

CONSULTATION ON MEDIA OWNERSHIP RULES
SUBMISSION BY DAILY MAIL & GENERAL TRUST

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INTRODUCTION

Daily Mail and General Trust (DMGT) welcomes this opportunity to respond to the Government's Consultation on Media Ownership Rules. This paper deals principally with DMGT's views on radio ownership, newspaper/radio cross-ownership, and the nominated news provider. Our proposals for reforming the newspaper merger regime appear in a separate paper submitted by Associated Newspapers, one of our subsidiaries.

SUMMARY

In order to achieve the Government's objective of a dynamic and competitive UK media market, the ownership rules should be designed to encourage rather than discourage investment whilst protecting plurality. Historically, the rules have protected plurality at the expense of investment and we believe the opportunity should be taken to redress the balance.

DMGT believes that newspapers and radio are complementary media which operating together could deliver enhanced services to their customers. DMGT would like to be free to own UK analogue and digital radio but we are hampered by the current restrictive cross-media ownership rules and so we have invested abroad instead.

DMGT is encouraged that the Government's consultation document looks ahead to a new regulatory regime for media ownership that:

- guarantees plurality and diversity;
- is flexible;
- encourages investment; and
- is simple and transparent.

In preparing this submission, DMGT has been mindful of these objectives and believes that the proposals set out here for newspaper and radio cross ownership will help to achieve the Government's objectives. Our main proposals are based on the following principles:

- Plurality should be preserved by limiting concentration of ownership within each media sector (we suggest three owners including the BBC for the radio broadcast sector)
- With appropriate ownership limits delivering plurality within each media sector cross media ownership restrictions between newspapers and radio are unnecessary
- Diversity of content will be delivered through a combination of ownership deregulation and a licensing regime. Too strict ownership regulation will almost certainly have the opposite effect

ABOUT DMGT

DMGT is a broad based media group growing internationally.

Our businesses include:

Teletext	electronic publishing on ITV and Channel 4 (analogue), on digital terrestrial, satellite and cable television and on mobile telephones
DMG Radio Australia	62 radio stations in Australia
DMG World Media	consumer and trade exhibitions worldwide
Euromoney Institutional Investor	international business information publishing in specialist cross-border markets
Hobsons Study Group	education and recruitment publishing and training for students worldwide
DMG Information	information and software publishing for risk managers primarily in insurance and property
Associated Newspapers	Daily Mail, The Mail on Sunday, Evening Standard, Metro, Loot and Ireland on Sunday
Northcliffe Newspapers	regional newspapers, 20 daily and 21 paid for weekly titles and 43 free weekly titles.

We are also investors in UK Radio and have been since its very beginning in 1973. We have a 27% interest in GWR Group, one of the leading UK radio groups, and the pioneer of digital commercial radio.

DISADVANTAGES OF THE CURRENT OWNERSHIP REGIME

Our principal concerns are:-

- *Current rules have discouraged investment*

Although DMGT is a major investor in UK radio we have been prevented from developing a significant radio business in the UK by the application of current regulations. The 1996 Broadcasting Act sought to deregulate ownership and as a result, DMGT began to build its own radio business. However the way the Radio Authority was required to determine the public interest tests severely restricted our ability to grow the business and this led us to concentrate on building our radio operations overseas. The rules should encourage media companies like ours to invest in UK radio for the longer term, not discourage them.

- *Current rules discriminate against terrestrial broadcasting*

Under the existing Broadcasting Act, there are no restrictions on newspapers controlling UK licensed satellite news services e.g. the highly influential Sky News, yet newspaper ownership of terrestrial radio stations is severely fettered. Rules like this are discriminatory and inhibit investment in radio. Media regulation should as far as possible be technology-neutral.

- *Current rules discriminate against newspapers and in favour of satellite and cable*

Satellite and cable ownership of radio is not restricted but newspapers' ownership of radio is. Indeed, a rule limiting satellite ownership of national radio licenses in the 1990 Broadcasting Act was repealed by 1996 Broadcasting Act. Newspapers should not be treated differently from satellite or cable.

- *UK rules are less liberal than other countries.*

The UK's current rules on newspaper/radio cross-ownership are less liberal than many other countries, including those with highly-regulated regimes like Canada, France, the Netherlands, Belgium, Germany, Italy, Spain and Poland. The Government should take the opportunity to modernise the UK's rules.

- *Current rules give an unfair advantage to foreign media players*

EU media groups who do not own UK newspapers but which are major press owners in Europe currently have an unfair advantage over UK press groups in the ownership of UK broadcast assets. But their markets are for a variety of reasons not as open to us as our market is to them. The Consultation Paper recognises this in the context of newspapers and the Government should take the opportunity to correct this imbalance in broadcasting.

THE BENEFITS OF INVESTMENT BY NEWSPAPER COMPANIES IN UK ANALOGUE AND DIGITAL RADIO

Across the UK, media companies with significant newspaper holdings are already significant investors in national and local radio. There are great prospects for expanding this source of investment to the benefit of both analogue and increasingly, digital radio services – and most importantly to the benefit of listeners. But it will not happen unless the Government take steps to remove the barriers to newspaper ownership of UK radio.

Liberalisation would mean:

- Local newspapers would bring a depth of local market knowledge, quality investment, cross promotion and services that would enhance the ability of local radio to serve its area, and boost the uptake of local digital radio.
- Common ownership would allow sharing of local production costs freeing up greater resources for programming and locally-focused services. This can be achieved without unifying editorial control.

- Newspapers are ideally placed to be able to boost the uptake of digital through financial resources, access to services and most significantly the ability to promote digital both generically and specifically through local and national publications. Digital radio needs investment and promotion which a relaxation of newspaper/radio cross-ownership rules will enable.
- Without the incentive of the upside potential through a controlling interest, there is a limit to the extent to which national and local newspapers will be prepared to invest in promoting digital radio. This investment will not be encouraged by liberalising the ownership of digital radio only. The existing analogue radio brands will be key drivers in the uptake of digital and restricting their ownership by newspapers will have the direct effect of limiting investment in digital.
- An additional benefit would be the creation of larger media units to counterbalance the growing concentration of ownership within television. This would provide competitive alternative solutions for advertisers and reduce their dependency on television - a significant competitive benefit.

PROTECTING DIVERSITY AND IMPARTIALITY

We believe concern about newspaper ownership of radio threatening diversity of services is unjustified. Diversity issues can perfectly well be addressed through the licensing requirements rather than ownership regulation.

Content diversity is quite possible within a single organisation, *viz*

- ITN, which produces national and international news for the entire UK independent terrestrial television sector
- The *Evening Standard* and the *Daily Mail*, which made opposite political endorsements to their readers for the General elections of 1997 and 2001
- a unified ITV with regional content diversity obligations in its licences

Newspapers do not “pollute” the impartiality of broadcast outlets. Quite apart from the commercial and audience-related imperative, broadcast licensees are subject to strict impartiality controls. For example, Teletext, a regulated broadcast service used by 22 million people a week, is subject to strict impartiality controls and there has never been any suggestion that the editorial independence of the service has been affected or influenced by its common ownership with the Daily Mail.

The ability of local people to access broadcast outlets for the expression of their views will not be restricted by newspaper ownership. This is a programming decision that will be driven by the local market. If a media company determines that local access will improve its ratings then it will offer local people that opportunity. The decision will function independently of ownership and is not something that should be second-guessed by Parliament. The impartiality restrictions, which apply to broadcasters, would play a powerful role here too.

PROTECTING PLURALITY

DMGT maintain that plurality within any given media market is best protected by specific rules limiting the number of licences any one company may own within that market. With such rules in place we believe there is no need for cross media restrictions on newspaper/radio ownership.

We are encouraged by the support given by the ITC towards this view both in relation to television and radio. Despite looking at an increased concentration of television ownership, the ITC has not called for a strengthening of cross ownership restrictions between newspapers and television. In fact, the ITC's view is quite the opposite:

"In television and radio, the BBC has a 40-45 per cent share of voice. The interests of plurality suggest a need for at least two to three other significant operators in the market.... This could be achieved by...relaxing the current cross media rules to permit any operator to have for example a 25% share in each of the television markets (subject to competition rules) with a higher threshold, say 40% between newspapers and radio or television and radio". (ITC's submission to the Select Committee's first enquiry into the White Paper, February 2001).

The ITC extends the rationale for this position to the radio market where it sees the scope for *"...more relaxed cross-ownership threshold between newspapers and radio...)* where cross media plurality concerns are less acute". ("A New Future for Communications": ITC Comments, paragraph 21, Executive Summary.)

Other countries have taken a much more targeted approach to protecting plurality than we have in the UK. In Canada the CRTC recently concluded an investigation into the renewal of television broadcast licences held by CanWest Global Communications Corp. CanWest is a leading owner of broadcast television in Canada, owning 16 stations across the country. It had recently purchased 14 major daily Canadian newspapers, 126 daily and weekly newspapers in smaller communities, and a national newspaper. The CRTC reviewed the cross-media issues and concluded that all that was required was a limited set of behavioural undertakings in relation to news management. The CRTC did not prohibit common newsgathering, and specifically allowed cross-promotion and some co-operation between CanWest's television stations and its newspapers.

DMGT'S PROPOSALS

ANALOGUE RADIO OWNERSHIP

DMGT recognises that competition law alone is not adequate to ensure plurality. However, we believe that, in the context of newspapers and radio, a provision requiring there to be a minimum number of other radio services in addition to that owned by the newspaper is sufficient to guarantee plurality. This proposal is also balanced and proportionate to the end to be achieved.

We broadly agree with the Radio Authority/CRCA approach that local market plurality will be preserved by ensuring at least 3 separately owned ILR licences plus the BBC in a local market. We also agree with the Government's view in the consultation paper and with the ITC (see above) that further deregulation could be achieved and we suggest that the number of radio services required to preserve plurality in a market be reduced to three (including the BBC if it operates in that market). DMGT therefore proposes that :

- A national newspaper would be permitted to own an Independent National Radio ("INR") licence provided that there were at least two other national radio services in the market not owned by that newspaper including the BBC. To account for the growth of digital radio, we would suggest that after a short time, the number of other national radio services to be counted should also include any national digital services (other than simulcasts).
- A local or regional newspaper would be permitted to own an overlapping Independent Local Radio licence provided that there were at least two other radio services not owned by that newspaper in that market (including the BBC if it serves that market).
- If there were more than three owners of local radio services in any locality or nationally (including the BBC), then the number which could be owned by the newspaper proprietor would increase proportionately provided that there were always three separate service providers including the newspaper proprietor and the BBC.
- A newspaper proprietor would not be prevented from owning radio stations in adjacent areas provided that they met the above conditions and did not overlap to a significant extent - say more than 20%.
- There would need to be "grandfather" provisions to allow the continued holding of a radio licence by a newspaper organisation if through circumstances beyond its control, the number of other services in the market was reduced below three.

These proposals work because they guarantee that there will be at least two other radio voices in the relevant market that are independent of the views expressed by the newspaper/radio group concerned. These proposals fulfil all the Government's aims as they:

- guarantee plurality and diversity;
- are flexible;
- allow investment; and
- are simple and transparent.

DIGITAL SOUND PROGRAMME SERVICE LICENCES

We propose that the rules for digital radio cross-ownership should follow that for analogue, so that :

- A national newspaper would be permitted to own a national digital licence provided that there were at least two other national digital services in the market not owned by that newspaper, including services provided by the BBC.
- A local or regional newspaper would be permitted to own an overlapping local digital licence provided that there were at least two other local digital services not owned by that newspaper in that market including services provided by the BBC.
- There should be no cross-media restrictions between newspapers and either national or local multiplexes.

RADIO MULTIPLEXES

The Consultation Paper proposes consultation on a scheme to ensure plurality of ownership of radio multiplexes.

DMGT is firmly of the view that ownership of the multiplex is not an issue of plurality and that such a proposal is fundamentally flawed. There is currently no rule prohibiting a newspaper from owning a radio multiplex. Multiplexes are distribution systems. New rules to prohibit or restrict their ownership would be a backward step, not a deregulatory one.

In the context of a struggling digital radio industry urgently needing new investment, we do not understand proposals such as that made by the Radio Authority that ownership fragmentation must be imposed on a fledgling industry, but that competition law will be sufficient when the industry has "moved beyond its development stage". If competition law is sufficient to safeguard plurality in respect of a mature industry, why not in an industry that has a zero market share and virtually no listeners?

The plurality issue is centred on ownership of the services that are transmitted via the multiplex (as was recognised by the Government when it effectively abolished ownership restrictions for digital terrestrial television (DTT) multiplexes). DMGT believe that plurality in digital radio ownership can best be safeguarded by:

- requiring fair, reasonable and non-discriminatory access to a multiplex, as in digital television; and
- applying the "three to a market" rule in regulating the number of digital programme services any organisation can provide on a multiplex, including the multiplex operator

Restricting the ability of newspapers to invest in the digital radio infrastructure, would discriminate against terrestrial transmission merely because of its technical method. No similar plurality restrictions apply to cable or satellite radio, or for that matter to cable television, ntl's national TV and radio transmission infrastructure, or BT's telecommunications network. Such a restriction for digital radio could divert investment away at a time when UK digital radio urgently requires additional investment and promotion.

Very few EU member states have imposed cross-ownership restrictions between newspapers and digital broadcasting. The UK would be virtually alone in so doing, to the material disadvantage of our domestic industry compared to other countries.

WIDER CROSS MEDIA OWNERSHIP

We believe that our proposals above adequately guarantee plurality across newspapers and radio and for radio separately.

However, should Government consider that some further plurality measures across the entire media market may be necessary, we would support a Share of Voice scheme. Measurement by Share of Voice or Media Impressions is a far-reaching proposal advanced for a number of years by DMGT and others by which to assess market positions for regulatory purposes. This is our preferred option for the future and there is growing evidence that regulators in other countries are now, rightly, taking into account all sources of information in an area to measure plurality. This approach was used by the US FCC in its revision to the US radio/television cross ownership rules last year.

While we recognise that the UK Government may not think it appropriate now, we consider it important that research and modelling work is carried out under the auspices of OFCOM to ensure that in future all the necessary information is available to give such a proposal full and proper consideration. In the meantime, we would not object to proposals, such as a sliding-scale approach as referred to in paragraph 6.5.11 of the Government's consultation paper, although the exact percentages and market definitions among other things would need careful debate.

BUILDING IN GREATER FLEXIBILITY

We believe that any system which proposes unchanging numerical limits to control cross-media concentration will, by its very nature, fail the Government's policy objectives of building a robust but flexible framework. A mechanism will be needed to allow the regulator or another body to review and change such numerical limits as markets evolve. We would support a periodic review process carried out by OFCOM to achieve this.

On the question of permeability, DMGT strongly supports the Radio Authority's proposal to eliminate Public Interest Tests and agrees that numerical limits with flexibility for change through a periodic review mechanism are preferable to the lack of clarity and certainty in the current system.

As to permeability beyond the fixed limits, we are broadly neutral provided that it is not a substitute for a set of clear and simple rules.

NOMINATED NEWS PROVIDER

Independent Television News Limited (ITN)

As a 20% shareholder in ITN, DMGT asserts that the ownership restrictions on ITN are no longer appropriate and are not in the interests of ITN or the public. DMGT believes that the restrictions should be removed completely and ITN should be free to operate on an open market basis.

The BBC and ITN no longer have a news duopoly. Today on television we have BBC, ITN, Sky News (a wholly owned subsidiary of BSkyB), CNN (a wholly owned subsidiary of AOL/TimeWarner), Bloomberg Television, (a wholly owned subsidiary of Bloomberg) and many other specialist services. On the internet, and therefore increasingly available on digital television, there are a great many more news services.

These various services ensure the plurality and diversity of supply which are necessary in an open society. Sky News and CNN are available in approximately 40% of UK homes, a figure which will ultimately approach 100% as digital penetration increases. So very soon we will have four television news sources available to the majority of UK television viewers. It is clear that the basis for imposing a rigid regulatory ownership structure on ITN no longer exists, nor is it consistent with a dynamic media market.

The arrival of digital television, the internet, and data communications on mobile devices provides great opportunities for ITN but also presents great challenges. These new technologies require considerable investment, as the BBC and Sky will attest. The ownership restrictions placed on ITN discourage shareholders from making such investment as few shareholders are enthusiastic about investing in a business in which they have little influence. As a result ITN is inhibited from making the longer term investments which a wholly owned company would be making.

ITN is a familiar, reliable and trusted provider of high quality news services to the UK public. To remain so it must be able to move quickly and to invest strategically. If it remains unable to do so because of a cumbersome ownership structure it will inevitably decline and a news service renowned for its quality and impartiality may be lost to the UK viewer.

There would be no threat to the impartiality of ITN if it were to become owned by a single organisation, as the impartiality provisions in the Broadcasting Acts which apply to its clients would continue to regulate its output, as would the highest standards of journalistic practice. As we argue elsewhere in this submission, using limits on share ownership to regulate impartiality is the wrong approach and creates more costs than benefits. Licence obligations are far more targeted and proportionate to the end to be achieved.

DMGT believe that only by having the ownership restrictions removed completely can ITN prosper and remain at the centre of UK television news broadcasting.