

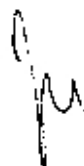
The Hon Tessa Jowell MP
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23 January 2002

Thank you for your letter of 26 November 2001 inviting SACOT's comments on the Consultation Paper on Media Ownership Rules.

→ I attach a copy of our response. I am also sending a copy directly to the Broadcasting Policy Division.



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Chair



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CONSULTATION ON MEDIA OWNERSHIP RULES

By the Department of Trade and Industry and Department of
Culture, Media and Sport
November 2001

Comments by the Scottish Advisory Committee on Telecommunications (SACOT)

What is the case for retaining any special rules in relation to media ownership? It is argued in some quarters that the provisions of the Competition Act 1998 should apply to all media just as they apply to other industries and that no additional special rules are needed. New 'formats' for the delivery of content to consumers, including those based on telecommunications, are being developed in response to market and technological developments and competition will ensure that consumers' needs are met.

This treatment of the media as essentially no different from any other sector of the economy marginalises the significance of the media in the country's cultural and political life. It also overlooks the importance of ensuring that the media meet the varied needs of all sectors of the community. SACOT therefore supports the emphasis in the consultation on the need to ensure that media ownership rules deliver plurality, diversity and quality to consumers. Our comments on the detailed options follow.

1 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.

SACOT has serious doubts about allowing advertising agencies to hold broadcasting licences. However, if the Competition Act provisions enable the competition authorities to deal with any possible implications for unfair competition in the advertising market, then perhaps this should be the preferred route for control. SACOT strongly supports the government's intention to retain prohibition on ownership by political organisations.



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

SACOT supports this. It is a matter of concern that there are no comparable provisions in relation to ownership of newspapers and that it is open to individuals or companies which have no allegiance to the UK or EU to exert influence on British political processes through editorial columns. This should not be allowed to happen in broadcasting.

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 licence or a multiplex licence (local or national).

SACOT appreciates the strength of the argument for relaxation based on freedom of speech. On the other hand, it is not clear how safeguards could be built in that would prevent religious broadcasting from having seriously divisive social consequences, particularly if different religious organisations were broadcasting 'against' each other in an attempt to win converts. Also, would atheist, agnostic, humanist and other 'anti-religion' organisations be allowed to hold licences? How in practice would religious broadcasting stations be able to comply with the same requirements of plurality and diversity as other types of broadcasting organisation?

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

As a Scottish organisation, SACOT has no views on this.

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

This change will allow consolidation through mergers and takeovers and the likely development of a single ITV. The commercial pressures for this to happen are considerable and have been reinforced by the recent fall in advertising revenue.

However, it will have major implications for consumers in Scotland and for the Scottish 'cultural economy'. Instead of an ITV media landscape populated by a series of regional stations, one national UK company is likely to control all of Channel 3's output. In Scotland, the most likely scenario is that the Scottish Media Group would dispose of Scottish Television and Grampian Television to the new Carlton/Granada conglomerate

and that Border Television would similarly disappear as a separate entity. The Scottish Media Group currently has departments for drama, childrens programmes and factual programmes based in Scotland, but it seems unlikely that, in the absence of regulatory requirements, these would survive North of the border.

In such a situation, Scotland's need for television programming which not only deals with 'regional' matters but offers a Scottish perspective on the world - both factually and creatively - would be under serious threat. The consultation document attempts to deal with this by stating that:

"...there will continue to be regional licences which will include requirements for regional content. Targets for regional production and regional programming will be included in tier 2 requirements of the proposed new regulatory structure, which deal with quantifiable and measurable public service obligations."

This is all right so far as it goes, but it does not go far enough. Regulators tend to think of regional programming in terms of news and sport. This will not be enough. Regional production and programming requirements - certainly so far as Scotland is concerned - need to span the full spectrum of Channel 3 programming strands.

Moreover, the importance of the tier 2 requirements puts the need for a strong Scottish presence within Ofcom into sharp focus. SACOT considers that there should be statutory provision for a Member for Scotland on the Ofcom Board, to ensure an adequate Scottish presence at the highest level in the regulatory system. There is in the present regulatory structure statutory provision for Members for Scotland on the Independent Television Commission and the Broadcasting Standards Commission. In the light of the changes that are likely to take place in ITV, the new Ofcom structure should provide at least comparable representation of the interests of Scotland.

Also, it is important that the implications of the changes for consumers in Scotland should be closely monitored. SACOT considers that this would best be accomplished by a statutory requirement for the proposed Ofcom Consumer Panel to have a Scottish Committee and to maintain an office in Scotland. We do not accept the view currently held in some quarters that, for reasons of administrative convenience, matters of this kind are best left to Ofcom to sort out for itself.

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

Should consolidation be allowed to go so far that it produces what would virtually be a duopoly of the BBC and ITV on free-to-air analogue television? SACOT considers that, on balance, keeping ITV and Channel 5 in separate ownership would contribute to plurality and diversity.

VII 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.

SACOT agrees.

VIII We are persuaded that the current 20% limit on the 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.

SACOT supports the principle that no one company should be allowed to dominate the news provider and compromise its independence. A minimum of three shareholders should safeguard this principle while allowing effective management. However, a limit of 34% rather than 40% might make for a more equal partnership.

IXa 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 interests on a UK-wide basis.

SACOT does not oppose the abolition of the existing points system in respect of UK-wide ownership

IXb 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 there are at least three owners of Independent Local Radio Services in addition to the BBC.

While laudable in intent, it is not clear how this will be achieved in smaller or less commercially attractive local areas. For example, in Shetland there is at present only one independent local radio station which broadcasts a continuous output of pop music and news and has an advertising monopoly. Where is the competition? Where is the consumer choice? How will the objective of ensuring "... that in every local area the listener will be able to receive a plurality of voices" (para.6.3.3) be achieved?

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

SACOT considers that the existing controls should be allowed to continue for the time being. Ofcom should have a duty to monitor the situation and to make a recommendation that the disqualification should be lifted when it is satisfied that there would be no harmful consequences for plurality and diversity.

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

SACOT agrees with the suggestion. However, this does not deal with the issue of competition in smaller or less commercially attractive areas raised in our answer to IXb above.

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.

It seems probable that an existing licensed station only becomes attractive to a prospective purchaser because of the nature of its listener base. This sets up a natural barrier to a potential buyer making a radical change to a station's format. However, the idea of some built-in delay to onward-sale is desirable, not least to prevent sham licence bids.

XIII [Newspaper options as outlined]

The importance that newspapers play in the political and cultural

life of Scotland and the rest of the UK strongly suggests that provisions are needed over and above normal competition law. SACOT therefore supports the Government's rejection of the view that any controls over and above normal competition law should be abandoned (para.6.4.5). However, while recognising that this implies that any final decision will rest with the Secretary of State, there are dangers in early and heavy Ministerial involvement in the process of consideration.

The second option in the consultation paper means that, using the exceptional public interest gateway, the initiative to give special consideration to the transfer of ownership of a newspaper would lie with the Secretary of State. It would thus take on a 'political' complexion at an early stage. The first option would avoid this, since Ofcom would be under a duty to assess whether any newspaper transfer might compromise the accurate presentation of news and free expression of opinion, in addition to scrutiny by the competition authorities, and to make recommendations to the Secretary of State. This seems to us preferable. However, there would need to be transparency in the process. In particular, the Secretary of State should be under a duty to give a public explanation of his reasons if in any instance he decided to reject or qualify significantly any recommendation from Ofcom and/or the competition authorities.

We are not clear what types of newspaper would be covered by the revised special regime. SACOT's view is that it should cover all daily and Sunday papers, whether national or regional, but that local papers should be excluded (assuming a satisfactory border between regional and local papers can be defined).

SACOT agrees that the regime should be applied to newspaper assets, as suggested in para.6.4.9.

So far as the scope of the regime is concerned, SACOT supports the 'alternative' approach outlined in para.6.4.11 that all qualifying acquisitions should be included, whether or not they are by an existing newspaper owner. The current approach provides a loophole for foreign media owners who do not currently own a UK paper.

SACOT agrees that there is a strong case for abandoning criminal sanctions.

XIV [Options for Cross-media ownership]

We are entering into a period of 'fuzzy' convergence. While there is a marked blurring of the boundaries between different media, newspapers, radio, television and computers are still recognisably different from each other. Their content overlaps, but only partly, and they are 'used' in different ways by different groups of people. In such a situation, which looks likely to persist for some time, it is vitally important for the political and cultural health of Scotland and the rest of the UK that media ownership rules should govern both each medium individually and all media taken together. SACOT does not therefore favour any approach which would dispense with cross-media limits and rely on separate media controls and competition law.

As we have stated above in our comments on newspaper ownership, SACOT considers that the final decision in any case should be a 'political' one, resting with the Secretary of State. It would be an abnegation of responsibility to leave critically important decisions whose implications go well beyond industrial economics to Ofcom and/or the competition authorities. But again, we would counsel against any early involvement of the Secretary of State in the process of considering cross-media ownership cases.

While the 'share of voice' approach outlined in paras.6.5.6-6.5.10 is theoretically attractive, the problems involved in weighting the importance of different media (either in terms of financial revenue or audience reach) would seem to rule it out as a practical possibility.

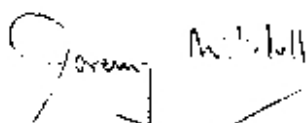
There does not seem to be a perfect solution. SACOT's default preference is therefore an approach based on setting the same set of limits on all forms of cross-media ownership. However, we would welcome further and more detailed consultation on how this might work in practice and how it would be embodied in legislation and/or regulatory rules.

XV Views are invited on whether all media ownership rules should be subject to automatic review by Ofcom every two years.

SACOT supports this, with the proviso that earlier review should not be precluded if changing circumstances warranted it.

We have a final comment on competition in digital television (paras.6.2.13-6.2.14). While there is currently competition between digital platforms, this may not persist in view of the

increasing dominance of Sky at the expense of ITV Digital. Also, the proportion of the total audience held by free-to-air broadcasters may continue its decline. Ofcom and the competition authorities will need to be alert to the implications and the legislation should include provisions which will enable such a situation to be dealt with.



Jeremy Mitchell
Chair

January 2002

The Scottish Advisory Committee on Telecommunications (SACOT) is a statutory body established under the Telecommunications Act 1984. Members are appointed by the Secretary of State for Trade and Industry to advise the Director General of Telecommunications on matters he refers to SACOT, or which the Committee thinks he should consider. There is coordinating machinery for the work of the six country-based and special interest advisory committees (ACTs).