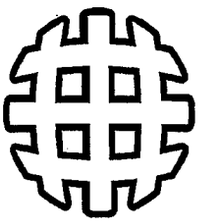
News Corporation
K.R. Murdoch
First Statement
"KRM35"
12 April 2012

IN THE MATTER OF THE LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS

EXHIBIT "KRM35"

This is the exhibit marked "KRM35" referred to in the witness statement of Keith Rupert Murdoch dated the 12th day of April 2012.

News International plc



Response to Consultation on Media Ownership Rules

January 2002

News International is grateful for the opportunity to respond to the Government's consultation document 'Consultation on Media Ownership Rules' and to contribute our views once again to this important policy area.

Over recent years successive governments and ministers have repeatedly approached the question of reforming media ownership regulation. That even after many consultations and proposals have been exchanged, no clear pattern for reform has emerged, is a reflection of the difficulty of this task.

The consultation document opens with the Government's commitment to 'making the UK home to the most dynamic and competitive communications and media market in the world' (paragraph 1.9) and its recognition that existing legislation needs overhauling (paragraph 3.1). We believe that the Government's goal of making the UK media industry a world leader can be achieved only by significantly lightening the regulatory burden that currently prevents the industry from fully exploiting its skills and capital.

The Government's other policy objectives are clear – to 'ensure that citizens receive a diverse range of content from a plurality of sources' (paragraph 1.3). The consultation document rightly makes the point that these two objectives are delivered by different means. We are concerned, however, that some of the options offered in section 6 of the document fail to maintain this distinction.

We agree with the Government's assessment of the failures of the current regime (paragraphs 3.3-3.4). The system of media ownership rules is too rigid to allow organic growth in an industry that is constantly changing and developing. Its reliance on arbitrary thresholds is one of the fundamental problems. The current system is also highly discriminatory – as the document states, the rules are still 'directed at particular areas of the media industry' (paragraph 3.4); most notably, the newspaper industry and certain companies within that sector.

News International agrees with the key aims of media ownership rules, as set out in section 5 of the document. If the UK is to create a world-leading media industry, it

first needs to create the most competitive market possible at home (paragraph 5.2). Such a market will enable efficient, innovative companies to thrive and will, as well, preserve the plurality of voice and diversity of content that are essential characteristics of the media in any modern democracy.

It is clear that the new regulatory framework must be 'robust but adaptable to a rapidly changing technological and economic environment' (paragraph 5.3), and should provide a predictable environment in which business decisions can be made (paragraph 5.4). These goals can both be achieved by keeping any regulation to the minimum consistent with preserving competition, diversity and plurality. Indeed, an essential part of this review should be to subject every proposed new regulation to a proper cost-benefit analysis, applying the Better Regulation Task Forces' five tests of transparency, accountability, targeting, consistency and proportionality. The new regime must be proven to be necessary, effective, fair and ultimately to benefit the consumers of media services: viewers, readers and listeners. Regulations that do not meet these criteria, and cannot demonstrably be linked to the achievement of specific policy goals (mere assertion will not do), should be eliminated.

In this light, we would like to focus our comments on three areas: foreign ownership rules, cross-media ownership rules and newspaper mergers. These comments expand on comments we have made in previous responses to consultation on this subject.[1]

Foreign ownership

We agree that any policy should be aimed at 'enabling British companies and consumers to benefit from the investment and skills of international companies' (paragraph 5.3). That goal cannot be achieved by restricting foreign companies from owning certain media properties in Britain. It is only because these rules did not apply to non-domestic satellite television that Britain has become the world leader in that field.

[1] News International's pre-White Paper submission, 23 June 2000, and News International's response to the White Paper, including addendum, 6 February 2001

In the UK newspaper industry, a long history of foreign ownership has brought new investment and innovation, adding to diversity and competition. From Max Beaverbrook and Roy Thomson to Conrad Black and Rupert Murdoch, this foreign involvement has helped to create the most competitive and popular newspaper market in the world.

Foreign owners, like UK-based companies, must respond to British consumers' demands for lively, unbiased news. It is important to stress this point: the competitive nature of the industry does not allow some foreign owner to foist its own agenda on British consumers. The media industries are consumer-driven, not producer-driven. For example, what could be more British than The Times or The Sun? Or look at News Corporation's TV satellite business in Asia, which is expanding precisely because of the strategy of providing local content in different markets. The objective of any media company is to be successful within its local market: nationality of ownership cannot drive content – content is determined by the demands of consumers.

Concerns about ensuring that 'European consumers continue to receive high quality European content' (White Paper, paragraph 4.9.5) are not best dealt with through ownership restrictions, but rather through content regulation. At the European level, we already have in place a quota system that guarantees that over half of broadcast fiction is of European origin. (And even here, consumers have shown that they, not the regulators, are in the driver's seat as TV companies have responded to consumer demand by broadcasting more European-originated content than the quota system requires.)

Any other Government concerns about programming content should be dealt with through content rules and licensing requirements, not through regulations based on the nationality of the owner.

In the modern, global marketplace, it is increasingly difficult to try to define the nationality of companies. We only have to look at the preposterous situation in France in which the French government is questioning France's leading media company, Vivendi Universal, about its nationality.

The consultation document includes a survey of foreign ownership rules in a sample of key countries. Yet, as the table in paragraph 4.2 shows, only 6 of the 17 countries studied have limits on foreign ownership. Why Britain should adopt a policy merely because a minority of the countries studied have such rules is unclear. Indeed, it is not at all clear why the policies of other countries, even a majority of them, should necessarily be a model for Britain.

Britain is Europe's leader in attracting inbound investment, and a world leader in arguing for the unimpeded international movement of goods and capital. The idea that a protectionist policy in the media is justified by a desire to maintain the quality of programmes is belied by (a) the wide number of domestically produced programmes to which consumers have access if that is their preference; and (b) the generally high quality of many of the programmes made available from Australia, the United States and other countries.

In any case, in the context of EU law, the restriction does not apply to the equally 'foreign' and much larger Vivendi Universal or Bertelsmann. There has been press speculation recently as to whether Bertelsmann will make a bid for an ITV company. How can a UK policy of allowing such a bid, while denying similar opportunities to US, Australian or Indian companies, add to diversity or shield UK consumers from non-UK content?

Foreign ownership disqualifications date from an era when scarcity of spectrum and concerns about national security were the prevailing conditions. These conditions no longer apply. Indeed, the rules are so out-dated that they apply only to analogue terrestrial licences. In the context of the Government's commitment to analogue switch-off, these restrictions look more and more absurd and should be removed with immediate effect.

Furthermore it has to be remembered that these controls are quite clearly no longer lawful. Leading counsel opinion states that the existing foreign ownership prohibitions, and any subsequent legislation which fails to remove these prohibitions, will be open to action on grounds that it is in breach of the Human Rights Act 1998 by virtue of its incompatibility with the European Convention on Human Rights. The

foreign ownership prohibitions are in contravention of Article 10 (concerning freedom of expression) and Article 14 (prohibiting discrimination) of the ECHR.

The consultation document appears to concede some of these points, yet it backs away from the conclusion that these rules should be removed. It argues that as long as a number of our key trading partners, such as US and Australia, impose restrictions on British ownership of their media, the Government would not be justified in lifting our own bans (paragraph 6.1.5). But retaliation-by-imitation of protectionist policies is self-defeating. If this is the only reason for retaining these restrictions, it is a weak one.

We repeat: restrictions on the inflow of capital and skills damage the country that establishes such restrictions, whatever the policy of other countries. To apply such restrictions to an industry in which technological innovations originate in many countries, in which massive capital investment is required, and in which talent can flow to the most receptive jurisdictions, is to impede the development of Britain's media industry.

Cross-media ownership

In the areas of television and radio ownership the Government appears happy to embrace the idea of relying to a far greater extent on competition law. It suggests that the time may now be right to allow a single company to own the London ITV licences and to remove the 15% limit on the share of TV audience that any one ITV company may have. The justifications given are that the provisions of the Fair Trading Act 1973 would address the impact of such mergers on the interests of consumers and market players such as advertisers, while concerns over plurality of ownership within commercial TV are seen as being 'less valid, given the range of alternative media and pay-TV options that are widely available' (paragraph 6.2.2).

News International believes these same arguments apply to cross-media ownership considerations. We believe that vigorous application of competition law will prove sufficient to assure that in any proposed merger – whether it is a merger within one media sector or across media sectors - neither economic power nor an undue concentration of sources of information and entertainment results. Competition rules

are an excellent tool for this job. In contrast to the current system, which is based on arbitrary and discriminatory thresholds, competition rules are sufficiently flexible to keep up with changing market conditions and the new forms of competition that media companies face.

Preserving the right of consumers to choose between competing products, offered by independent sellers, is nothing new for the competition authorities. They traditionally have to decide whether consumer choice would be unduly constrained if producers of different products were allowed to merge.

So, for example, in a specific geographic market where consumers are only served by one radio station and one local newspaper, the case would be very different to another market in which three local newspapers and three radio stations compete and there is a high penetration of cable and satellite TV and high Internet usage. As the consultation document acknowledges in paragraph 6.2.2 concerning TV and radio, where there is a range of alternative media and pay TV options available, concerns over plurality of ownership become 'less valid'.

The benefits of such a system are that it would mean applying the same approach to all media, thus reducing complexity and lightening the overall regulatory burden. It would also rely on the expertise already residing in the competition authorities and it would replace arbitrary rules with case-by-case determinations in light of the pertinent specific facts.

There is no good argument for retaining the existing limits on cross-media ownership – they are outdated and discriminatory, they prevent skills and capital acquired in one sector from being deployed in others, to the ultimate loss of the consumer; and they have no basis in empirical or other studies.

The option of reformulating the existing rules, incorporating the extent to which different media differ in their influence, throws up obvious difficulties. These are touched upon in the document's own discussion of how a 'share of voice' system might operate (paragraph 6.5.8). It would be virtually impossible to devise a way of calculating the relative influence of the different media that is universally acceptable.

A system that establishes a set of limits on all forms of cross-media ownership would do no more than reintroduce and extend arbitrary limits. Necessarily any scheme of regulation that imposes limits on investment will prove to be arbitrary and quite possibly discriminatory in its effect. Since the passing of the Broadcasting Acts of 1990 and 1996 we have seen absurd distortions in investment behaviour in order to accommodate the arbitrary rules imposed by those Acts. Any comparable scheme of cross-media ownership regulation is going to produce the same results.

Furthermore, by its very nature such a formula of regulation is a gift to the lawyers and if it is introduced we will see a proliferation of complex corporate finance structures and off-balance sheet contractual arrangements that will in essence try to frustrate the denial of investment opportunity.

This is not a desirable development for the industry. And similar consequences are going to follow from any model that seeks to peg cross-media interest at any stated level of investment.

What is required, instead, is proper analysis by the competition authorities of the effects of any proposed merger on the relevant market for news or views in the relevant geographic area.

We do not accept the idea that cross-media ownership rules could be combined with a rule that allows these limits to be exceeded if a plurality test is satisfied. This retains the disadvantages of the current arbitrary system while introducing a new test for media companies to pass before they are allowed to merge. The burden of proof should be the other way around – it should be for the authorities or the Government to prove their case if they wish to prevent a merger, rather than for the companies concerned to prove that they meet certain complex requirements in order to be given an exemption from the usual limits.

Why should there be a need for special rules where newspapers are involved? The concerns about plurality of ownership can be met in the same way whether the prospective merger involves, say, a magazine publisher and a TV broadcaster, or a

radio broadcaster and a local newspaper – i.e. by the thorough application of competition rules.

In any case, the so-called 'Plurality Test' that appears in Annex B would be unlikely to pass the Better Regulation Task Force's test of transparency.

Finally, on the question of reviewing ownership rules in the future, News International believes that the provisions should lapse unless their continuation is agreed by Parliament, based on recommendations by the regulator that demonstrate, after public consultation, the continued need and cost effectiveness of each regulation that is to remain in force.

Newspaper mergers

The Government's White Paper promised to consider a lighter touch approach to newspaper mergers[2]. News International feels that the two options contained in the Consultation document do not adequately deliver this objective.

News International disagrees with the view expressed in paragraph 6.4.5 of the consultation document; we believe that the only sensible way forward is to allow newspaper ownership to be regulated by normal competition law. We do not accept that there is any remaining justification for treating the ownership of a newspaper publishing company any differently from the ownership of a TV or radio broadcaster or, for that matter, any other product. A properly competitive market is a pluralistic market in the sense of the Government's policy objective.

The consultation document refers to the 'particular public sensitivity' relating to newspapers (paragraph 6.4.3). It is true that newspapers do not operate under the same impartiality rules as the broadcasters. However, that is because there is healthy competition in the market for national newspapers, in contrast to terrestrial TV where monopoly regional and national licences are granted. In this context, News International does not disagree with the Government imposing impartiality rules and other content requirements as part of a licence agreement. However, in the longer

[2] 'A New Future for Communication', December 2000, paragraph 4.11

term, with the liberalisation of the TV and radio sectors and the increased competition from pay TV and other new media, and where barriers to entry (such as spectrum scarcity) no longer exist, we believe that the time will come when there will be no further need for impartiality rules for any of the media.

In paragraphs 6.4.13 and 6.4.14 the paper puts forward two alternative regimes for newspaper mergers. Neither is attractive or appropriate. Under the first of these proposals OFCOM would be given the duty of assessing whether a particular newspaper transfer would compromise accurate presentation of news and free expression of opinion. This would be a separate and additional hurdle to Competition Act clearance. This proposal amounts to excessive regulation, hardly complying with the objectives of the Better Regulation Task Force, and, dangerously, would put a regulator in the business of deciding on the accuracy of newspaper reporting. There can be no greater threat to freedom of the press. There is also the broader question of whether OFCOM, primarily established to deal with and focussed upon electronic communications, is suitable for also dealing with print media.

The alternative suggestion presented in paragraph 6.4.14 is again not a suitable way forward. Apart from the unsuitability of OFCOM (see below), there is no need for the 'exceptional public interest gateway' – an idea which is a product of the fiction that there is a meaningful difference between an effectively competitive market place and an effectively pluralistic one. The newspaper market, at national, regional and local level, is already effectively pluralistic. There is no need to create a plural market, merely defend it. Vigorously applied competition law (in its new form) is perfectly capable of doing that, using tried and tested institutions and personnel.

The use of OFCOM for the purpose of advising on matters relating to newspapers would be entirely inefficient. OFCOM, as currently envisaged, will be an amalgamation of the Independent Television Commission, the Office of Telecommunications, the Radio Communications Agency, the Radio Authority, and the Broadcasting Standards Commission. None of these agencies has any knowledge or experience of the newspaper industry.

The consultation document asks four further questions with regard to newspaper mergers: 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; whether the regime should be extended to include potential owners who do not already own a newspaper; and whether local titles should be taken out of the regime.

With regard to the control of newspaper assets, there has been such a wholesale technological change in the production of newspapers since the provisions of the Fair Trading Act were written in 1973 that the reason for such special provision has now ceased to exist. The production plant and assets now needed to establish a newspaper are so much more widely and easily available that regulatory control at plant level is neither feasible nor desirable. In current times the establishment of a newspaper production plant or its facilities is no more special than the creation of a TV studio. Consequently, there is no rationale for special controls.

On the subject of criminal sanctions, the unusual provisions of section 62 of the Fair Trading Act 1973, making it a criminal offence to fail to pay due regard to newspaper merger controls, stands out as an odd and exceptional provision in current merger law in the UK. This looks distinctly like a provision provoked by the prevailing mood of the time of its enactment. There is no justification for it and it should be abolished.

We turn, now, to the treatment of potential owners who do not already own a newspaper. We see no reason to exempt foreign or UK non-newspaper purchasers from any merger regime that the government might establish. It may well be that the purchase of a single UK newspaper by a foreign buyer or local new market entrant will provoke no competitive concerns. In those circumstances the merger will pass scrutiny easily. If the potential entrant's presence in the market would create competitive problems, consistent application of uniform and universal rules will nip the problem in its incipiency. No special exceptions to standard practice are required.

Finally, with regard to local newspapers, the consultation document seems to accept both that existing practice marks a difference in the way local newspapers are treated, as contrasted with regional and national newspapers, and that such a difference should

be maintained in the future. We see no justification for this difference. The considerations relevant to a policy for the local market for newspapers are the same as those that are relevant on a national or regional level: consumers should have available diverse and competitive sources of news they find relevant, be it local, regional, national or international. The burden of complying with the regime should, as in all cases, be proportionate to the ability of affected parties to bear that burden.

.....

Reforming media regulation is both difficult and important. It is essential that the UK system is flexible and clear. The key objective must be to allow media businesses to develop, change and expand in response to consumer demands. The Government's role is to serve the best interest of the UK consumer. Truly competitive markets are plural markets. The new competition laws should be allowed to do their job. There is no need for further regulation, extra bureaucracy and more institutions. Issues of content regulation and ownership restrictions must be dealt with separately. Arbitrary thresholds should be removed to allow relevant authorities to take account of the true market for information, news, entertainment and opinion. Any regulation should be subject to a regular review, and if it is shown not to be operating in the public interest - i.e. in the best interest of viewers listeners and readers - should be automatically deleted.

For further copies or if you require additional information please contact:
Alison Clark, directory of corporate affairs, News International plc on 0207 782 6017