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ROLLING BACK REGULATION

OFCOM has a specific duty (clause 5) to secure light touch regulation by keeping the carrying out of their functions under review with a view to securing that regulation does not involve:

- the imposition of burdens which are unnecessary; or
- the maintenance of burdens which have become unnecessary.

They have to publish an annual statement setting out how they propose to do that.

OFCOM must also, where appropriate, have regard, in carrying out their general duties, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed (ie the Better Regulation Task Force principles).

Specific deregulatory measures in the draft Bill, or foreshadowed in the policy document are:

Broadcasting

There will be the possibility of general purpose digital multiplexes, carrying various combinations of communications and broadcasting services.

There will be clearer limits to regulation to exclude the Internet and other one-to-one services, including possibly video-on-demand.

Television

A deregulatory regime for public service broadcasting content at tier 3 of the new regulatory framework.

Combined licences for satellite and cable TV channels.

Radio

Combined licences for satellite and cable radio.
No detailed format controls for national radio.
Analogue licences will be extended from 8 to 12 years.
The fast-track re-advertisement procedure will be extended to all local licences.
OFCOM will have more scope for allowing format changes to mainstream stations, to facilitate competition.

Competition

There is to be a specific obligation to revoke SMP - significant market power - conditions where market reviews find the market to be competitive.

Spectrum

Spectrum trading will be introduced.

Telecommunications

The Bill will move to a regime of general authorisations rather than individual licences.

Media ownership

<u>Our package</u>:

- abolishes restrictions on foreign ownership;
- removes the regulatory barriers to a single ITV (though not the competition authorities' scrutiny);
- removes limits on the accumulation of radio interests across the UK, simplifying the rules on ownership at the local level;
- scales down the burdens imposed on newspaper owners by the special merger regime; removes the restrictions on joint-ownership of TV and radio;
- allows large newspaper companies to own Channel 5 and a range of radio stations;
- greatly simplifies and relaxes the rules on local radio/local newspaper cross-ownership;
- effectively reduces the number of cross-media ownership rules from 12 to 3;
- allows for further, periodic reform based on a review of regulation at least every 3 years.

THE EXISTING RULES ON MEDIA OWNERSHIP

This is a summary guide only. No one should act in reliance on any statement in, or omission from, this guide without first having taken legal advice. Note that 'Channel 3' is used by the ITV network.

General disqualification on holding licences by:

- non-EEA individuals and bodies (except licences to provide television multiplex services, national or local radio multiplex services, digital additional services, local delivery services, non-domestic satellite or radio services, licensable programme services and licensable sound programme services)
- local authorities
- political organisations
- religious organisations (regulators have discretion to waive this in relation to cable/satellite TV and local analogue, cable or satellite radio services) publicly funded bodies
- advertising agencies
- a person who is in the opinion of the regulators subject to influence from a body which is itself disqualified, the effect of which is, or is likely to be, adverse to the public interest.

TV Ownership

Disqualification on BBC, Channel 4 or S4C from providing Channel 3 or Channel 5 services or a local delivery service

Disqualification on holding both a National Channel 3 licence and a Channel 5 licence

Disqualification on holding two Channel 3 licences for the same region

Disqualification on holding two or more television licences where the licensee has 15% or more of total television audience share (BBC, Channel 4 and S4C are included for the purposes of calculating the total audience share, but are otherwise exempted from the conditions of this rule)

Disqualification on holding more than 6 licences to provide television multiplex services, or from having a stake greater than 20% in more than 6 bodies holding such licences.

Disqualification on having a stake of more than 10% in 8 or more licences to provide television multiplex services.

If services are provided for the BBC multiplex, then above rules apply in relation to 5 or 7 licences respectively.

Radio Ownership

Radio points system limits licensees to 15% of the total points in the system

Disqualification from owning more than one national radio service, more than one national radio multiplex service, or more than one national digital sound programme service

Disqualification from holding:

- any two licences to provide local radio services which may share a potential audience unless one is AM and the other FM, or a public interest test is met
- any three licences to provide local radio services which may share a potential audience unless the licences include both an AM and an FM licence and a public interest test is met
- any four or more licences which may share a potential audience

Disqualification from providing more than one non-simulcast local digital sound programme service on a single multiplex, unless there is another multiplex operating in the same geographical area

Newspaper Ownership

Under the newspaper provisions of the Fair Trading Act 1973, proprietors of newspapers circulating within the UK must obtain the prior consent of the Secretary of State for Trade and Industry before acquiring a newspaper (or newspaper assets) where the total paid-for daily circulation of the newspapers involved is 500,000 or more.

The Secretary of State is required to refer newspaper applications to the Competition Commission (CC) for a detailed report before deciding whether or not to consent to the transfer. There are, however, three exceptions to this rule:

The Secretary of State *may* consent to a transfer without a CC reference if he is satisfied that the newspaper is not economic as a going concern and that, if it to continue as a separate newspaper, the case is urgent (section 58(3)(a) of the Act).

The Secretary of State *must* consent to a transfer without a CC reference if he is satisfied that the newspaper concerned is not economic as a going concern and that it is not intended to continue as a separate newspaper (section 58(3)(b) of the Act).

The Secretary of State *may* consent to a transfer without a reference to the CC if he is satisfied that the newspaper being taken over has average daily sales of 50,000 or less (section 58(4) of the Act).

Newspaper transfers to companies or individuals who have no existing interests, either directly or indirectly, in newspapers circulating in the United Kingdom are not caught by the newspaper mergers legislation. Neither are transfers to newspaper proprietors whose newspapers, taken with those to be transferred, have an average paid-for circulation of less than 500,000 copies. Such transfers might however, be subject to the general merger provisions of the Fair Trading Act.

Cross-media Ownership

Disqualification from holding a licence to provide a national Channel 3 service or Channel 5 and a licence to provide a national radio service

Disqualification from holding a licence to provide a local radio service or local digital sound programme service and a licence to provide a regional Channel 3 service whose coverage area is to a significant extent the same

No person who runs one or more national newspapers with combined market share of 20% may hold a licence to provide regional or national Channel 3 service or Channel 5; or a national or local radio service

No person who runs one or more local newspapers with a combined local market share of 20% in a Channel 3 region may hold a licence to provide that regional Channel 3 service

No person who runs one or more local newspapers with a combined local market share of 20% in the coverage area of a digital programme service may hold a licence to provide that digital programme service

No proprietor of national newspaper(s) with a national market share of 20% or more may have more than a 20% stake in a regional or national Channel 3 service or Channel 5; or a national or local radio service

Disqualification from holding a licence to provide a local radio service by a person who owns one or more local newspapers with a local market share of 50% or more in the coverage area of the service, unless the radio service shares a potential audience with another local radio service (and two such radio services are not owned) and subject to a public interest test

Limit on ownership of two overlapping local radio service licences for owners of local newspapers with market share of 20% in the coverage area provided one is an AM licence and the other is an FM licence and subject to a public interest test
Limit of three overlapping local radio service licences for owners of local newspapers with market share of less than 20% in the coverage area, subject to a public interest test

Applications to hold a licence to provide a national Channel 3 service or Channel 5, a national radio service or a national digital sound programme service by a national or local newspaper will be subject to a public interest test

Applications to hold a regional Channel 3 service or a local radio service by a national or relevant local newspaper will be subject to a public interest test

Digital programme services shall not be provided for three months after the award of a licence to a national or relevant newspaper unless a public interest test is met

The matters to which the ITC and the Radio Authority shall have regard in determining the public interest test include:

- the desirability of promoting
  - plurality of ownership in the broadcasting and newspaper industries
  - diversity in the sources of information available to the public and in the opinions expressed on television or radio or newspapers
- economic benefits
- market effects

OUR PROPOSALS FOR NEW RULES ON MEDIA OWNERSHIP

General disqualifications

- Political organisations will not be allowed to hold broadcasting licences of any kind.

- Religious organisations will not be allowed to hold any Channel 3 or Channel 5 licence or any national radio licence (analogue or digital).

Within individual media markets

- Local radio ownership rules should ensure that wherever there is a well-developed choice of radio services there will be at least 3 separate owners of local commercial radio services, in addition to the BBC.
- No one will be allowed to own more than one local digital multiplex in any area (most areas will only have two).

- A reformed newspaper merger regime will be less onerous and more targeted, applying post-acquisition only in cases where there is significant concern on competition or plurality grounds. Criminal sanctions will be removed. Final decisions, at least on plurality grounds, will rest with Ministers.

- (There will be no rules on TV ownership, but the existence of BBC and C4 will ensure the existence of at least 3 separate free-to-air broadcasters)

- The Nominated news provider system will be retained to guarantee the quality and independence of ITV news.
- ITV companies will have to ensure the service is adequately financed, to ensure that it is of high quality.
- No one will be allowed to own more than 40% of any nominated news provider, and ITV companies may own no more than 40% in combination or in total.
- There will be a power for the Secretary of State to introduce the system for Channel 5, if that channel's news service acquires a major share of the free-to-air TV audience.
- The Secretary of State will also have the power also to revoke the whole arrangement, if a wider range of competitors emerge.

Cross-media ownership rules

1 A national '20%' rule:

(a) no one controlling more than 20% of the national newspaper market may hold any licence for Ch 3;

(b) no one controlling more than 20% of the national newspaper market may hold more than a 20% stake in any Ch 3 service;

(c) 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.

2. A parallel, regional '20%' rule: no one owning a regional Channel 3 licence may own more than 20% of the local/regional newspaper market in the same region.

3. Rules on local radio ownership will ensure there are at least 3 local/regional commercial media voices (in TV, radio and newspapers) in addition to the BBC, in most areas.

Review

OFCOM will be required to review all media ownership rules, at least every three years. They will make any recommendations for further reform to the Secretary of State, who will be able to amend or remove rules by secondary legislation.

Content regulation will ensure the quality, impartiality and diversity of broadcast programming.

Competition law will tend to encourage dispersed ownership and new entry in all markets.