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RESTRICTED - POLICY Comms Bill : Mo

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Prime Minister

CROSS-MEDIA OWNERSHIP

At our meeting this week, you asked for some further discussion of the merits and defects of the different approaches we could take to the rule preventing anyone owning 20% of both the national newspaper market and a Channel 3 or Channel 5 service. Our original recommendation was to keep this rule. Three other options are discussed in the pages that follow. Of these, we would recommend Option 3, which removes all restrictions on the ownership of Channel 5, to allow free investment and growth in that channel, while protecting the independent voice provided by ITV, by far our largest commercial public service broadcaster.

The rule as it stands

- 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 *[it is this last clause which catches BskyB]*.

Background

The original thinking behind this rule was that no company or individual should be the dominant controlling 'voice' in our two most influential media.

Those who argue for limits on cross-media concentration consider this rule to be the most important guarantor of plurality of voice. There would be enormous resistance, in Parliament and in the non-Murdoch media, to its removal.

As things stand, the rule affects four companies:

- News Corporation (with 33% of the national newspaper market);
- BskyB (36% owned by News Corporation);
- Trinity Mirror (with 23% of the national newspaper market);
- Daily Mail and General Trust (with 18%, and rising, of the national newspaper market).

There is no scope to relax the rule by raising the limit to 25% or 30% - this would catch only News Corporation/BSkyB, and would therefore appear to be a 'Murdoch rule'.

Options

1. Remove the rule entirely and rely on competition law.

2. Remove the rule and instead create a different rule, insisting on separate ownership of Channel 3 and Channel 5 services.

3. Remove the rule as it applies to Channel 5, but keep a restriction on ITV ownership.

OPTION 1 - RELY ON COMPETITION LAW ALONE

The limits of competition law

- In <u>television</u>, the Competition Commission have defined the market for free-to-air TV very narrowly: effectively ITV alone (due to their mass audience coverage on analogue terrestrial TV, and consequent domination of the advertising market). The competition authorities will therefore act to prevent the formation of a single ITV (even with separate advertising sales houses) as long as the channel retains its existing share of ad revenue. They will probably not prevent either BSkyB or an existing ITV company buying Channel 5. They probably would act to prevent BSkyB buying any significant stake in ITV, although this could not be guaranteed.

- <u>Cross-media</u>. The competition authorities consider national newspapers to be operating in a separate advertising market to television stations. So again, media ownership rules would be the only means of preventing one company being the largest player in both these complementary markets - it is unlikely that concerns over market share would prevent many mergers. So without the 20% rule, there is little to stop Daily Mail and General Trust or Trinity Mirror buying into ITV (or News Corporation acquiring Channel 5).

The possible effect of a reliance on competition law

- News Corporation/ BskyB own Channel 5

  Based on current viewing figures, such a company might control 12% of the total TV audience (20% of the commercial audience) and 33% of the national newspaper market. However if they invested heavily in Channel 5, they might expect that TV share to grow. Our removal of other cross-media ownership rules would also allow them to own a significant share of the commercial radio market.

- DMGT own an ITV company and/or Channel 5

  Such a company might control 15% of the total TV market (25% of the commercial audience) and 18% if the national newspaper market (plus a significant share of the local/regional newspaper market). The relaxation of other cross-media rules will also allow them to realise their ambition to hold a large share of the commercial radio market.

Advantages

- Simplicity, and a level playing field.

- Should arrive at the most economically efficient outcome.

- Such commercial freedom would strengthen the arguments for retaining the BBC and Channel 4 as alternative sources of diverse content.

The risks in allowing this degree of consolidation

- Major newspaper companies would be able to promote their editorial line through a television station. We regulate news and content, and we could regulate further (see below). Yet such regulation is not foolproof and will not prevent an owner using a station to promote a certain political opinion, if he or she is determined to do so. Content regulation can only act retrospectively and where obvious abuses occur. It cannot control the sort of documentaries that a channel commissions, the stories that are given prominence in the news agenda, or those that are omitted entirely.

- Our key aim is to make sure there are a range of competing voices readily available to citizens, so that they are free to form their own opinions. If we allow the largest newspaper companies, who are already very influential, to buy up the television market, we risk a significant reduction in the number of voices, allowing one voice to become much louder than all the others.

- Such a concentration of voice would be harmful to politicians as well as citizens - it could create a media owner so powerful they can exercise a direct influence over political decisions.

The shape of the package on media ownership

- You have agreed to the principle of a 20% rule at the regional level, to prevent any company dominating newspapers and television in an area such as Scotland, or a major city such as Leeds. To keep this rule whilst removing all restrictions on National newspaper owners might appear to favour the latter without good reason.

OPTION 2 - INSIST ON SEPARATE OWNERSHIP OF ITV COMPANIES AND CHANNEL 5

Possible effect

- News Corporation/BskyB own Channel 5; Daily Mail and General Trust become the largest ITV company, creating a duopoly of media influence.

  If Sky owned Channel 5, their investment might allow it to grow into a major competitor to ITV. Any other newspaper group (eg DMGT) that bought into ITV would have a far more powerful voice to begin with.

Advantages

- This rule is easy to understand, and prevents any one company from completely dominating commercial television.

- It was an option put forward in our consultation paper, and attracted roughly equal degrees of support and opposition.

- Many in the TV industry think that such a rule already exists, although in fact it doesn't (the only rule is one preventing joint ownership of GMTV and Channel 5)

Drawbacks

- This solution would be more regulatory than the existing rule on Channel 3/Channel 5 joint ownership. It might be difficult to justify such concern about the ownership of Channel 5, given its present standing, its lack of universal coverage and its small audience share.

- It is not a balanced solution - if Channel 5 merely retains its existing audience share (and there is no guarantee it will grow with increased investment) ITV will provide a far more powerful voice for its owners.
- It is not proprietor-neutral - it would prevent the existing ITV companies buying Channel 5, although anyone else would be able to, competition law allowing. This would be perverse, given that one of the original plans for C5 was for it to grow into an additional ITV channel, so that together the two commercial channels together could provide competition to BBC1, BBC2 and C4.

OPTION 3 - KEEP A 20% RULE FOR ITV, BUT NOT FOR CHANNEL 5

Possible effect

- News Corporation/BskyB own Channel 5; ITV companies (or perhaps eventually a single ITV) separately owned by a separate media giant with no British newspaper interests - Bertelsmann, or Disney perhaps.

Channel 5 would be free to benefit from all sources of additional investment, allowing it to grow over time into a more serious competitor to ITV. ITV will also be able to benefit from new sources of investment, as long as that investment doesn't come from the British newspaper industry.

Advantages

- This suggestion would be proprietor-neutral - it allows anyone to buy and invest in Channel 5.
- ITV would survive as a voice independent of newspapers' editorial agendas, but will still be able to benefit from new sources of investment.
- There are some obvious justifications for making a distinction between ITV and Channel 5:

  C5 doesn't cover the whole of the UK population, has low viewing figures and few public service broadcasting commitments.

  ITV has a much more defined public service role, and comprises 15 regional licences that cover the whole country. These regional licences are already the focus of a 20% rule, and cannot be joint-owned with more than 20% of a region's press.

- We could try to protect the independence of Channel 5 by maintaining or even strengthening its public service requirements.

Drawbacks

- Although Channel 5 is small in terms of viewing figures and influence now, with increased investment it may grow its share of both over the coming years, to remove the most obvious distinctions between it and ITV.

POSSIBLE STEPS TO STRENGTHEN REGULATION OF CONTENT

Whichever option we choose, Channel 5 might be owned by a large newspaper group, and its audience share may grow. To address any concerns we might have over the quality of news and programming, there are some additional steps we could take to regulate content, rather than ownership:

- Enable OFCOM to vary Channel 5's requirements for original production if they felt changes in audience share demanded it.

- Extend the nominated news provider requirement to Channel 5, to make sure there is an independent source of news on that channel as well as ITV (this could also be dependent on an increase in Channel 5's audience share).

- Insist (as we will for Channel 3) that the Channel 5 licensee has a specific duty to maintain adequate financing for their news service, ensuring it is of high quality.

- Prevent ITV or Channel 5 companies owning a majority stake in their news provider (we have already proposed such a restriction on ITV companies). We could even prohibit the ownership of <u>any</u> stake at all, to guarantee the <u>complete</u> independence of news services.

- Make sure OFCOM has a specific duty to carry out an annual audit of news quality and impartiality on all commercial public service broadcasting channels.

Arguments For

- Channel 5's light public service broadcasting requirements are a reflection of the business costs and risks involved in building a new national broadcaster without national coverage. If BSkyB, say, were to own the channel, with the lower costs and risks they would incur by running their own/imported content, they could make a success of the channel, undermining ITV's audience share and its ability to fund public service broadcasting. This scenario might warrant an increase in public service requirements for Channel 5.

- News is our major concern. If we could be certain that Channel 5's news was independent, impartial and of high quality, and OFCOM were required to monitor it annually, we might feel more comfortable with the idea of a newspaper owning a major free-to-air TV channel.

Arguments Against

- Content regulation, however strong, cannot prevent a determined owner adding a political slant to editorial or programming decisions.

- Any of these steps (apart from the last) would be significantly more regulatory than the arrangements currently envisaged, for licence terms to be negotiated between regulator and broadcaster, with only a high level remit set down in law.

- Placing more regulatory obligations on Channel 5 if its audience grew might look like penalising success.

- We argue that particular requirements need to be placed on ITV news because of its influential position as the main competitor to BBC News. This argument does not extend to Channel 5 at present, and if its audience share grew competition between Channel 5 and ITV might remove the justification for a nominated news provider on any channel.

- Excessive limits on ITV/Channel 5 companies' ownership of their news provider may risk restricting the scale of investment in those news services.

RESTRICTED - POLICY

- ITV will continue as a major free-to-air channel with significant public service broadcasting requirements. It might not serve diversity to insist that Channel 5 acquires this exact same role if it is successful. Such an insistence would not, in any case, be able to shore up ITV's audience share.

This letter is copied to Sir Richard Wilson.

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Secretary of State for Culture, Media and Sport

25 March 2002

PATRICIA HEWITT
Secretary of State for Trade and Industry

25 March 2002