

CHANNEL 4 RESPONSE TO DCMS/DTI CONSULTATION ON MEDIA OWNERSHIP RULES

Executive Summary

Channel 4 welcomes the government's consultation on media ownership and the emphasis it places upon the need to ensure continuing diversity and plurality of media ownership.

Channel 4 has three main concerns:

- The need to maintain a genuinely competitive advertising sales market. While the role of competition law in preventing distortion of the market is acknowledged in the consultation document, Channel 4 remains concerned that the government should be fully aware of the consequences of early ITV consolidation on all other advertising funded broadcasters and, in particular, its potential impact on the diversity and quality of content production.
- The fundamental democratic need to maintain plurality of news suppliers and, in particular, the need for OFCOM to have the powers to ensure that the ITV nominated news provider should have the necessary ownership structure to guarantee editorial independence and integrity, and the necessary financial resources to guarantee quality of service.
- The need to consider platform ownership and control of content gateways as a factor of growing significance in cross-media ownership. Platform ownership and control should be recognised as a distinct form of media ownership, akin to newspapers, television and radio. The government should consider regulation for the separation of carriage from content and should require OFCOM to review the issue annually.

Introduction

Channel 4 welcomes the government's consultation on media ownership and hopes that it will lead to the formulation of durable rules for governing this important area.

Channel 4 supports the general principles set out in the paper – that there are important democratic reasons for ensuring diversity and plurality in the media, and that these objectives cannot be achieved by competition law on its own.

The very existence of Channel 4 contributes to diversity and plurality. Its unique structure, as a corporation established by statute but funded entirely by commercial revenues, means that it is a source of public service broadcasting distinct from the BBC; it is free of shareholder pressure; and a strong editorial remit drives its programming. Channel 4 makes a unique contribution to consumer choice and editorial pluralism in the television sector and the wider media industry.

Channel 4 also contributes to the diversity of programme supply in the television sector, by commissioning its programmes from independent production companies. It plays a key role in supporting small and medium sized companies within the cultural industries sector throughout the UK, in part through its commitment to have 30% of its spend on new programmes made in the nations and regions. Channel 4 believes that the requirement on all public service broadcasters to commission at least 25% of their output from independent producers ensures the maintenance of a thriving independent production sector.

In a media universe where vertical integration is intensifying, Channel 4 has particular concerns about continued access for content suppliers to all relevant platforms.

General Principles (Chapters 1-5)

Channel 4 recognises that the government should seek “to encourage a dynamic market whilst at the same time guaranteeing plurality, diversity and quality for the consumer”(paragraph 1.11), and recognises that the media landscape is changing, not least with expansion of choice in the television market and the development of new technologies and new media.

However, the increasing convergence of technologies will not necessarily reduce the need for media ownership rules (paragraphs 3.6 - 3.9). Platform or gateway ownership controls access to a channel’s customers and gives huge leverage in, for example, negotiating shares of revenue streams from interactive applications. The requirements on platform owners to provide “open access to gateways on fair, reasonable and non-discriminatory terms” have not proved adequate in practise to safeguard the interests of content providers; for example, in guaranteeing channel providers’ access to information on their subscribers.

Simply being “as deregulatory as possible” may not achieve the government’s aim of promoting pluralism and diversity. New regulatory approaches may be needed. Vertically integrated companies that are both platform providers and content providers should not be allowed to have unfair commercial advantages. We expand on these views later in this paper.

Channel 4 does not dissent from the aims of ownership rules as set out in chapter 5. However, when the two stated objectives of British companies having “sufficient freedom to be at the heart of media convergence and expansion” and the need to “uphold our democratic principles” are in conflict and cannot easily be resolved, Channel 4 believes the government should make clear that, as a matter of policy, it will favour democracy over commercial freedom.

Detailed Proposals (Chapter 6)

General Prohibitions: advertising agencies (paragraphs 6.1 & 6.2)

Channel 4 is not persuaded that the present prohibition should be abolished. This exists to prevent advertising agencies favouring broadcasters that they might own. Although competition law can prevent agencies owning broadcasting licences in some circumstances, in a fast-moving market where the relative market power of individual agencies can change quite quickly it may not prove sufficient to prevent abuse.

Television: ITV consolidation (paragraphs 6.2.1 – 6.2.6)

The two changes proposed here, to remove the rules prohibiting single ownership of the two London ITV licences and the 15% limit on audience share, are designed to open the way for consolidation of ITV into a single company. Channel 4 does not believe that it makes sense for a barrier to continue to exist in primary legislation that would prevent ITV consolidation at some point in the future.

However, for ITV to merge into one company in present circumstances would create a company with a dominant position in the airtime sales market, holding a market share of over 60% of UK terrestrial television advertising and dominating the premium London market. The consultation paper argues that “competition law should provide sufficient protection” against this eventuality, but Channel 4 is concerned that the full impact of ITV consolidation on all other advertising funded terrestrial broadcasters should be fully appreciated.

The reality is that there should be no prospect for many years to come of ITV consolidation being allowed under existing competition rules. So long as ITV is successful in holding on to its audience and generating advertising revenue, it will have too dominant a market position for consolidation to be allowed in the short to medium term.

Television: ITV and Channel 5 (paragraph 6.2.7)

Channel 4 welcomes the suggestion that in the interests of plurality there should be at least four separately-controlled providers of free-to-air analogue television services, and would welcome a restriction on joint ownership of ITV and Channel 5.

Channel 4 also believes that, in the interests of plurality and diversity, dominant platform owners should not be allowed to acquire any of the commercially-owned analogue broadcasters. This view is expanded below.

Television: ITV News Provider (paragraphs 6.2.8 – 6.2.12)

Channel 4 continues to support the principle of the nominated news provider for ITV. It is important for democracy and plurality that there is at least one alternative, independent news supplier to the BBC with guaranteed levels of quality and editorial independence. We are concerned that the terms under which OFCOM would review this provision should ensure that any new arrangements continue to guarantee quality and editorial integrity.

Channel 4 is not opposed in principle to lifting the ceiling on the size of shareholdings (and thereby reducing the number of shareholders) in the nominated news provider. As the consultation paper suggests, fewer shareholders may well provide for more consistent and effective management. However, we believe the maximum size of shareholding should not be any greater than 40% at most.

But our overall concern is to ensure that the editorial depth and quality of the news provider are safeguarded. The resources devoted to news on ITV have declined considerably over the last decade – neither the nominated news provider system nor regulatory action has prevented this. OFCOM should use its powers to ensure comprehensive, adequately funded news coverage is provided as part of the ITV service.

Digital, cable and satellite television (paragraphs 6.2.13 & 6.2.14)

The most serious weakness in the consultation paper is its failure to recognise the scale of the problem created by the emergence of a handful of powerful platform or gateway owners who control access to content. Such platform ownership is already as important, if not more so, than ownership of individual service licences or newspapers. It is likely to become even more significant in the future.

The paper argues that “plurality is not threatened whilst there is competition between digital platforms and free-to-air broadcasters continue to hold such a significant share of the total audience.” But there is little likelihood of meaningful competition between digital platforms. It is much more likely that there will be a progressive entrenchment of one or two vertically-integrated platforms, with a consequent threat to plurality.

No limits were placed on the ownership of cable and satellite platforms when these pay-TV markets were in their infancy. Today, with a much larger and more mature market, ownership limits should be seriously considered.

Requirements on platform owners to provide “open access to gateways on fair, reasonable and non-discriminatory terms” are no longer sufficient safeguard for the interests of content providers.

The government should consider regulation for the separation of carriage (ownership of a platform) from content (service provision). OFCOM should be required to review this issue annually, and to be able to require such separation if it believes it to be necessary. Platform ownership should be viewed as a separate form of media ownership and be subject to cross-media ownership rules.

Cross-Media Ownership (paragraphs 6.5.1 - 6.5.12)

In the converging world of multi-media, all major media owners are attempting to achieve powerful positions across all media, giving them the ability to intensify their control through cross-promotion and other forms of complementary marketing. Ownership rules need revision to take account of these developments.

Rules based purely on specific limits within individual sectors are insufficient to regulate cross-media ownership. A statutory cross-media ownership regime is therefore necessary.

Platform ownership should be recognised as a form of media ownership, akin to newspapers, television and radio and should, like them, be taken into account when assessing levels of market influence.

In devising a new regime, Channel 4 sees merit in the proposal for a “plurality test” and in OFCOM being responsible for publishing guidance and reviewing it periodically. The virtue of this approach is that it would combine an assertion of democratic priorities with the flexibility in interpretation and implementation necessary in a dynamic commercial and technological environment.

Channel 4 also believes it would be sensible for the detailed process of deciding on the application of cross-media ownership rules to be undertaken by expert and impartial regulators, but with the final decision subject to political approval.

Review of Ownership Rules (paragraphs 6.6.1 – 6.6.4)

Many of the proposals in this paper will lead to a liberalisation of media ownership rules. But these rules should not be changed further without the sort of full consultation and democratic scrutiny that is involved in the preparation and passage of primary legislation. Channel 4 would be unhappy if secondary legislation or ‘sunset clauses’ were used to legislate in such an important area.

Other Issues

One issue not covered in the consultation paper is the status of independent production companies that have lost their independent status because they have been acquired by companies with broadcasting interests outside the UK. Channel 4 supports a redefinition of what constitutes an independent producer for the purpose of production quotas to enable UK production companies to benefit from external investment that does not involve conflicts of interest without having to sacrifice their independent status.

Conclusion

Channel 4 believes the government is right to be concerned about the maintenance of diversity and plurality in the media – an issue whose importance means it cannot be left simply to the market and the competition authorities. In devising new rules Channel 4 is particularly concerned that platform ownership is seen in itself as a form of media ownership and should be subject to appropriate regulation and limitations.

Channel 4 Television

Friday 25 January 2002