

Channel 5 submission to the DCMS/DTI consultation on media ownership rules

January 2002

INTRODUCTION

Channel 5 welcomes the publication of the Government's consultation document on Media Ownership rules and this opportunity to comment on its contents. Many of Channel 5's views on this matter have already been set out in our submission to the prior consultation on the Communications White Paper. This submission therefore focuses on the key issues and those where the Government has explicitly sought further views. The opinions expressed in this submission are those of Channel 5 and do not necessarily represent the views of our two shareholders, RTL and United Business Media.

Overall we support the Government's stated objective to create a framework for media ownership, which will continue to protect plurality of voice and encourage diversity of content whilst aiming to promote a competitive market for new businesses and attract new investment. We remain unclear however as to how the thinking in the document will lead to this objective being met. The media sector is part of a rapidly changing market. Any new rules must be within a flexible framework, well able to adapt to new circumstances be they economic or technological.

In general terms we favour the introduction of an enhanced version of Competition Law under which preserving the plurality of the media and the right of free expression of opinions are treated as exceptional public interest issues to be determined by the Director General of Fair Trading and the Competition Commission with advice from OFCOM and subject to approval of the Secretary of State.

DETAILED OPTIONS

6.1 General Prohibitions

6.1.1 Local Authorities, Advertising Agencies and Political Organisations

Channel 5 supports the intention to revoke the rules preventing Local Authorities from owning media companies (provided they are placed under an absolute prohibition from using their ownership for political purposes). We agree that the prohibition on ownership by political organisations should be retained.

We do have some concerns regarding the proposal that advertising agencies should be permitted to own media companies. This is due to the fact that we believe that an advertising agency that owned a broadcaster might be in a position to restrict and distort competition in the advertising market.

6.1.3 Foreign Ownership

We support the Government's working assumption that the current prohibition on non-EEA ownership of broadcasters should be retained. It seems reasonable that this prohibition remains in place until there are reciprocal arrangements that would allow EEA companies to expand into the markets of key trading partners/competitors such as the US and Australia.

However as a matter of principle, foreign ownership restrictions should be considered as incompatible with an open market economy and with free trade. They should therefore be progressively abolished. In order to create scope for liberalisation in international trade in services, in particular during the current WTO/GATS negotiations, we suggest that the current prohibition could be attenuated by a reciprocity clause, i.e. that it would apply only to countries which do not (yet) allow direct or indirect ownership by EEA broadcasters, and only to the extent as the foreign ownership restrictions in these countries apply.

6.1.6 Religious ownership

We agree with those who argue that ownership restrictions should be lifted on national religious broadcasting on the grounds of freedom of speech with the proviso that these bodies are made subject to the same

regulatory code as other the ITC licensed broadcasters. We are content that this principle should be applied to a national digital sound programme service licence and to a multiplex licence (local or national).

6.2 TV Ownership

We note that the Government intends to remove the 15% limit on share of TV ownership (6.2.2) as well as to revoke the rule that prohibits single ownership of the two London ITV licences (6.2.1) thus paving the way for a single ITV company, subject to the decision of the competition authorities.

In principle we agree that it is preferable that plurality of ownership should be determined through competition law rather than by statutory regulation. But we wish to state our concern that the creation of a single ITV company will further consolidate ITV's already dominant commercial terrestrial television trading position. Such market dominance of ITV's already accounts for about 57% of all airtime sales and this from only two sales points. We believe that it is *vital that the competition authorities are robust* in their assessment of any ITV merger and that their decision-making takes into account the in our view, adverse long term implications for viewers, advertisers, other commercial broadcasters and the market as a whole, of the creation of a dominant player with very strong market power, able to influence the market as a whole. Whilst ITV retains its current dominant position, we believe that these adverse implications should preclude the creation of a single ITV company.

Similarly, Channel 5 would strongly recommend that any merger leading to the creation of a single dominant sales house with a NAR in excess of 50% in the UK market be submitted to the review of competition authorities. Any sales house with a NAR in excess of 50% would be able to distort the market to the detriment of advertisers and the other commercial broadcasters. We would also expect the existing regulations to be relaxed to enable the other 'non-ITV' broadcasters to be allowed to consolidate into one sales house with up to 50% of NAR.

6.2.1 Single ownership of London ITV licences

Channel 5 believes that the competition authorities should veto the joint sale of advertising for the two London ITV franchises. Historically, London has provided the only real competition within ITV as buyers try to secure coverage of one of the most powerful markets in Europe. It will

be critical to the maintenance of fair competition that London remains separated and that a 50% limit of NAR applies to any one sales house.

6.2.2 The 15% limit on share of TV audience

As stated above, despite our own serious reservations about the potentially anti competitive nature of a singly owned ITV, Channel 5 prefers that these matters should be determined under competition law and by the competition authorities rather than through the statutory imposition of a 15 % limit on share of audience.

6.2.7 Ensuring the existence of at least 4 separately controlled broadcasters providing free-to-air analogue television services, by preventing the joint ownership of ITV and Channel 5.

We believe that the decision as to whether the Channel 5 licence and ITV licences may be held by the same operator should be determined by the competition authorities under the competition law and by reference to all appropriate circumstances at the time in question. It is impossible to accurately predict the future commercial and economic environment. Statutory regulation of this nature would reduce the flexibility to respond to currently unknown circumstances. The important issue should be to ensure plurality of services rather than to apply rigid ownership constraints.

6.2.10 ITV news provider

The proposal to retain the nominated news provider system for ITV, but to introduce a clause to allow the Government, on advice from OFCOM to revoke it, is a middle course that few will argue against. However we believe that subject to compliance with all applicable legal and regulatory requirements broadcasters should be free to produce their own news or obtain it from whomsoever they choose.

6.2.12 Remove 20% limit on ownership of ITN

ITN is one of Channel 5's most important suppliers. They are currently responsible for producing 15 hours of news programming every week as

well as a range of factual programmes for the channel. Our news service is a key element of our status as a public service broadcaster. It includes half hour bulletins at 17.30 and 19.30 as well as news on the hour every hour.

We would support the Government's proposed option that the limit on ITN ownership by any one entity should be raised to 40% thus ensuring a minimum of three owners for ITN. The reduction from five to three owners would help to make the company more manageable at the same time as ensuring its ongoing editorial independence. It would also remove the unwelcome possibility that Channels Four and 5 might otherwise face if the provider of their news programmes was solely owned by a free-to-air analogue competitor.

6.5 Cross-media ownership

We recognise the complexity of legislating for plurality of media ownership in times of fast changing markets and technological convergence. As previously stated our preferred approach to this issue would be to leave as much as the decision-making process as possible to OFCOM and to the competition authorities.

In order to achieve maximum flexibility we believe that along with a general liberalisation of the thresholds themselves, the concept of 'permeable' thresholds able to be exceeded on satisfaction of a plurality test, could be best way forward. As stated in the consultation paper, this approach would increase the ability of the framework to react to change and might allow companies to grow organically without needing to divest.

6.6 Review of Ownership Rules

We believe that it is vital that any new legislation laying down the new framework for media ownership is not 'set in concrete' requiring primary legislation in order for it to be amended. As the Government itself recognises, the media market is going through a period of swift and extensive change and it is not possible to predict with any certainty how the market will look in ten or even five years time.

We do not believe that an automatic review by OFCOM every two years would make much sense. Instead we would favour making the new legislation subject to modification on the recommendation of OFCOM by secondary legislation and approval of both Houses of Parliament.