

Carlton Communications Plc
Response to the Consultation on Media Ownership Rules

1. BACKGROUND

- This memorandum sets out the views of Carlton Communications Plc. Carlton is one of the UK's leading commercial broadcasters, holding regional Channel 3 licences for London, the Midlands, the South West, West and Wales, and owning 50 per cent of ITV Digital, the world's first commercial digital terrestrial television (DTT) operator.
- Carlton welcomes the key objective set out in the consultation document:

"... We want UK industries to be able to compete in a changing global market, and we want them to be able to attract new investment and skills. We must ensure that the environment we create allows companies to grow, to reduce costs, attract new investment and develop new, improved and cheaper products and services for the benefit of consumers." (3.5)

UK media businesses, and the television industry in particular, have been constrained by the confused and contradictory regulatory environment in which they have operated. Proscriptive ownership rules have prevented British media businesses from building economies of scale and competing in international markets. Liberalisation will help realise the full potential of the UK media industry, creating jobs and additional investment in the economy as a whole.

2. THE REGULATORY FRAMEWORK

- Carlton has consistently argued that the main focus of the Communications Bill should be to minimise the overall burden of regulation and reduce the overlap between the regulatory bodies governing the media.
- Decisions about the development of the UK media market, as with other sectors, should be based on the competitive environment in which companies operate, rather than arbitrary rules enshrined in primary legislation.

- The new regulatory framework should be based primarily on competition law, with minimal sector specific powers to deal with issues such as access to networks. By seeking to pre-regulate every eventual market outcome, the current framework stifles innovation, distorts competition and has become outdated.
- We welcome the Government's pledge: "*We will be as deregulatory as possible, in the knowledge that new competition legislation should be more effective in preventing companies from abusing a dominant market position.*" (3.7)
- Competition law should be sufficient to maintain plurality and prevent concentration of ownership in the media. Diversity is best maintained through content regulation, not ownership controls.
- However, this deregulatory approach will only work effectively if the competition authorities are structured and charged to operate at the same pace as a fast-moving dynamic industry such as broadcasting. The evidence to date suggests this is clearly not yet the case.

3. DETAILED OPTIONS

GENERAL OWNERSHIP PROHIBITIONS

Local Authorities, Advertising Agencies and Political Organisations

We will revoke the rules preventing local authorities and advertising agencies from owning media companies, but will keep the prohibition on ownership by political organisations.

- Carlton agrees with this recommendation.

Foreign Ownership

Our working assumption remains that we will keep the current prohibitions on non-EEA ownership of broadcasters.

- Carlton believes this assumption is misplaced. A principal aim of this proposed legislation is to allow British companies to build economies of scale and to compete in international markets. Key to that will be opening up new opportunities for investment into UK-based companies, and opportunities for UK-based companies to invest in and develop alliances internationally.

- Maintaining prohibitions on non-EEA ownership of broadcasters will serve further to limit the growth potential of British media companies, at a time when US and pan-European media companies are developing rapidly.
- The Government should instead adopt a policy of reciprocity towards non-EEA countries. UK ownership rules for non-EEA countries should mirror the rules which apply to UK companies owning companies in the relevant country. This “open skies” approach has, for example, long been accepted as being beneficial for the growth of the UK airline industry.

Religious Ownership

Views are invited on whether we should remove all restrictions on religious organisations holding broadcasting licences, and in particular whether religious organisations should be able to hold:

- *a national digital sound programme service licence;*
- *a multiplex licence (local or national).*
- Carlton is neutral on this issue.

TELEVISION

Single ownership of London ITV licences

We will remove the rule that prohibits single ownership of the two London ITV licences.

- Carlton fully supports this recommendation. This restriction creates a bar to consolidation and should be repealed. Decisions about the concentration of ITV ownership would be better taken by the competition authorities at the relevant time, rather than being written into primary legislation.

The 15% limit on share of TV audience

We have decided to remove the rule that imposes a limit of 15% on any company’s share of the television audience.

- Carlton fully supports this recommendation. The audience share limit creates a bar to consolidation in the industry and to the creation of a single ITV. An ITV network with a single owner would be a media company of sufficient scale to maximise its competitive edge and form international alliances.

- These two changes will remove the statutory obstacles to the creation of a single ITV. Further consolidation within ITV would, of course, be subject to competition law and the provisions of the Fair Trading Act.
- In addition, we believe the licensing and advertising restrictions that prevent the integration of GMTV within ITV should be lifted.

Options:

We could remove all restrictions on the ownership of licensed television services, leaving the matter to the competition authorities.

We could ensure 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.

- Carlton believes that all restrictions on the ownership of licensed television services should be removed, and that general competition law should apply. This is sufficient to ensure plurality.

ITV News Provider

We will retain the nominated news provider system for ITV, but will introduce a clause to allow the Government, on advice from OFCOM, to revoke it.

- The questions of nominated news provider status and ownership of ITN (see below) are inter-linked. ITV believes that it should both be free to choose its own news supplier, and not have one effectively imposed by the regulator, and be free to own that supplier.
- The Government is clearly minded, in time, to revoke the nominated news provider system. We believe it is in the interests of ITN for that decision to be taken now. The continuation of the nominated news provider system serves to perpetuate uncertainty and actually disadvantages ITN rather than protects it. Under this system, last year ITV had no option but to consider a bid from a rival consortium.

We are persuaded that the current 20% limit on ownership of the nominated news provider is inconsistent with the demands of effective management and that the development of the market for news will permit liberalisation.

We would welcome opinions on what ownership limit might constitute an appropriate safeguard of the news provider's independence. One option, for example, would be to raise the limit to 40%, reducing the minimum number of shareholders from five to three.

- Carlton welcomes the Government's recognition that the current ownership limit is outdated. However, raising the ownership limit to 40 per cent is equally outdated and inconsistent with the Government's clear support for the eventual consolidation of ITV under a single ownership.
- Moreover, ITN's future as a news organisation and as a supplier to the UK's largest commercial broadcaster would be safeguarded, not threatened, by allowing it to be wholly owned. ITN is currently substantially weakened by having a consortium ownership. History shows that such ownership inevitably leads to a diminution and dilution of interest and support. Success is always better achieved through sole ownership.
- There is no other major broadcaster in the world, public service or otherwise, which is barred from owning its news service and which is obliged to use a news supplier nominated by its regulator. We believe this regulatory anomaly should be abolished.
- There would be no future threats from rival consortia anxious to take over the news supply contract. The quality and impartiality of ITV news would continue to be safeguarded by statutory and licence requirements.

RADIO

Nationwide ownership of Independent Local Radio licences

Views are invited on whether the existing points system should be abolished in respect of UK-wide ownership. No alternative system would be established to limit total concentration of radio ownership. It could be left to the competition authorities to determine the appropriate limits on the accumulation of radio interests on a UK-wide basis.

- Carlton supports this recommendation.

Accumulation of interests in local areas

Views are invited on the proposals that, at the local level, OFCOM should be responsible for ensuring, via a new points system, that in every local area with a well-developed choice of radio services there are at least 3 owners of Independent Local Radio services in addition to the BBC.

- Carlton believes competition authorities are best placed to determine limits.

National Radio Licences

Views are invited on whether we should lift the specific disqualification from ownership of more than one national radio licence.

- Carlton believes this specific disqualification should be lifted.

Digital radio

Views are invited on the suggestion that OGF.COM should be responsible for instituting a scheme that ensures at least 3 owners of local digital sound programme service licences in each area, and also ensure plurality of ownership of multiplex licences.

- Carlton believes that open access to platforms is more important than ownership, a lesson that has been learned from the launch of digital terrestrial television.

Onward sale of Radio Licences

Views are invited on whether OFCOM should be able to prevent the onward sale of licences for a two year period after their award, where it believed a change of control would jeopardise the character of the service.

- Carlton is neutral on this issue.

THE PRESS

The special newspaper regime could be reformed to give OFCOM the duty of assessing whether a particular newspaper transfer would compromise the accurate presentation of news and free expression of opinion. OFCOM would advise the Secretary of State on whether to prohibit the merger or subject it to conditions on “freedom of expression” grounds. The independent competition authorities (the Director General of Fair Trading and the Competition Commission under the proposed merger reforms in the forthcoming Enterprise Bill) would separately assess the merger on competition grounds.

An alternative process could involve the repeal of the special newspaper provisions. An exceptional public interest gateway under the reformed general merger regime would be created, so that the Secretary of State could call in any newspaper merger case which gave rise to freedom of expression concerns. OFCOM could have the role of advising the Secretary of State on freedom of expression issues in such cases. The

Director General of Fair Trading would advise the Secretary of State on the competition issues. The Secretary of State would be the ultimate decision-maker.

If either option were to be adopted, we invite views on:

- the merits of taking local titles out of the newspaper regime. In particular, we would welcome suggestions as to how “local” should be defined for this purpose;*
 - the merits of extending the newspaper regime to all qualifying acquisitions, regardless of whether the potential owner is an existing newspaper proprietor or not;*
 - whether the scope of controls should be revised in relation to newspaper assets;*
 - whether it is appropriate to retain the criminal sanctions that underpin the regime.*
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- Carlton is neutral on this issue.*

CROSS MEDIA OWNERSHIP

Options:

We could retain the existing limits on cross-media ownership.

We could do away with cross-media limits altogether, and rely on regulations within separate media and competition law to meet our objectives.

We could reformulate the existing rules, attempting to incorporate the extent to which different media differ in their influence, so that, for example, newspaper owners might be more limited in the TV interests they controlled than radio owners were.

We could establish the same set of limits on all forms of cross-media ownership. For example, at national level, no owner might be allowed to control more than 20% of the audience in any 3 markets, or more than 30% of any two markets, regardless of the particular nature of the markets involved. A comparable system with different limits might be applied to local markets.

We would welcome views as to whether the limits on cross-media ownership (whether or not they are altered) should be combined with a rule that these limits could be exceeded if the acquiring party satisfied a plurality test. If so, should decisions be taken by OFCOM or by Ministers?

- Carlton believes the best approach is to remove cross-media limits altogether, and rely on regulations within separate media and competition law to meet Government objectives.

Review of Ownership Rules

Views are invited on whether all media ownership rules should be subject to automatic review by OFCOM every 2 years. Limits could be amended through an Order by the Secretary of State on the recommendation of OFCOM. Alternatively, provisions would lapse unless their continuation was agreed by Parliament.

- Carlton believes outdated legislation and the slow pace of legislative reform have severely limited the growth potential of British media companies. Automatic review by OFCOM every 2 years would ensure that rules remain appropriate in a fast-changing market.
- Any provisions enshrined in primary legislation should be subject to a “sunset” clause ensuring the provisions lapse after a period of 2 years.

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