

CONSULTATION ON MEDIA OWNERSHIP RULES

**Submission by Voice of the Listener & Viewer (VLV) to the
Consultation Document issued jointly by
the Secretary of State for Culture, Media & Sport and
the Secretary of State for Trade & Industry
on 26 November 2001.**

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1. Diversity and Plurality

1.1 Voice of the Listener & Viewer (VLV) welcomes the opportunity to comment on the Consultation on Media Ownership Rules and the emphasis that it places upon diversity.

1.2 However there is immediate concern that the consultation document makes no specific reference to public service broadcasting. It appears, almost deliberately, to ignore the public service principles upon which the previous ownership rules were predicated and which the Government's White Paper 'A New Future for Communications' (December 2000) put at the forefront of its proposals. In consequence, some of the definitions relating to diversity and plurality appear to relate to the specifics of competition rather than having regard to the diversity of programmes available to the citizen.

1.3 The assumption is made that diversity can be achieved solely through content regulation and that plurality is a separate issue tied to the number of voices behind the content. Content regulation is far from clearly defined in the White Paper on Communications, of which this current consultation is an extended part. This assumption may be convenient in trying to define a competitive market but it ignores totally the original intentions of diversity and plurality in public broadcasting which are not separate, but are inextricably linked.

1.4 Plurality sets up the circumstances for diversity. They are intertwined in public service broadcasting; separate them and the purpose is negated. It would seem that diversity and plurality are being subordinated to the maintenance of a competitive market whereas the aim should be to maintain diversity of programming.

1.5 It is stated that media companies argue for deregulation as a method of achieving greater diversity with the proposal that larger companies will have the opportunity to provide a broader range of programming. This is hardly borne out by example. The tendency is, and is likely always to be, for the larger companies to seek mass audiences and wealthy minorities and to push other listeners and viewers to the margins. The argument of the media companies is not convincing and, VLV considers, more likely to lead to a greater concentration of ownership - justified by economies of scale - than to diverse programming from a plurality of sources. This fear is confirmed by the move, advocated in both the White Paper and in the consultative document, to permit Granada and Carlton to combine in London. The follow up statement (1.5) that content regulation is essential would therefore reflect VLV's view. VLV considers, however, that it would have to be a more positive and enforceable regulation than the self-regulation proposed in the White Paper. Indeed, given the policies of the ITC and Radio Authority in recent years, regulation should be stronger than that in current legislation.

1.6 To retain the diversity stated as inherent in any new broadcasting regime it is essential for plurality requirements to be accompanied by an interlocking diversity test which is a specific duty imposed on OFCOM.

1.7 VLV believes that Section 1 should be redrafted to affirm the commitment to public service broadcasting set out in the preamble to the Communications White Paper. This statement should re-define the relationship between diversity and plurality within a public service context by including a diversity test for all types of broadcaster covered by the legislation. The statement, and regulation, should also enshrine diversity within the requirements of Tiers 2 and 3, together with specific regional objectives, and make these requirements clearly measurable and enforceable.

2. Specific Comments

2. Against this background, VLV has a number of concerns arising from the Consultation document and our views are given below on specific issues as requested:

2.1 VLV fully agrees that in drafting new legislation there should be flexibility to adapt to future change, **(3.1)**, so minimising the need for further primary legislation. Such flexibility, however, would increase the emphasis that will be needed to ensure that the legislation clearly defines the principles to be followed - public service broadcasting guaranteed by diverse programming from a range of providers with a diversity of ownership.

2.2 VLV supports the intention to create a vibrant and dynamic commercial media sector **(3.5)**. VLV believes, however, that consolidation will not necessarily create the circumstances that will facilitate the production of unique creative products with wide international appeal. Consolidation and size are not necessarily the best, and certainly not the only, ways to compete in, and to create, a dynamic global market. British skills are creative, and VLV would wish to see them fully utilised, rather than crushed by attempts to profit only from highly competitive, indistinguishable mass appeal products - which in other industries would be called the commodity market - already dominated by massive international corporations. These corporations, as recently evidenced by the actions of the French company, Vivendi, are transitory in their economic loyalties and hardly fit the profile meant by continuing contribution to local economies

2.3 The claim is made **(3.7)** that competition legislation will best prevent companies from abusing a dominant market position. This is undoubtedly achievable on a normal commercial platform. However, as the document makes clear elsewhere (4), broadcasting is regulated almost everywhere, even to some extent in the USA. It is puzzling therefore to see suggestions that de-regulation might now suit the UK. VLV believes that all companies should be subject to competition legislation but that the terrestrial UK broadcasters should continue to be required to meet public service obligations which can be monitored, and which lie quite outside conventional competitive legislation. VLV considers that the priority spelt out in the statement **(5.1)** that ownership rules should 'create the most competitive market possible whilst ensuring plurality of voice and diversity of content' should be reversed, and that the statement should be amended to read 'ensure plurality of voice and diversity of content in a competitive environment. This requirement would need to be reinforced by making the diversity test a part of the plurality conditions.

2.4. The objective of allowing companies to grow organically **(5.3)** is obviously highly desirable if a dynamic market is to be created, but there is little evidence that restrictions on ownership are an inhibitor to growth in other markets - companies have just found ways to operate and succeed within the rules. It is stated (6 I) that a single licence should be permitted in London. The problems that the two licensees, Carlton and Granada, face today are probably less to do with restraints on ownership than with management and shareholder issues. Both are profitable companies, in spite of an advertising recession, and this proposed consolidation is purely profit oriented, flying in the face of pluralistic ownership requirements, whilst using restraints on growth as an excuse. Clear regulatory conditions can concentrate minds on the real opportunities rather than using restraints as an excuse for other failings.

2.5. VLV believes that the rules preventing local authorities, advertising agencies and political parties from owning media companies (6 I) should remain in place. The safeguards proposed would not be adequate. Local authorities will all have political affiliations; advertising agencies will endeavour constantly to alter the framework to the benefit of advertisers. Both will exert undue pressure on regulators to serve their own interests.

2.6. VLV supports the continuing prohibitions on non-EEA ownership (6 II).

2.7. Views are invited on the licence restrictions on religious organisations. Apart from other factors, the limitations on spectrum availability, which will ultimately apply to the number of multiplex licences available, make it unlikely that the requirements of all religious interests could be met. A bidding process could be most inappropriate in such a circumstance. Furthermore, a proliferation of religious channels could exacerbate potential inter-religious tensions in the UK. VLV therefore recommends that the ban should continue (6 III)

2.8. Removal of the rule prohibiting the single ownership of the London TV licence (6 IV) is presented as a decision already taken, and does not even stipulate that it should be accompanied by some clear obligations. This example immediately highlights the weakness of the proposals to permit content self-regulation in the White Paper. The original intention for having multiple ownership within ITV was to ensure diversity through plurality and a safeguard which should not be removed for the sole purpose of meeting the specific financial interests of the two existing franchise holders. Plurality of licences is intended to stimulate a fruitful diversity in the programmes on offer and to maintain a degree of competition in the sale of airtime. Both would be eliminated under this proposal. VLV opposes the single licensee proposal.

2.9. The 15% limitation on audience share (6.V) is perceived as a potential barrier to ITV companies consolidating their holdings through mergers. Reference is made to consolidation having benefited the industry. It is far from clear that consolidation has benefited viewer choice, or that it will in the future. Instead we have seen a significant decline in news, drama, documentary, current affairs and regional programming under increasingly lighter-touch ITC regulation. Before any diminution of viewer choice is to be permitted, viewer choice should be established as a primary criterion which licensees should be required to meet. What viewers need is a diversity of programmes which is best achieved by an editorial policy designed to achieve this end. What companies seek is economic growth. Ideally this growth would be overseas economic growth and the best way to achieve it would be for the licensees to coordinate their overseas marketing of individual programmes or series.

2.10. Furthermore, it is important that the English regions retain the opportunity to express their local characteristics and interests. There has been a serious decline in regional activity in recent years in England. It is crucial that the Tier 2 structure (6.2.5) includes specific regional obligations with measures to ensure that they are fulfilled.

2.11. VLV believes that the restriction on ITV and Channel 5 licences being held by the same owner (6 VI) should be retained as recommended but that this restriction should continue beyond analogue switch-off and apply in the digital era also. Within the context of diversity and plurality it is not acceptable to leave such issues of ownership to the competition authorities alone.

2.12. VLV supports the retention of the nominated news provider (6 VII) but are uneasy that government should be able to revoke it unilaterally, albeit on the advice of OFCOM. We feel the provision should remain as it is. The proposal that the 20% limit on ownership of the news provider (6 VIII) should be replaced by a higher percentage raises significant issues of possible domination. 40% could mean a minimum of 3 owners. It would seem appropriate to go no higher than 30%, thus ensuring a minimum of four owners.

2.13. VLV suggests that a diversity test is included in any proposals for changes to the radio points system (6 IX) or the format controls (6 IX).

2.14. VLV also agrees that a scheme ensuring at least three owners of local digital sound service programme licences in each area (6 XI) should be devised.

2.15. VLV agrees that OFCOM should be able to prevent the onward sale of licences for a two-year period (6 XII) and that the change of purpose provision should apply.

3. Cross Media Ownership (6 XIV)

3.1. VLV believes that cross media ownership regulations are essential to ensure the plurality which is a fundamental element of democratic society. Competition laws alone are insufficient to guarantee plurality and it is interesting to note that even the USA does not rely solely on Anti-Trust laws for its media regulation.

3.2. It would appear from earlier proposals that the 15% audience share rule is to be abandoned, without any alternative being proposed. Whether these proposals are confirmed or not, the thinking behind them makes it critically important for the rules on cross media ownership to be firm and clear.

3.3. VLV would oppose any form of plurality test as a basis for permitting higher ownership than current rules allow. Any relaxation in the rules would bring a constant source of unreasonable pressure on OFCOM, and on the government; and in all likelihood any decision would eventually be decided on a subjective basis.

3.4. VLV agrees that the rules should be reviewed by OFCOM on a regular basis (6 XV) but would propose that 5 years should be adequate in any given situation. The importance of this issue to citizens and consumers and to the democratic process is so great that modification should only be possible by primary legislation, not by an Order of the Secretary of State alone. It should not be sufficient for the Secretary of State to make modifications simply by statutory order.

3.5. VLV submits that it is important to make an analytical distinction between competition for audiences and between advertising-funded broadcasters and viewer choice for a diversity of programmes. This means that if the 15% share rule is abandoned, it must be replaced by programme diversity criteria backed up by legislation which has real teeth.

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