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To: _____ ci _____ as attached list _____

PATRICIA HEWITT) separate
TESSA JOWELL) submissions

BPD 1/2/23

From:

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27 February 2002

REFORM OF THE NEWSPAPER TRANSFER REGIME: THE PLURALITY TEST

Issues

How a "plurality test" might apply in the case of a merger between a newspaper proprietor and another media owner. And the implications of a wider "share of voice" plurality test for the rules on cross-media ownership.

Recommendation

2. That you note the contents of this submission, which Tessa Jowell requested urgently. For what it is worth, I conclude that there are certain purist attractions to a wider share of voice test, but I am concerned about such a fundamental change at this stage of development of policy. Some options for the relation of the newspaper regime and the cross-media ownership rules are given in paragraphs 14-17.

Timing

3. **Urgent.** For your meeting together tomorrow, 28 February.

Argument

4. My submission of 4 February on reforming the newspaper transfer regime noted the conceptual problems around defining a plurality test and suggested that we ought to focus pragmatically on the main elements of the public interest test in the current newspaper regime under which the Competition Commission has been able to reach some sensible and useful

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judgements. These are concentration of newspaper ownership, freedom of expression and the accurate presentation of news. This is what in shorthand has been described as "the plurality test" (there would also be a competition test, in standard terms).

5. The submission also noted the case for covering any acquisition of a significant newspaper title (the present newspaper regime only covers transfers between certain newspaper proprietors). The relevant cases cited were where a magazine proprietor or a foreign newspaper proprietor has a history of interference on editorial grounds such that might warrant investigation were he or she to acquire a UK newspaper. This becomes more significant with the move to a competition focused general merger regime under the Enterprise Bill (in principle the current public interest test in the general merger regime would enable such matters to be considered, even though the current newspaper transfer regime does not apply).

6. Clearly the freedom of expression and accurate presentation of news elements of the plurality test would be relevant in such a case, but not concentration of ownership of UK newspapers.

7. However, any acquisition would include acquisition by a media owner (assuming the cross-media ownership rules allowed it). In such a case, should we be looking at plurality of the media as a whole (as in a share of voice test) not just plurality of newspaper ownership? And, if so, what are the implications?

8. It has been difficult to think these implications through in the time available (and that would counsel caution in extending the test wider). In particular, we need to recognise that media markets may change over time, so that whereas at present it may be that some media are separate markets, that competition assessment may change over time. However, the immediate issues and implications which spring to mind are as follows.

Scope of the regime

9. We had conceived the regime as covering transfers of ownership or control i.e. where someone has acquired a newspaper title. The logic of a wider plurality test would be for the regime to cover acquisitions by newspaper owners of non-newspaper media assets where the cross media ownership rules permit it (and I assume that we would and could carve out other acquisitions by newspaper proprietors, which would be left to

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be dealt with by the general, reformed merger regime) and vice-versa. That would be a very significant change. It might be sensible in its own terms but ideally we would think further about it. It would be disliked by the newspaper industry although they might be happy were it to be accompanied (in effect be a replacement for) some of the cross media rules.

Acquisitions of newspaper titles by newspaper proprietors

10. The implication of a wider share-of-voice plurality test is that it might potentially be less stringent than merely plurality of newspaper ownership (because by definition concentration would be less affected by a merger of newspaper owners). That might be appropriate (especially as the competition assessment would be likely to focus on the newspaper market). If not, it might be possible for the Bill to provide that, because of the particular concerns over newspaper ownership, a more pure plurality test, just relating to newspaper concentration, should apply there. But again ideally one would think about the implications including the presentational ones.

key point - general test would remove any sort of intra-paper plurality 'floor'.

Mergers between newspaper proprietors and TV licences

11. General merger law would apply to these where the acquirer was the newspaper owner, as would of course any cross media ownership rules, notably the current 20% rule. Some of those transfers are not prevented by the rules, and there may be a case for subjecting them to a wider share of voice plurality test. As we had conceived the newspaper regime, acquisition by a TV licensee of a newspaper title would be subject to the regime, subject again to the media ownership rules. The logic of a wider share-of-voice plurality test is that all these mergers should be subject to the new regime in the Communications Bill to replace the newspaper regime. And if so there is an issue as to whether one needs the 20% rule. The Secretary of State would be able to block any merger which raised plurality concerns. Whilst this might be less certain for business (albeit business could presumably be enabled to obtain confidential guidance on proposed transactions) it would enable the merger to be assessed on a case by case basis, in the light of all the facts and circumstances. An important issue might be avoiding duplication in the assessment of the plurality issue in any licensing regime. Note too that the assessment would be by different bodies in the two regimes.

Local radio/local newspaper mergers

Thresholds point
20% would have to persist
in some form

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12. The argument here parallels that for national TV. In this case, however, there are anyway rules requiring a certain number of different owners of local radio licences. If the rules were to be more stringent for local newspaper proprietors, there presumably would be even more of a question as to whether this was justified if there were to be a share-of-voice plurality test covering such mergers whoever were the acquirer.

- Quite. One or the other if radio = 2+1.

TV/Radio mergers

13. These would be unaffected by the proposed new newspaper regime. There may be a certain lack of logic and consistency if the regime concerns share of voice as a whole, but that could probably be justified by arguing that newspapers are special (the lack of statutory content regulation, their role as agenda setters, their partisan nature and the historical role of press barons), and that it was the combination of that with another media outlet that raised the concern. TV/radio mergers would in any event remain subject to the general merger regime as appropriate. The reformed regime post the Enterprise Bill would potentially allow for the opening of a new exceptional public interest gateway

- > to radio ownership rules.

Options

14. It is difficult to re-invent the newspaper plurality test at short notice without further thought, but you may want to focus on the following 3 options that were raised at a meeting with Tessa Jowell yesterday:

- 1) Rules as they are currently proposed in the DCMS briefing with a plurality test applicable to the acquisition of newspapers only;
- 2) A wider plurality test that is applicable for all media, where one of the parties is a newspaper proprietor;
- 3) A wider plurality test that would include certain rules setting out the absolute floor of the plurality test.

15. Option 1) would enable newspaper titles that are being acquired to be subject to a special plurality test, regardless of whether this is by another newspaper owner or other media company. The plurality test would not be applicable in reverse though, for example if a newspaper owner wanted to acquire a radio or TV license. Arguably this would then require rules (as indicated in DCMS briefing) to provide the additional cross-media safeguards.

- or simply rely on radio rules if these felt to be sufficient (ie if there's 3+1)

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this = no rules at all on anything.

16. Option 2) would involve a wider share of voice plurality test which would be applicable to all media and cross-media mergers, if a party were a newspaper proprietor. Arguably this would remove the requirement for separate rules. The transparency of the rules in option 1) would be the trade-off for flexibility of a wider plurality test. This option would require guidelines to be provided to explain how the plurality test would operate in order to minimise uncertainty.

17. Option 3) would involve the wider plurality test combined with rules that set an absolute floor for cross media consolidation. The rules could then be reined back to an absolute minimum (beyond those in option 1) knowing that there is an additional safeguard in place with the plurality test. The rules would provide transparency of the floor of the plurality test, whilst the plurality test itself would provide a degree of flexibility to analyse mergers on a case-by-case basis. Guidelines would also be provided as in option 2) to minimise uncertainty.

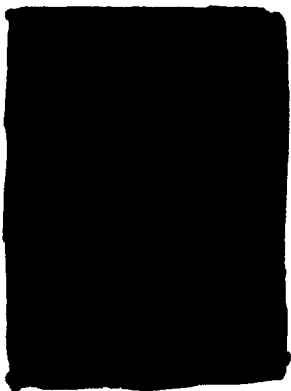
*so this = 2+1 with a paper-related special regime and opt - RAU ang 7
- newspaper ang 7
TV would need separate 3+1 rule anyway.*



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ci

DTI



Outside DTI

Kim Howells



Andrew Ramsay DCMS

Diana Kahn DCMS



Ruth Mackenzie DCMS

Bill Bush DCMS