the way that the Radio Authority carries out it's licensing duties. In choosing between competing applications for licences, the Authority considers a number of factors: resources available to each applicant; local support; broadening of choice; and 'the extent to which any proposed service would cater for the tastes and interest of people living in the area.' The Authority then includes the key features of the successful application into the licence itself, by way of a stated Format.

3. Under the forthcoming Bill, licensing duties will pass to OFCOM. In addition there will be a new power to allow OFCOM to vary the Format of a station on change of control, to make sure the local nature of the service is sustained, whoever owns it.

Option to give OFCOM further power

4. There are already concerns that allowing greater concentration of radio ownership could result in a loss of localness in local radio services. To prevent this we are considering giving OFCOM a new duty to 'protect and promote the local content and character' of independent local radio services. This would not be unprecedented - regional Channel 3 television licences already include requirements for regional programming and production (see below).

TELEVISION

5. Tier two of the new regulatory structure consists of a number of quantifiable and measurable elements of public service broadcasting, which will be applied to public service broadcasters (Channels 3, 4 and 5, S4C and the BBC) only. In brief, the tier two requirements are:

1. UK quota on independent productions.
2. Quotas on original productions
3. Quotas on regional programming and regional production
4. Provision of news and current affairs programmes in peak hours
5. Requirement for Channel 4 to produce programmes for schools

6. ~~The requirements will be less uniform than the basic tier one requirements (eg~~ standards of programme content, assistance for people with sensory impairments) which apply in the same way to all television broadcasters. Except in the case of independent productions, where statutory provision already exists under the Broadcasting Act 1990, the level of the quotas will not be specified in the legislation. They will instead be determined following consultation between OFCOM and each broadcaster.

7. In the case of Channels 3, 4 and 5, the legislation will give OFCOM a duty to ensure that, for each tier two requirement, appropriate conditions are included in the relevant licences to ensure the prescribed result. In the case of the S4C, the requirements will be applied directly by the legislation. For the BBC, the requirements will be applied via the Agreement.

8. The second and third tiers together, as they apply to each broadcaster, define that broadcaster's individual "public service remit".

Tier two requirements

<u>UK quota on independent productions</u>

9. Channels 3, 4 and 5, S4C and the BBC will be required to ensure that in each year at least 25% of the time allocated to the broadcasting of qualifying programmes in the service is allocated to a range and diversity of independent productions. The quota will be extended for the first time to S4C, to whom the 1990 Act requirements do not currently apply.

<u>Quotas on original production</u>

10. Channels 3, 4 and 5, S4C and the BBC will be required to ensure that a suitable proportion of the programmes included in the service are originally produced or commissioned for the service.

<u>Quotas on regional programming and production</u>

8. Channel 3 and the BBC will be required to meet certain requirements relating to programming designed for regional audiences, and these broadcasters together with Channel 4 will be also be subject to regional programme production requirements.

9. Channel 3's requirements will include ensuring that: a sufficient amount of time is given to a suitable range of regional programmes, including, news programmes, and that a suitable proportion of such programmes are broadcast in peak hours; that a suitable proportion of such programmes are made in the area for which the service is provided; that a suitable proportion and range of programmes for national audiences are produced outside London and the South East; and that a suitable proportion of investment is undertaken in a range of production centres outside London and the South East.

10. OFCOM will also be required to conduct and publish, when a Channel 3 licence changes hands, a review of whether the change of control may threaten the fulfilment of a licence holder's regional programming or production requirements. OFCOM will be able to vary licence conditions to meet any concerns arising.

11. The BBC will be subject to similar requirements to Channel 3, though reflecting its different status and constitution (ie it is not a regionally-based network like Channel 3). As a national service, Channel 4 will not be subject to regional programming requirements, but will be required to ensure that a suitable range and proportion of programmes are produced outside London and the South East.

News and current affairs in peak time

12. Channels 3, 4 and 5, S4C and the BBC will be required to ensure that high quality news and current affairs programmes are broadcast at intervals throughout the day and, in particular, at peak times.

Schools programmes on Channel 4

13. Channel 4 will be required to ensure that a suitable proportion of its programmes are schools programmes.

Options for changing/strengthening tier two

14. In framing the three tier regulatory structure we have aimed to rationalise the current system of broadcasting regulation so that it is more coherent across all broadcasters. We have also aimed to strike the right balance between the public interest in ensuring the provision of the key, quantifiable elements of public service broadcasting, and the business interest of broadcasters in avoiding undue prescription and regulation. We consider that the current framework is right to deliver that result. It would, however, be possible to make adjustments to meet particular concerns, arising for example from further Channel 3 consolidation. Three possible options are discussed below.

Set quotas in legislation

15. As mentioned in paragraph 2 above, with the exception of independent productions, it is proposed that the tier two quotas in each case will be determined following consultation between OFCOM and each broadcaster, and may vary to some degree. The legislation will only set out the prescribed result. An alternative approach would be for Government to set the level of the quotas in each case in legislation.

Pros - Provides clarity and certainty.
No risk of OFCOM caving in to special pleading.

Cons - Regulatory.
Inflexible, even if quotas are amendable by secondary legislation.
Difficult for Government to assess proper quota levels.

Move some tier three requirements to tier two

16. The self-regulatory tier three covers all those elements of public service broadcasting not specifically covered in tiers one and two. It would be possible in principle to decide that certain elements - for example arts programming or international programming - were so essential to the proper provision of public service broadcasting that they should be moved to tier two and become subject to quantifiable requirements.

Pros - Would ensure that the relevant programme strands were delivered at a prescribed level.

Con - Regulatory, move back to current ITC "bean counting" system.
Radical departure from White Paper policy.
Difficult to assess which elements should move to tier two.
Arguably unnecessary as OFCOM backstop powers would allow regulation in any case if PSB delivery as a whole was judged to be failing.

<u>Increase existing quota for independent productions</u>

17. As has been mentioned, the independent productions quota is already specified in legislation and can be amended by Order. The quota could therefore be increased for some or all broadcasters without the need to radically change the overall approach to tier two.

Pros - Straightforward to implement.

Cons - No convincing case in policy terms for increasing the quota either for some or all broadcasters.
Level of any increase would be arbitrary.
Regulatory, intervention in market.

ANNEX 9: SUMMARY OF EXISTING CROSS-MEDIA OWNERSHIP RULES

TV/radio cross-ownership

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

19. 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

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

21. (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]*

22. 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.

23. 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

24. 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.

25. 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.

26. 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

27. 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.

28. 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.

29. 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.

ANNEX 10: OPTIONS FOR REFORM OF THE NEWSPAPER MERGER REGIME

OPTION ONE – a bespoke newspaper regime

1. The DGFT would be able to refer a transfer over which he had competition concerns to the Competition Commission, within a set period from the later of the completion of the transfer or its publication, OFCOM would be able to refer any remaining cases over which it had "plurality" concerns by a slightly later timescale.

2. The Competition Commission would assess the transfer(s) on competition and plurality grounds. If they found no detriments to the transfer on both grounds, and OFCOM consented, the transfers would be cleared. If they found detriments on either or both grounds, they would so advise the Secretary of State and recommend remedies which would cure the problem.

3. The DGFT would be required to advise on the competition aspects of the CC's case, and OFCOM on the plurality aspects. Decisions would be for the Secretary of State, but would be restricted to remedying the identified detriments.

OPTION TWO – an alternative, which would apply to newspaper ownership the procedures for 'exceptional public interest' cases to be introduced by the Enterprise Bill.

1. The SoS would be able to intervene in any case that raised issues concerning the plurality of newspapers. The DGFT would advise the SoS on the competition aspects of the case, and the SoS could seek OFCOM's advice on the plurality issues. The reference decision would rest with the SoS.

2. The CC would assess the transfer(s) on competition and plurality grounds (if the DGFT had raised competition concerns) or on plurality grounds alone (if the DGFT had concluded that the transfer would not result in a substantial lessening of competition). On receipt of the CC's report, the ultimate decisions (on whether the merger was in the public interest and, if not, what remedies should be imposed) would be for the SoS.

ANNEX 11: SUMMARY OF KEY CONSULTATION RESPONSES

Alphabetical list of responses included in this summary

1 Associated Newspapers Limited
2 BBC
3 BECTU
4 Bloomberg
5 Broadcasting Standards Commission (BSC)
6 BSkyB
7 Capital Radio plc
8 Carlton Communications plc
9 Channel 4
10 Channel 5
11 Commercial Radio Companies Association (CRCA)
12 [redacted]
13 Daily Mail and General Trust (DMGT)
14 Emap
15 Endemol UK
16 [redacted]
17 Guardian Media Group (GMG)
18 GWR Group plc
19 [redacted]
20 Independent Television Commission (ITC)
21 Institute of Practitioners in Advertising (IPA)
22 mediawatch-uk
23 News International plc
24 Producers Alliance for Cinema and Television (PACT)
25 Radio Authority
26 Scottish Radio Holdings plc
27 SMG plc
28 Trinity Mirror