

## **CAMPAIGN FOR PRESS AND BROADCASTING FREEDOM**

### **RESPONSE TO CONSULTATION ON MEDIA OWNERSHIP RULES BY DCMS and DTI (November 2001)**

#### **1. Introduction**

1.1 The Campaign for Press and Broadcasting Freedom (CPBF) was founded in 1979. We work with public interest groups, trade unions, academics and individuals inside and outside the media to promote accountability, diversity and plurality in mass communications. One particular strand of our work has been to track and analyse the distorting impact which excessive media concentration can have on the democratic process, and on broader social, cultural and economic activities.

1.2 Our response to the Consultation on Media Ownership Rules (2001) (hereafter the Consultation Paper') follows the Campaign's earlier response to the White Paper, *A New Future for Communications*, as well as the earlier consultation on the White Paper and the 1998 Green Paper, *Regulating Communications*, (all available at [www.cpbf.org.uk](http://www.cpbf.org.uk)). In these responses we explain the general principles which we believe should govern communications policy. We recognise that media markets are evolving, influenced by technological changes arising from digitalisation and by convergence. However, we challenge the basis of arguments that regulation is either no longer necessary, or desirable, or feasible due to 'convergence'. We argue that the continuing significance of mass media in people's lives as well as the growing importance of new media, justify and require effective regulation of communications in the public interest.

#### **2. Regulating for pluralism and diversity**

2.1 We agree with the authors of an earlier study of ownership regulation (Congdon et al 1995: 8) that: '..any ownership controls devised for the digital world must be based on a clear assessment of the kind of diversity they seek to promote and of the types of influence they are directed at containing.'

We believe that the Consultation Paper does not adequately identify the purposes of regulating for plurality and diversity in the media, nor the risks to pluralism and diversity in evolving communication systems in the United Kingdom.

The importance of the media for democracy justifies particular attention to the plurality of voice in the media, to the diversity of sources of news and information available, and to access to ideas and opinions. We welcome the acknowledgement of the importance of safeguarding pluralism on these grounds in the Consultation Paper [1.6; 1.8]. The Consultation Paper identifies four reasons for pluralism put forward by 'proponents of the case' [1.7].

(i) Plurality ensures against 'excessive power in an industry which is central to the democratic process'.

- (ii) Plurality of owners should secure a plurality of sources of news and editorial opinion and, by inference, allow space for 'dissent and argument'.
- (iii) Pluralism is necessary to counter risks of bias or editorial control of the news agenda.
- (iv) Plurality 'maintains our cultural vitality... A plurality of approaches adds to the breadth and richness of our cultural experience'.

We agree with all these points but they do not address all the concerns that arise and which continue to be important for the purposes of regulating pluralism and diversity in communications media. Further, as we argue below, there are important concerns identified in the list above which are not acknowledged or addressed in the remainder of the Consultation Paper and in the Government's proposals themselves.

2.2 We believe that Harcourt and Verhulst (1998: 1-2) offer a valuable starting point in their summary of why media pluralism and media ownership have been considered important in democratic communications policy:

“The media are relied upon in democratic societies for the protection and promotion of human rights and democracy. Diversity of the media and accurate and honest reporting of the news are considered to be vital for guaranteeing pluralism of opinion, adequate political representation, and a citizen's participation in a democratic society. A pluralistic media is seen to meet the demands of democracy by providing citizens with a broad range of information and opinions; to represent minorities by giving them the opportunity and space to maintain their separate existence in the larger society. It is also seen to reduce the likelihood of social conflict by increasing understanding between conflicting groups or interests; to contribute to overall cultural variety and to facilitate social and cultural change, particularly when it provides access to weak or marginal social groups.”

The problems arising from media ownership are not restricted to possible limitations on the supply of news and information. The arguments set out in [1.7] are all important, but there are additional considerations which media ownership measures should address, and against which the effectiveness of communications policy as a whole must be assessed.

1. Variety and cultural diversity.
2. Media access (social, cultural and economic access for individuals and groups in society, especially marginalised groups).
3. Independence of programme makers and journalists.
4. Owner influence affecting media content and performance in entertainment and fiction as well as in news, current affairs and non-fiction.
5. Separation of editorial and commercial speech.
6. Transparency of owners' corporate or commercial interests in editorial and media content.
7. Plurality of sources of funding for media (especially in broadcasting).

We think that the government should be concerned with preventing a concentration of ownership and using its legislative and economic power to promote plurality of outlets. The media should be an arena in which a diversity of perspectives and viewpoints can be

encountered. This means that governments have to take action to encourage participation in the media by the range of different communities in our society and also enforce, across the media, obligations on providers of services to promote key values of accuracy, impartiality and public service principles. As we have argued in our main submission on the White Paper, we do not think that diversity is served by encouraging the spread of market-driven services and leaving public service and community media on the margins of the system.

### 2.3 Cross-promotion and conflicts of interest

The government's communications policy needs to address ways of tackling and preventing a number of abuses which restrictions on cross-media ownership have served, in part at least, to minimise, but which are already present and likely to intensify in the UK and other media systems. These arise especially where there is actual or potential conflict between editorial integrity and the commercial or corporate interests of firms. Particular problems include conflicts of interest, the degree to which commercial or corporate interests are declared and transparent and the separation of editorial and advertising or promotional content and cross-media promotion.

The ability to cross-promote products and services has been a powerful incentive driving media mergers. In the United States, where this dynamic is most advanced, the results have been increasingly sophisticated and systematic marketing effort (synergy), more media promotion, and more surreptitious advertising as promotional material burrows into editorial content. Effective content and behavioural regulation are both vital here, but we believe these are matters which need to be addressed through an integrated approach requiring effective ownership regulation within and across sectors. Competition law can address some of the issues of market power and economic competition that arise, but it is not equipped to address matters of pluralism or to examine the quality and integrity of editorial speech.

Our views on cross-promotion are set out in more detail in our responses to the Independent Television Commission's two consultations on cross-promotion in television services carried out in 2001 (available at [www.cpbf.org.uk](http://www.cpbf.org.uk)).

### 2.4 Regulating competition

We welcome the clear set of statements about the need to protect diversity and plurality and the recognition that 'competition issues alone cannot secure our diversity and plurality objectives' [6.0.6].

However this intention clashes with [1.8] 'we are committed to a deregulatory approach to media markets'. This approach is justified partly on the grounds that 'new competition legislation should be more effective in preventing companies from abusing a dominant market position'. [3.7].

While competition regulation can successfully tackle economic competition between firms, it has widely acknowledged limitations as a means of regulating for pluralism and diversity. As the former EC Competition Commissioner Van Miert stated in 1997: “My personal opinion is that I am convinced of a need for European legislation on media concentration...We cannot use competition rules to govern democratic issues.” (cited in Barendt and Hitchens 2000: 264)]. Above all, competition regulation may tolerate monopoly or oligopoly provided that markets are economically contestable and so allow conditions that threaten pluralism. In contrast, the public policy concept underpinning anti-monopoly measures concerns the effects of concentration on the public interest rather than on competition.

Communications regulation needs to be based on the recognition that media contribute to pluralism, diversity and quality of information and hence require a separate regulatory structure from that which governs other parts of the national and global economy.

### **3. CPBF Responses to Some Detailed Options [6]**

#### **Local Authorities, Advertising Agencies and Political Organisations**

*[I] 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.*

##### Advertising Agencies

We strongly oppose allowing advertising agencies to hold broadcasting licences. The Communications White Paper asserts that 'the disqualification on advertising agencies is aimed at ensuring fair competition in the advertising market.' This is inaccurate and misleading. Historically, the concern that the interests of advertisers should not jeopardise editorial independence has been a key rationale underpinning both ownership regulation and content regulation. It is not just economic competition that suffers if advertisers can influence media content but many other aspects of consumer welfare and consumer protection that the Government states it seeks to safeguard.

While asserting that only economic competition issues pertain, the Government does not provide any further explanation or rationale for allowing advertising agencies to own broadcasting services.

We believe there are very strong arguments against allowing advertising agencies to own media companies (see CPBF response to the White Paper). It is widely acknowledged in the media and advertising industries that advertisers seek to overcome the limitations of spot advertising on television in seeking more effective channels to reach target markets, especially the young.

The development and growth of advertiser-financed programmes, masthead programming and interactive advertising as well as programme sponsorship and product placement attest to the importance of finding effective methods of promotion and

persuasion on behalf of advertisers. Likewise, in print media, advertorials, advertiser-financed supplements and other promotional practices have taken increasingly sophisticated forms.

Ownership regulation, as well as content and behavioural regulation, such as the ITC's rules on advertising and promotion, have together operated to prevent excessive influence of advertisers on programme content. Allowing advertising agencies to own licensed services will put into reverse all such regulation which has acted to protect consumers from both undue or surreptitious commercial speech in media content and safeguard editorial integrity and independence.

Content regulation, such as the ITC's rules for licensed services, can provide important safeguards, if adequately enforced. However, the prohibition on advertising agency ownership of media organisations remains a necessary regulatory tool for which there is no adequate substitute. The ITC acknowledged in its White Paper submission that there are powerful commercial motives for blurring the distinction of editorial and advertising in both directions, placing commercial messages in programmes and making advertisements look like editorial. As commercial pressures intensify in a multi-channel system funded largely by advertising or sponsorship revenue, we believe it is essential that existing controls are strengthened and rigorously enforced across all licensed services.

The influence of advertising is important for other reasons. Offering advertisers a one-stop shop for advertising across a variety of platforms has been a factor influencing consolidation of firms. There is evidence from the United States that increased competition for advertising amongst media with a high level of dependence on advertising finance leads to media organisations becoming more suppliant in seeking to accommodate advertiser demands (McAllister 1996, 1999; Bogart 1995).

### **Foreign Ownership**

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

The Consultation Document quotes the White Paper (4.9.5) as stating that restrictions on non-EC and non-EEA ownership of indigenous media 'play an important role in ensuring that European consumers continue to receive high quality European content'. This is the key reason for maintaining, and indeed even strengthening, such restrictions. The argument that follows this one, namely that Britain should not open its media markets to firms from countries which impose restrictions on British ownership of their media, is a far weaker one. Not only does it ignore the crucial *cultural* issue at the heart of this particular matter, it also suggests that were these countries to abolish these restrictions then Britain could and should do likewise.

The case for actually *strengthening* existing restrictions is forcefully made by the large amount of supposedly British media already in non-EC and non-EEA hands. Gannett, the biggest US local newspaper publisher, owns one of the largest English local

newspaper groups, Newsquest; AOL Time Warner own the largest magazine publisher, IPC; and Hollinger International, the Canadian media group owned by Lord Black, and publisher of the *Daily Telegraph*, *Sunday Telegraph* and *The Spectator*, for example.

In the context of this consultation, can the government simply ignore the palpable, if inconvenient, fact that large tracts of the British media are already owned by one particular non-European, namely the American, Rupert Murdoch, whom our fellow EC members have made strenuous and largely successful efforts to prevent from entering their media ecologies. No doubt his exclusion from the continental European media scene, and thus from exerting the kind of daily political influence on our European neighbours which he does so successfully in the UK, largely helps to explain his remorseless hostility to the entire European project. Indeed, the highly US-centric views expressed by Murdoch's newspapers have effectively meant that successive governments, both Conservative and Labour, have quite clearly felt constrained to tailor their policies on Britain's entry into the Euro, and indeed its place in Europe, to the extreme views of a foreign media magnate.

This presents us with a classic, textbook illustration of the argument that restrictions on media ownership are needed in order to prevent the concentration of media power in the hands of those who would use it for their own particular ends. The contents of a nation's media are far too important, politically, culturally and in every other sense, to be left to the tender mercies of outsiders with particular axes to grind.

This is the cast-iron assumption on which every other EC country works, and it is difficult to see why the UK has chosen to follow a different path. The consequence, however, is clear: more of Britain's media are in non-EC hands than those of any other EC country, which casts a certain amount of doubt on the extent to which countries such as Germany, Spain and the Netherlands have genuinely removed their restrictions on foreign investment in their media, as the Consultation Paper states.

The consequences of Murdoch's ownership of BSkyB also raise crucial cultural questions, since his satellite channels are heavily dominated by non-EC-originated, largely American, material, thus daily flouting the spirit (even if not the letter) of the Television Without Frontiers directive. This then has consequences for its main rivals, BBC1 and ITV, which are increasingly forced to compete with BSkyB on its own programming terms. Quite apart from the fact that many British citizens are now more familiar with media images of the back-lots of Los Angeles than of their own country, this has increasingly dire consequences for Britain's ever-worsening balance of payments situation, as well as for job prospects within our own film and television industries.

No doubt Murdoch would argue that he is not the majority shareholder of BSkyB, and that it should not be subject to the same regulations as ITV and C4 as it uplinks from outside the UK. Presumably he would also argue that News International is a British company. However, these are simply convenient fictions along with which successive

governments have played, presumably for fear of alienating such a powerful influence on public opinion.

The plain facts are, of course, that Murdoch controls BSkyB, that BSkyB is the same as ITV and C4 in that it broadcasts to a wholly British audience, and that News International is simply a cog in the vast multinational News Corporation. This is why News International is able to offset its profits in the UK against losses made elsewhere in News Corporation and thus pays not a penny of corporation tax in the UK. And, as is well known from the vast amount of media coverage devoted to his family's exploits, the entire edifice is controlled by the US-based Murdoch dynasty.

If the government wishes to be taken remotely seriously in its stated desire to retain the present disqualifications from media ownership on grounds of nationality, it should first properly enforce those which currently exist rather than continuing with the casuistry which allows North Americans to own ever greater swathes of the media in Britain. In addition it will need to resist attempts made by media owners through the World Trade Organisation to abolish limits on foreign ownership of the media, and to recognise the very real threats to public service broadcasting contained in the GATTs.

***[III] 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).***

Whilst the Campaign desires to see an increase in diversity in the provision of information and opinion in the UK, it questions why this proposal should be brought forward in the way that it has. Mass broadcasters, commercial and public service broadcasters should have a clear obligation to reflect the religious and cultural life of the UK. Allowing the establishment of national religious licenses would provide a clear pretext for these organisations to diminish their coverage of these issues.

Equally, given the history of religious broadcasting in the United States, it is clear that these stations would not be inclined to treat religion in anything more than a purely propagandistic manner. Were such stations to be allowed, they would have to be under the strictest of obligations to present views on religion fairly and to encourage opposing views on the subjects to be aired. But, further than that, allowing religious stations to have national services privileges them over other bodies with national reach, such as trades unions and political parties, neither of which are being offered similar concessions. It is not clear as to why religion should be privileged in this way.

The Campaign, in the first instance, wants to see all national and local broadcasters respond to the range of cultures in their service areas, and does not want to see a situation develop which allows mass audience broadcasting to become a solely entertainment and commercially led enterprise. This is the context in which the allocation of national

religious licences would take place, and therefore the Campaign opposes such a development.

## **Television**

*[IV] We will remove the rule that prohibits single ownership of the London ITV franchises.*

*[V] We have decided to remove the rule that imposes a limit of 15% on any company's share of the television audience.*

*[VI] 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 four separately controlled broadcasters providing free-to-air analogue television services, by preventing the joint ownership of ITV and Channel 5.*

These three options, if implemented, would lead to the creation of a single ITV system, at least in England and Wales. The Scottish Media Group controls the franchises (with the exception of Border) north of the border. We already have a heavily concentrated ITV structure with the SMG dominant in Scotland, Granada in the North of England, and Carlton in the South.

The following points support our view that moving towards a single ITV system will accelerate the decline in the range and quality of programming on ITV:

- A single ITV will reinforce the current weakened commitment to reflecting the nations and the regions in terms of news and specific programmes produced in the regions dealing with issues affecting their people and local/regional institutions and activities. The proposals for a single ITV will accelerate already clear trends in ITV franchises away from programming, staffing, production, and even studios and buildings, within the regions. There are signs that the ITC seems willing to trade off the need for strong regulatory commitments requiring regional production and broadcasting for vaguer and less stringent requirements. The ITC decision on the fate of the Meridian newsroom in Newbury, which Granada want to close, will be a good indicator of its stance on this issue.
- We agree with the Writers' Guild, who point to the negative effect a single ITV would have on the commissioning of new TV drama and light entertainment. They point out at present there is some creative competition between Granada and Carlton but a single national broadcaster will encourage ITV to play it safe, to run on and increase the frequency of established series at the expense of new and original ideas, and to fall back on repeats of previously successful shows in preference to investing in (and taking a risk) on new productions. A single national broadcaster could also reduce the regional flavours and locations we have grown used to in TV dramas. The Writers' Guild also point to the malign effects already seen in Children's ITV, which is effectively a national service run by the

Network Centre, where the current downturn in ITV fortunes has led to a slashing of budgets and the cancellation of new production.

- We think the arguments put forward by the ITV companies Carlton and Granada for the creation of a single ITV company are driven by commercial considerations, rather than by issues about programme quality or pluralism and diversity. Indeed there is clear evidence that, as fewer groups have begun to control the fifteen ITV regional franchises, there has been a move away from a range of diverse, quality programming in drama and current affairs towards programming driven by commercial/ratings considerations. (Barnett and Seymour, 1999).

[IV] The Campaign believes the original arguments for not having a single franchise serving the London region remain valid and therefore recommends that the existing two distinct franchises should remain. This does not mean that we think the status quo is satisfactory; but, in our opinion, to move to one London ITV franchise would make the situation worse.

[V] The Campaign is not persuaded by the arguments that greater consolidation of the ITV network will achieve goals such as promoting the international standing of ITV companies. Indeed we would argue that, rather than remove the rule that imposes a limit of 15% on any company's share of the television audience, there is good case for *reducing* any company's share of audience to 10% in order to encourage more competition for programme ideas and innovation.

[V] We have pointed out above (2.4) our concerns about leaving decisions on the ownership of licensed television stations to be determined by competition criteria, and therefore oppose this.

We do support the proposal that Channel 5 remain an independent free-to-air broadcaster.

### **ITV News Provider**

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

The system for national news provision to the ITV network worked well when ITV started but has become problematical as control of the franchise companies has narrowed. The position following last year's re-award of the contract to ITN is so serious that there will have to be a change to the system.

In financial terms the annual value of the contract has fallen from £80 million a year in 1991 to £33 million now. In real terms the fall is of more than two-thirds. The effect on ITN as an operation has been shattering and the effect on the standard of bulletins has been grave. The simple reason is

that the few companies controlling the network are currently most concerned to reduce costs and subordinate news and current affairs to entertainment and popular drama. There appears to be little to stop them cutting the value of the contract to a level where their franchise obligations to produce news of a high standard are perilously close to being broken.

The system of ITC approval of nominated bidders proved to be entirely useless. There was much comment on the intervention of the Chrysalis/BSkyB consortium, but in truth, the CPBF believes that this made little difference. The ITV network would have driven down the price anyway. Indeed, the price did come down during negotiations after the competition had been eliminated.

The consequences were serious and went beyond Channel 3. ITN announced more than 100 redundancies, which went right across the company. ITN's other output, including that for Channels 4 and 5, have been affected. That the system to award the Channel 3 contract should be allowed to have a detrimental effect on the provision of news to other TV services - themselves subject to regulation - is absolutely indefensible.

There is also the effect on other broadcasters to consider. One reason for nurturing a strong ITV provider is to establish a counterbalance to the BBC's domination of TV news. The BBC funds news and current affairs generously. The CPBF believes it should face competition from a strong commercial broadcaster, because the public should have a choice. That choice is no longer real. ITN cannot possibly compete with the BBC, certainly on international and in many cases on national domestic news.

It is clear that the ITC's role in the process is no safeguard of quality and that the system must be changed before the contract is next due for renewal. The solution must be to place the decision to award the contract in the hands of the regulator itself, rather than the hands of the broadcasters whose sole interest is to lower the price.

JMTV was awarded the ITV breakfast contract to transmit a networked broadcast at a specific daily time. In the same way, there could be a licence advertised for the transmission of national news bulletins right across the network at, say, 1300, 1800 and 2200. The Campaign urges the adoption of provision of national news to ITV to be the subject of a new and separate licence, to be advertised, awarded and monitored by OFCOM.

***[VIII] 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.*

The ownership structure of the news provider should not be changed. The potential domination of the provider by one or two ITV companies would intensify the problem already encountered in the last year's dutch auction for the contract. Such domination by a competing company, such as Reuters or BSKyB, would be equally serious.

### **Radio**

*[IX] 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 concentrations of radio ownership. It could be left to the competition authorities to determine the appropriate limits on the accumulation of radio interest on a UK-wide basis.*

Diversity of content in the media should be at the heart of any policy. Evidence from the United States and from recent developments in the UK radio industry illustrates that allowing increased concentration of ownership in the sector leads to standardisation of formats and content, with the spread of stations varying only in their logos and the nature of their advertising. It is therefore necessary, in the interests of cultural diversity and democratic access to a range of viewpoints, that there should be a number of owners. Secondly, competition law does not adequately address questions of purpose, quality and range. It is therefore the wrong tool to use to determine questions of radio ownership.

The Campaign recommends that no company should be allowed to hold a controlling interest or shares in more than two local commercial radio stations and local digital sound services.

*[IX] 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.*

This proposal militates against the notion of diversity of content. In large conurbations where there may be a whole range of services, this proposal advocates a reduction in choice by allowing three companies to gain a foothold. In addition it implies that the same three companies could hold substantial stakes in other localities. It appears to be a proposal designed to succumb to pressure from the large operators in the radio industry who want to get bigger. It is not clear that the government would be acting in the interests of listeners if it allowed this.

The Campaign recommends that no company should be allowed to hold a controlling interest or shares in more than two local commercial radio stations and local digital sound

services anywhere in the UK. This will allow for the development of a wide variety of locally based services.

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

The interests of diversity of content and access to a variety of opinions will not be served by this proposal. Each national commercial radio service should be distinct from the other, thereby offering choice. It should not have its future and programming influenced by the corporate needs of a company owning other national stations, but rather should be influenced by its need to serve the audiences it has targeted.

The Campaign recommends that the current disqualification should remain.

***[XI] Views are invited on the suggestion that OFCOM 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 ensures plurality of ownership of multiplex licences.***

There seems little merit in arguing for plurality of ownership in multiplex licences and encouraging concentration in local digital sound programme services. The case for doing as is suggested in the Consultation Paper simply flies in the face of a policy designed to promote diversity at a local level. If local services are to be diverse in content, then they must be diverse in ownership. Our response to question [IX] applies to this question also.

The Campaign recommends that no company should be allowed to hold a controlling interest or shares in more than two local commercial radio stations and local digital sound services anywhere in the UK. This will allow for the development of a wide variety of locally based services.

***[XII] 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.***

Radio licences should all be granted with strict conditions relating to the range and quality of the service required for the local area or national audience being served. These licence conditions should be monitored and enforced by the regulator. Where a licensee cannot continue the service, or where licence conditions have been breached or when the term of the licence has expired, the regulator should publicly advertise the contract to allow other companies to compete. To do otherwise is to foster cartels, and place unfair, market-defined, barriers to entry to a public facility.

In addition, because broadcasting affects the cultural and political environment, licences should not be awarded without public hearings around the applications.

The Campaign recommends that licences should carry strict conditions relating to the range and quality of service and that licences should only change hands through a process of public advertisement and public hearings around the applications.

## **The Press**

### **[XIII] Options**

*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 concerns 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.*

## **National Newspapers**

The inference in the Consultation Paper [2.5] and [6.4.2.] is that current regulations make newspaper mergers more difficult than general mergers. However, in terms of the national press no mergers have been disallowed, and the present regulations, or at least the way they have been interpreted, have actually contributed to the concentration of the UK press.

The Campaign is puzzled therefore about what ‘a lighter touch approach to newspaper mergers’ [6.4.1] might involve. National newspapers do have a powerful role in shaping and influencing public opinion, especially because there is no requirement for impartiality, unlike broadcast news, and it is for this reason that we agree with [6.4.5] which rejects the view that ‘the regime should be completely abandoned and newspaper ownership left to be regulated by normal competition law.’

### **Local and Regional Newspapers**

It is an undisputed fact that the overwhelming numbers of local newspapers are 'local in name only'. They are part of huge groups which form what are in effect regional monopolies.

As the Consultation Paper points out [6.4.4], from time to time challenges to this process are analysed in some detail. For example the takeover of the *Nottingham Evening Post* by Northcliffe Newspapers was blocked by the Monopoly and Mergers Commission in 1993, but cleared by the then Trade and Industry minister, Tim Eggar. The result was that all the local and regional newspapers from Leicester up to Hull and across to Stoke became part of Northcliffe Newspapers, the regional arm of the Daily Mail and General Trust, whose national newspapers are the highly partisan *Daily Mail* and the *Mail on Sunday*.

Now the Competition Commission is examining the transfer of titles owned by Trinity Mirror plc to Johnston Press plc. This will give Johnston Press a 96% share of the local newspaper market in Northamptonshire. The statement of issues published by the Competition Commission on 3 January 2002 highlighted the issues of whether the local titles face sufficient competition for readers and advertisers, whether there would be an 'unacceptable reduction' in diversity of editorial opinion, and whether the deal would lead to higher cover prices and increased advertising rates.

Interestingly, Tim Bowdler, the chief executive of Johnston Press, has expressed frustration at the delay caused by this examination process and cited the costs to the company in terms of management time and lawyers' fees, as well as the cost to the public purse. He said the £16 million deal 'makes good sense for us and for our shareholders', but unfortunately for him that does not mean it is in the public interest. We note, too, that the Newspaper Society's opposition to the process suggested in [6.4.14] and the criticism that this would give OFCOM a 'czar-like role which restricts editorial freedom'. (*Press Gazette*, 11/1/02).

We are strongly against any changes in the current regime of reference to the Competition Commission of newspaper transfers for local and regional papers. However it is also clearly the case that there is an anomaly by which Gannett, the huge US-based newspaper group, was able to acquire Newsquest without any reference to the Competition Commission or any consideration of public interest issues. Also the present regime has, with few exceptions, allowed the development of regional monopolies of local newspapers without any serious examination of the consequences.

The Campaign supports the process outlined in [6.4.14] and its application to national, local and regional newspaper mergers. We also support the option of extending the regime to all qualifying acquisitions, regardless of whether the potential owner is an existing newspaper proprietor or not. In this respect we believe the acquisition of Newsquest by Gannett and Express Newspapers by Richard Desmond would be appropriate cases to be considered by this new regime.

### **Cross-media ownership**

#### ***[XIV] We could retain the existing limits on cross-media ownership***

We recommend that new legislation includes provisions to ensure plurality of ownership across the communications industries by placing clear disqualifications on concentration of ownership within and across sectors. We recommend that the current rules on media ownership and cross ownership should not only be retained but also strengthened.

We do not believe that there is yet in place any adequate means of assessing the total share of media influence or control that any company may have. In the absence of clear, defensible criteria for measuring media influence we believe that limits on ownership and cross-ownership should continue to be set in and across each market sector.

Cross-ownership limits are necessary in order to counter the enormous pressures towards concentration. Such rules also provide a strong degree of predictability and clarity which the government identifies as amongst the most important demands made by the commercial sector itself [5.4].

### **Review of ownership limits**

#### ***[XV] Views are invited on whether all media ownership rules should be subject to automatic review by OFCOM every two 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.***

We oppose the Government's proposals for automatic review of media ownership rules every two years.

The establishment of OFCOM has not yet secured parliamentary approval and the precise details of its regulatory powers and structures have not yet been determined.

We do believe that a review of ownership rules every two years can provide a mechanism to identify changing circumstances and propose amendments to media ownership rules. However such a review should take the form of a public inquiry in which the views of the public and all interested parties are actively canvassed and deliberated upon.

We believe that all changes to media ownership limits should be subject to primary legislation. This acknowledges the special importance of the media and communications sector for democracy as well as in the emerging 'information society', and ensures proper parliamentary scrutiny of the process.

The requirement for primary legislation is also vital in defining and circumscribing the role of the regulator(s) by allowing greater public accountability and parliamentary scrutiny in order to guard against regulatory capture.

In addition to the central importance of the media for democracy, the communications industries affect all aspects of life in modern societies. It should be an objective of communications policy to increase public understanding of communications and to encourage and facilitate public involvement in governance of communications at all levels. The ITC has recently developed more innovative ways to assess public attitudes and encourage public participation in regulation. Such initiatives provide a model which needs to be retained and extended by the future regulator(s).

The government should draw up proposals for involving all key sectors of interests and ensuring representation from relevant trade unions, consumer bodies, academics and specialists as well as from the industry itself. The review must also be coordinated with the work of the Scottish Parliament and Welsh Assembly and ensure adequate regional representation.

#### **4. Conclusions**

4.1 Once powerful media groups have established themselves it is extremely difficult for governments ever to envisage policy proposals that might weaken or limit their economic or political power. In the UK we have seen how such a powerful group, News International, was allowed, and indeed encouraged, to grow. In part this was a reward for the support Rupert Murdoch gave to successive Conservative governments under Mrs Thatcher through his newspapers (the acquisition of the *Times* and the *Sunday Times* was not the subject of a referral to the Monopolies and Mergers Commission, for example). Also the satellite service, Sky, was exempted from regulatory and other limits placed on other UK broadcasters and newspaper publishers under the 1990 Broadcasting Act and then allowed effectively to take over its rival BSB.

We mention this case to underline our concern that media ownership does have a direct and vital impact on the democratic process, and changes in media ownership laws should therefore be very carefully considered. We welcome the opportunity to respond above to the options presented in the Consultation document and wish to conclude with some general points.

4.2 Previous government documents – *Regulating Communications* (1998) and the White Paper *A New Future for Communications* (2000) – were more insistent on the relentless march towards convergence, whereas there is a recognition in the Consultation document that media policy shouldn't be formulated on the assumption that ownership and regulation of the media become less central in a multi-channel, digital world with a plethora of news sources, entertainment and information. [3.10] and [6.0.7.]

However these statements do conflict with others [1.8] on the commitment to a deregulatory approach to media markets.

- 4.3 Our views on the Consultation Paper are shaped by the conviction that the defence and protection of a diverse and high quality media system requires positive regulation and controls. Those who argue that choice and diversity can flourish only through deregulation, or that to develop ‘a more significant international presence’ requires ‘further deregulation’ are, we believe, either mistaken or arguing from purely self-interested commercial perspectives. Indeed, making it easier for UK media companies to merge could simply create handy, bite-sized snacks for global conglomerates to swallow up. Furthermore, British television has proved to be at its most successful on the export market when it is most distinctive, not when it is at its most blandly international or mid-Atlantic.

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