Media Ownership: Summary

The rationale

Media plurality is the cornerstone of a healthy democracy.

Competition rules and impartiality rules are very important, but do not remove the need for ownership rules.

However, any rules are inevitably act as a potential constraint on that market so it is essential that they be proportionate and do not unnecessarily restrict growth and innovation.

Given the challenges facing local media in particular, in 2011 I removed local ownership rules so as to enable partnerships between local newspapers, radio and Channel 3 television stations to promote a strong and diverse local media industry.

Remaining Rules

National cross media ownership rules. No one can own more than 20% of a Channel 3 licence and national newspapers with more than 20% market share. The same restriction applies to anyone who is more than 20% owned by someone who has more than 20% of the national newspaper market. [Sometime known as the "20/20" rule, it is really a "20/20/20" rule.]

Specific prohibitions on licence holding. There is still a prohibition on political parties holding any broadcasting licences and on religious bodies holding certain licences for Channel 3 and Channel 5, any national radio analogue licence, and multiplex licences. Channel 4 and S4C may not hold Channel 3 or Channel 5 licences.

The Nominated News Provider for Chanel 3 cannot be under the control of political or religious bodies or bodies which would be barred from holding a channel 3 licence.

Media Plurality Public Interest Test. The Secretary of State may intervene in media mergers where he has concerns about media plurality.

A History of Media Ownership rules in the UK from 1990s onwards

Introduction

1. Successive governments have taken the view that the media is of central importance for a healthy, well-informed democracy and therefore control of the media should not be concentrated in too few hands. This is based on a concern that a small number of media owners could have too much influence in terms of content and, in particular, agenda setting. Policy and legislation has been designed overall to achieve a range of different media "voices" which enable consumers to have access to a range of views which help them actively participate in the democratic process in the widest sense.

2. It is sometimes argued that, where broadcast media are concerned, the existing rules around accuracy and impartiality should counter concerns about concentration of ownership. This is true up to a point, but it is difficult to regulate the coverage and prominence of stories. Therefore there is still considerable scope for influencing the agenda by the coverage or non-coverage of particular stories. As Damien Tambini put it, "you can't tell people what to think, but you can tell them what to think about". A wider range of media owners makes it harder for one or two large owners to distort the agenda in a way which suits their own purposes.

3. Some argue that competition rules alone should secure a plurality of media owners. Competition law is designed to reduce concentration of market power and therefore will generally produce outcomes which support plurality. However, competition rules are designed to prevent abuse of market power and it is possible that an owner could have a dominant position which he did not abuse in competition terms (and which will therefore be allowed under the competition regime) but which was deemed undesirable in relation to plurality. It is also likely that competition rules are less able to prevent unacceptable levels of cross-media ownership where each market may be seen as distinct for competition purposes. Yet this form of ownership is sometimes seen as of most concern because it could allow an owner to

promote an agenda across a number of platforms which could be more influential than influence in just one.

4. The media ownership regime takes as its starting point that a variety of owners will represent a variety of different viewpoints. This cannot be taken as axiomatic as owners could have a very similar set of views and values. It is nevertheless likely that the greater number of owners, the greater number of views. Moreover, as argued above, it is difficult to regulate for different points of view, so ownership restrictions act as an effective "proxy" for plurality.

5. The history of media ownership rules in the UK has, with few exceptions, been one of deregulation. Media ownership rules act as a constraint on the normal workings of the market, so it important to strike an appropriate balance between the needs of plurality and the needs of the wider economy, and to ensure that media ownership rules are no more burdensome that necessary. The maintenance of plurality is still vital but, as more and more services become available on differentplatforms, concerns over ownership have diminished to some extent and greater liberalisation has been permitted. As the "Consultation on Media Ownership Rules" in November 2001 said:

"The current ownership rules are being overtaken by a changing media landscape. In devising new, forward-looking legislation, we have two main aims. We want to encourage competition and economic growth, by being as deregulatory as possible. However, we must also allow the media to continue to perform its vital role in democratic society, as a forum for public debate and opinion." (para 1.2)

Background

6. The constitutional framework for UK commercial terrestrial television and local radio sectors during the 1980s was provided by the Broadcasting Act 1980 and

consolidated in the Broadcasting Act 1981[1]. The Independent Broadcasting Authority (IBA)had the function of providing television and radio services additional to those of the BBC. It thereforeacted as both broadcaster and regulator. It did this by entering into contractual arrangements with ITV and Independent Local Radio franchisees whereby the contractors agreed to supply programmes for their regions and the IBA agreed to transmit them. The IBA had wide powers to preview programmes and approve schedules in advance of transmission. The issue of ownership restrictions did not therefore arise as providers of commercial TV and radio services were not owners of licences but contractors to the IBA.

7. The Broadcasting Act 1990 made significant changes to this regime by abolishing the IBA and establishing the IndependentTelevisionCommission and the Radio Authority instead.The main effects of the Act were that:

- The previous contract-based regulatory system was replaced by a licensing system, with each licence subject to certain conditions with penalties for non-compliance. Licences for certain services were to be awarded by the ITC and RA through competitive tender to the highest bidder after a quality threshold and sustainability test had been passed, except in exceptional circumstances.

- Cable and satellite programme licences were to be issued on compliance with the ITC codes' consumer protection requirements.

- Channel 4 was to be provided by a new non-profit making body, the Channel Four Corporation, under licence from the ITC.

- Provision was made for the licensing of a new terrestrial television service, Channel 5 (which came to air in 1997).

[1]ITC Notes, The Broadcasting Acts of 1990 and 1996, June 2003

8. The **Broadcasting Act 1990**also introduced ownership restrictions now that licences could be held and traded. The rest of this paper describes the media ownership rules from 1990 onwards, sector by sector.

Analogue Television

9. The **Broadcasting Act 1990** placed an upper limit on any person owning more than two Regional Channel 3 licences[2]. These rules were subsequently refined by successive Orders, which made the limits referable to the size or character of the license. For example, it was not possible to hold more than one of the largest eight Regional licences, and subsequently more than one of the two London licences.[3]**The Broadcasting Act 1996** imposed a limit of one licence where the licence-holder's total audience share was over 15%, and provided that a National licence could only be held for either Channel 3 or Channel 5. (See Annex A for more detail.)

10. The White Paper, *A New Future for Communications*, published by DCMS and DTI in December 2000, proposed removing the 15% limit on share of TV audiences and the rule which prohibited single ownership of the two London licences. The White Paper argued that these rules were more restrictive than was necessary "for striking a reasonable balance between a dynamic market and plurality of ownership given the increasing range of alternative services now available[4]", and hindered the consolidation of ITV. The White Paper pointed out that, were the rules to be removed, consolidation would still be subject to the merger regime. It also suggested that that sufficient plurality in TV services could be achieved by retaining the prohibition on joint ownership of ITV and Channel 5.

11. The *Consultation on the Draft Communications Bill (May 2002)* went further and proposed that that the rule preventing joint ownership of a national Channel 3 licence and the Channel 5 licence should also be removed. The Consultation

[2]Channel 3 network includes 15 Regional licences.
[3]See The Broadcasting (Restrictions on the Holding of Licences) Orders 1991 and 1993 (SI 1991/1176 & 1993/3199)
[4] Para 4.6.1

document explained: "The existence of the BBC and Channel 4, in addition to the commercial channels, will still ensure the existence of at least 3 separately controlled free-to-air public service TV broadcasters, in addition to the expanding range of digital channels".[5]

12. Consequently, the **Communications Act 2003** repealed the two rules which prevented the joint ownership of National Channel 3 and Channel 5, and removed stand-alone accumulation limits for all television licences. ITV plc (which resulted from the merger of Carlton and Granada in 2004) now holds all but three of the 15 Regional Channel 3 licences (UTV and Northern and Central Scotland).

Nominated News Provider

13. The **Broadcasting Act 1990** made provision for the ITC to nominate news providers who would be eligible to provide news programmes for holders of Regional Channel 3 licences ('nominated news providers'). It was only possible to hold 20% of one nominated news provider, and each nominated news provider was only permitted to own up to 50% of a Regional Channel 3 licence (i.e. 50% of any company holding a Regional Channel 3 licence).

14. The **Broadcasting Act 1996** then made further provision for all holders of Regional Channel 3 licences to, as far as possible, appoint the same (single) news provider ('the appointed news provider'). The purpose of this provision was to ensure that high quality national and international news was carried across all Channel 3 regions at peak time by a single news provider. This was needed because Channel 3, unlike the BBC, was not a single network, but made up of different a number Channel 3 regions under different ownership. By requiring all Regional Channel 3 licence-holders to select the same nominated news provider from providers nominated for that purpose by the ITC, the rules guaranteed a nationwide competitor to the BBC's

[5] The draft Communications Bill - The Policy, para 9.5.2

news services. In the Government's view, this competition served to underpin the impartiality of both services, guaranteeing plurality for viewers.

15. *A New Future for Communications* (December 2000)proposed relaxing the 20% limit on ownership of the nominated news provider, and allowing the Government, on advice from Ofcom to repeal the system entirely. It argued that, as other service providers in addition to ITV provided high quality news services, the ownership restrictions, and the system as a whole, might become unnecessary in due course[6].

16. The document *Draft Communications Bill – The Policy* (May 2002) proposed strengthening the nominated news provider provisions by adding a new requirement for Channel 3 licensees to provide adequate financial support to the news provider to make sure the service was of high quality. There was liberalisation as well: the document stated that "To allow more strategic and dynamic management of the news provider, the limit on its ownership will be raised from 20% to 40%, potentially reducing the number of shareholders from 5 to 3. In addition, Channel 3 licensees will not be allowed to control more than a 40% share, either in total or in combination. This will make sure the service is independent of the licensees, and unaffected by any of their commercial concerns, but will not force any of the existing shareholders to disinvest"[7].

17. The **Communications Act 2003** went further still, by lifting all restrictions on the ownership of nominated news providers, while retaining the requirement for all Regional Channel 3 licence-holders to appoint the same nominated news provider.

Digital TV Services

18. The **Broadcasting Act 1996** introduced the licensing regime for digital TV and, at the same time, introduced certain ownership limits. Following a number of changes made by Order, as of the beginning of 2003 these restrictions were:

[6] A New Future for Communications, para 4.10
[7] The draft Communications Bill – The Policy, Para 9.5.4

- A disqualification on holding a 20% stake in bodies holding more than 6 licences to provide television multiplex services, or in 5 such licences were also providing services for the BBC.
- A disqualification on holding a 10% stake in bodies holding more than 8 licences to provide television multiplex services, or in 7 such licences were also providing services for the BBC.

19. These rules were removed by the **Communications Act 2003** consistent with its overall deregulatory approach so there are now no explicitownership rules in respect of digital TV services.

Satelliteand Cable TVservices

20. The**Broadcasting Act 1990** placed no restrictions on cable and satellite licences.It is likely that this is because these services were not subject to the same spectrum constraints as analogue services.

21. *Broadcasting in the '90s: Competition, Choice and Quality*, published by the Government in November 1988, proposed that DBS services (Direct Broadcasting by Satellite) services should "be required to meet the positive requirements on independent production described in paragraph 6.11"; in other words, that they should ensure that 25% of original programing come from independent producers. In thisrespect, they were to be in the same position as BBC and ITV companies[8].

22. It is not clear why this requirement did not apply to other satellite broadcasters, such as BSkyB. It is clear, however, that the Government saw a distinction between DBS and non-DBS broadcasting. As Earl Ferrers explained in the second reading debate on the Broadcasting Bill on 5 June 1990 (albeit in the context of ownership), "DBS refers to those services which operate on frequencies which are allocated to

[8] *Broadcasting in the '90s: Competition, Choice and Quality*, paragraphs 6.29 and 10.3

the United Kingdom for broadcasting. British satellite broadcasting, which is called DBS, falls into that category. Non-DBS refers to those broadcasting services such as Sky which use other types of frequency"[9]. He went on to draw a distinction between the competitive position of the two types of services: "BSB [British Satellite Broadcasting, which merged with Sky in November 1990 to form BSkyB]operates all the five high-powered channels which have been allocated to the United Kingdom for DBS. It has a monopoly of those channels. By contrast, the Sky channels are not alone on the Astra satellite.....There are predictions that there may even be 32 channels and that could increase to 48 channels later."[10]

23. The implication seems to be that the Government felt able to require DBS services to be more like other UK services, whereas it would be impractical or unfair to seek to place the same requirements on broadcasters not using UK spectrum and operating in a different competitive environment. In any event, the distinction between the two regimes was ended in 1997 following an ECJ ruling that the UK had unlawfully established two licensing regimes for satellite broadcasting in breach of the Television Without Frontiers Directive (copy of ruling at Annex C).

24. The **Broadcasting Act** 1990 also placed different ownership restrictions on DBS and non-DBS services. National newspapers could not hold more than a 20% stake in a direct broadcasting satellite channel. (The same restrictionalso applied in respect of a Channel 3, Channel 5 or national radio licensee.) However, no such restriction was placed on newspapers owning non-DBS licences. Earl Ferrers gave a detailed justification of this in House of Lords:

"It has always been the view of the Government that the 20 per cent. limit on newspaper interests which would apply to satellites using UK broadcasting frequencies would not apply to satellite services which are receivable in the United Kingdom but which are not using broadcasting frequencies that are internationally allocated to the United Kingdom.....

[9] *HL Deb 05 June 1990 vol 1222*
[10] *HL Deb 05 June 1990 vol 519, col 1356*

"The position is that for the foreseeable future the United Kingdom is restricted by international agreement to a maximum of five DBS channels, all of which have been allocated by the IBA to the BSB, thereby giving British Satellite Broadcasting a monopoly. In contrast, non-DBS satellite channels have developed largely outside United Kingdom broadcasting regulations. What is significant here is that in this context there are potentially very many outlets indeed. As my noble friend Lord Colwyn said, there are 16 channels available on the satellite Astra. Astra II is promised. There is talk of eventually 48 or more channels from Astra. There are other satellites too. One estimate is that by 1992 there will be at least 160 transponders which will be capable of carrying satellite TV channels in Europe.

"It follows from this that there is potentially an almost open-ended scope for non-DBS satellite channels under diverse ownership. Already significant investors in non-DBS satellite channels which can be received in the United Kingdom include not just News International but also Maxwell Communications, BT (Vision), W.H. Smith, D.C. Thomson, United Cable and a number of ITV companies.

"The case for restricting ownership is therefore simply not the same for non-DBS satellite services as it is in the case of the five DBS channels which are under a single owner. In that respect the position of DBS is much closer to the terrestrial channels than is that of non-DBS services. Both the DBS services—that is, British Satellite Broadcasting of course—and the terrestrial channels, which are 3, 4 and 5, are limited by spectrum scarcity whereas non-DBS services are not.

"....The owners of Sky have embarked on an enterprise of enormous expense, effort and great risk. It is one upon which they have embarked quite legally and it has created significant numbers of new jobs in England and Scotland as well as providing new television services for many viewers. If my noble friend's amendment were to be accepted, all that would suddenly stop and News International would be made to

divest itself of 80 per cent. of that which it has built up painstakingly, legitimately and at great risk."[11]

Analogue Radio

Local radio

25. The **Broadcasting Act 1990** placed an upper limit on ownership of 20 licences. This was strengthened by a further rule, made by Order, whichintroduced a points-based system. Under this system, points were awarded to licences depending on the size of a station's coverage area measured by population: the larger the population, the greater the points for that licence. The Order set an upper limit on the national points which could be held of 15%, thereby ensuring a minimum of 7 owners across the UK. Further details are includedat Annexes A and B.

26. *A New Future for Communications* proposed considering a simpler regime for radio ownership. It was argued that better share statistics were now available which made the old system obsolete and that a new system, or abolition, was needed "to give companies greater scope for investment and achieving economies of scale[12]".

27. The *Consultation on Media Ownership Rules* (November 2001) proposed getting rid of the national point system for radio which limited any one owner to 15% of the total points[13]. It proposed instead a new local points system which had been developed by the Radio Authority and the Commercial Radio Companies Association (CRCA) which would ensure at least 3 local owners in any area in addition to the BBC (the "3 plus 1" rule). It did this by building up a points total based on all the services in any given area and then setting a limit of 45% on the number of points any one

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[11] *HL Deb 09 October 1990 vol 522 cc209-210*

[12] Para 4.7
[13] Para 6.3

owner could hold, thus ensuring a minimum of three owners. The document also proposed similar provisions for digital radio services.

28. The **Communications Act 2003** gave the Secretary of State an order-making power to introduce the new points based system. Following extensive consultation with the radio industry, the Government gave effect to the points regime agreed between the regulator and the industry by Order, but changed the upper limits so that, wherever there was a well-developed choice of radio services, there would be at least two (rather than three) separate owners of local commercial radio services in addition to the BBC.[14] This was achieved by setting the limit on points in any one market at 55%, rather than the originally proposed 45% - with a parallel 55% rule for digital radio ownership.

29. All limits on the ownership of radio stations in areas with only one or two local radio stations were removed (subject to the local cross media ownership rule designed to ensure that there were not total local monopolies). There is a detailed description of how the regime works in Annex 3 to Ofcom's Review of Media Ownership Rules 2006.[15]

30. In the*Digital Britain Final Report* (June 2009), the Government asked Ofcom to consider specifically the impact of these rules on the long-term sustainability of local media and Ofcom produced a report in November 2009. The Ofcom report recommended that, in the light of the significant economic changes facing TV, radio and newspapers, the local radio service ownership rules and the local and national radio multiplex ownership rules should be removed. In Ofcom's view, removal "would reduce regulation on an industry facing difficult market conditions and may allow stations opportunities to be more viable. Research also shows a majority of consumers are not concerned about single ownership within local commercial

[14] See The Media Ownership (Local Radio and Appointed News Provider) Order 2003 (SI 2003/3299)
[15] http://stakeholders.ofcom.org.uk/market-data-research/other/media-ownership-research/rulesreview/

radio."[16] The local radio ownership rules were therefore repealed by the *Media Ownership (Radio and Cross Media) Order 2011*.

National radio

31. The **Broadcasting Act 1990** placed restrictions on one person holding more than one of the three national analogues commercial radio licences. This was changed by Order in 1991, to limit any one individual to 15% of the relevant points when taken together with those for any local radio licence also held. The **Broadcasting Act 1996** reversed this change to the original single licence limit.

32. The *Consultation on Media Ownership Rules*asked for views on removing this rule: "It would be de-regulatory and allow businesses to increase investments and achieve economies of scale. On the other hand, there may be concerns that single ownership of more than one national analogue radio licence would lead to a reduction in plurality...."[17]

33. The *Draft Communications Bill – The Policy* (May 2002) proposed that the rule preventing anyone owning more than one national analogue radio service should be removed, and this was done in the Communications Act 2003.

Digital Radio

34. Under the **Broadcasting Act 1996**. a person was limited to one digital service licence or 15% of the total audience points (whichever was the higher) and was also disqualification from providing more than one non-simulcast local digital sound programme service on a single multiplex, unless there was another multiplex operating in the same geographical area. Following the **Communications Act 2003**, these rules were replaced by a new local points based regime which mirrored the

[16]Ofcom Report to the Secretary of State (Culture, Media and Sport) on the Media Ownership Rules, 17 November 2009, p.4
[17] Para 6.3.10

provisions of the analogue regime by placing a limit on digital radio licences of 55% of the points available in an area.

35. Under ownership rules in the **Broadcasting Act 1990**, there were no effective limits on local radio multiplex ownership. Consequently, Part 2 of Schedule 14 of the **Communications Act 2003** introduced a new rule to prevent a person from having two or more overlapping multiplexes (i.e. where the overlap is more than 50%). This was removed as part of the reforms made by the *Media Ownership (Radio and Cross Media) Order 2011*.

Specific prohibitions on licence holding

36. There are restrictions on the holding of broadcastinglicences by certain types or classes of owners.

Religious Bodies

37. *A New Future for Communications* proposed some relaxation of the rules governing religious ownership so that they could hold local terrestrial digital licences (there were no restrictions on holding cable or satellite licences and local analogue radio licences). Views were invited on whether there should be further relaxation of the restrictions bearing in mind that "religious content has a particular capacity to offend those with different views, or, sometimes to exploit the sensibilities of the vulnerable" (a comment which in turn offended many religious broadcasters)[18]. The *Consultation on Media Ownership Rules* (November 2001) proposed some further relaxations on the restrictions on religious broadcasters, but retained, in particular the restrictions on holding national analogue radio and TV licences.

38. The *Consultation on the Draft Communications Bill* (May 2002) proposedfurther changes to restrictions on religious bodies, though the rationale had moved from

[18] Papa 4.9.2

one of offence to one of spectrum scarcity. It was now proposed that they could hold digital programme services, digital additional service licences and restricted service licences. This was in addition to the undertaking *A New Future for Communications* to allow religious bodies to hold digital local sound programme licences. Religious bodies could already hold local analogue radio licences and satellite and cable TV and radio licences. There would continue to be restrictions on national analogue radio and national digital sound programme licences, analogue TV licences and analogue additional services licences, and local and national radio and TV multiplex licences.

39. Under the **Communications Act 2003**, restrictions on religious organisations were reduced further as a result of consultation so that the only licences which they cannot now hold are licences for Channel 3 and Channel 5, any national radio analogue licence, and multiplex licences. These restrictions remain in place.

Local Authorities

40. The **Broadcasting Act 1990** prevented local authorities from holding broadcasting licences. *A New Future for Communications* proposed allowing local authorities to hold broadcast licences for information purposes, and putting in place safeguards to prevent this from being exploited for political purposes[19]. This was done in the **Communications Act 2003**.

Political Parties

41. The **Broadcasting Act 1990** prevented political parties form holding broadcasting licences (as there were concerns that they could not run a broadcasting company with sufficient impartiality). This restrictionremains in place.

AdvertisingAgencies

[19] Para 4.9.3

42. The **Broadcasting Act 1990** prevented advertising agencies from holding broadcasting licences. *A New Future for Communications* proposed removing the restrictions on advertising agencies holding broadcast licences and allowing the competition authorities to ensure fair competition in the advertising market. It was argued that the Government could "rely on the competition authorities to judge the lightly impact on competition of agencies holding licences."[20]In the event, this restriction was not repealed by the **Communications Act 2003**.

Foreign Ownership

43. The **Broadcasting Act 1990** introduced some foreign ownership restrictions to non-European Economic Area (EEA) countries (it was not permitted to place restrictions on EEA companies and individuals), which were expanded upon by the **Broadcasting Act 1996**. Non-EEA companies could hold certain licences inlcding for cable and satellite services.

44. *A New Future for Communications* proposed retaining the disqualifications on grounds of nationality:

"Our current restrictions on foreign (non-EC and EEA) ownership of media interests are reflected across Europe, and indeed beyond: the US restrict foreigners to a 25% interest in broadcasting companies, and Australia similarly limits foreigners to a minority interest in television. Within the EC, France restricts the interests of non-EC parties in TV and radio companies to a holding of 20%, while Spain and Italy are among other countries which also impose limits. We believe these restrictions play an important role in ensuring that European consumers continue to receive high quality European content."[21]

[20] Para 4.9.4
[21] Para 4.9.5

45. The *Consultation on Media Ownership Rules* (November 2001) endorsed this position, but the *Consultation on the Draft Communications Bill* (May 2002) paper proposedthat the existing prohibitions on the non-EEA ownership of broadcasting licences be removed. It said:

"These rules are inconsistent and difficult to apply. The Government wants to encourage inward investment from non-EEA sources, to allow the UK to benefit rapidly from new ideas and technological developments, aiding efficiency and productivity. Content regulation will maintain requirements for high quality, original programming."[22]

46. A Joint Committee of both Houses of Parliament, chaired by Lord Puttnam, was set up to scrutinise the draft Bill[23]. It concluded that the foreign ownership disqualification should not be removed. In its response to the Joint Committee, the government defended its policy decision:

"We are pleased that the Committee has no objections in principle to foreign ownership of broadcasting licences, and does not consider reciprocity to be pivotal. However, we also note its view that there is currently insufficient evidence to justify removing the restrictions now. We will, of course, consider any new evidence arising from the ITC review of programme supply, which will include a consideration of the implications of liberalisation in the media ownership rules and their impact on the programme supply market. However, we do not believe that there is a strong case for delaying the policy in the way proposed by the Committee. As we are sure the Committee will understand, no predictions can be made about the level of foreign investment that will result from our proposed changes, since that is a matter for the individual businesses concerned. However, we believe that a more open market will create conditions that are conducive to greater competition, more investment, and

[22] Para 9.3.1

[23] Joint Committee on the Draft Communications Bill, *Draft Communications Bill*, 25 July 2002 HC 876-I ('Joint Committee')

an injection of new skills and ideas. We believe that this will translate into better programmes for viewers and listeners.

"The Government does recognise the Committee's concern about the risks posed to the UK broadcasting ecology by the entry of large American companies into the market. We do, however, believe that we have put safeguards in place so that these risks have been addressed. The Bill makes provision for content regulation that will prevent any 'dumping' of US programming in the UK. In the television industry, Channels 3, 4 and 5 will be subject to obligations for original programming, made for first screening to a UK audience, above the EU requirement for a minimum of 50% EU-originated content. There will also be additional obligations for independent production and for regional production and regional programming on ITV. In radio, local stations will have to maintain the formats they agreed with the regulator. Whenever a local radio licence changes hands, OFCOM will be able to vary the licence to make sure the local character of the service is maintained and OFCOM will also be given a new power to protect and promote the local nature of local radio. Such provisions will act as a guarantee of quality and diversity."[24]

47. The **Communications Act 2003** removed the disqualifications on ownership of Broadcasting Act licences by non-EEA persons who are now free to hold any broadcasting licences subject only to the remaining ownership restrictions.

Cross media ownership

48. The position under the **Broadcasting Act 1990** was:

- national newspaper owners were tightly limited in their holdings in terrestrial TV and radio, and in domestic satellite broadcasters[25]. Within each category they could hold up to 20% of one licence, and then up to 5% of any others. They were allowed full

[24] *Government's Response to the Report of the Joint Committee on the Draft Communications Bill*, Department of Trade and Industry and Department for Culture, Media and Sport, October 2002, Cm 5646, recommendation 86

[25] Media Ownership, The Government's Proposals, May 1995, para 2.8

control of non-domestic satellite broadcasters "in order to encourage investment in an uncertain and high-risk enterprise". (By 1996 there were no domestic satellite broadcasters and the largest non-domestic satellite broadcaster was BSkyB);

- local newspaper owners were less tightly controlled, in being allowed to own regionalTV or local radio broadcasters, provided there was no significant overlap between the licence area and the paper's circulation area;

- national TV and radio (and regional Channel 3) broadcasters were limited to a 20% stake in national newspapers and non-domestic satellite licences; and

- there were no cross-media restrictions on ownership cable services (other than that satellite providers could not own more than 20% of a terrestrial TV or National Radio licence).

49. Under successive Orders, producers could not own more than 15% and, by 1995, 25% of a broadcaster and vice versa if they were to qualify as independent producers for the purposes of the 25% UK independent production quota required of terrestrial broadcasters.[26] Two or more broadcasters could hold up to 50% of the shares in a producer without prejudicing this status.

50. Under the **Broadcasting Act 1996**, the television and radio licence-holders were allowed up to a 20% interest in publishers with a 20% share of the national newspaper market.

51. The White Paper *A New Future for Communications* invited comments on whether the then current cross media ownership rules were still needed.

52. The *Consultation on Media Ownership Rules* in November 2001 outlined a number of approaches to cross media ownership from abolition to no change, with a number of midway points such as a "share of voice" model (setting limits on total ownership,

[26] See the Broadcasting (Independent Productions) Orders 1991 (SI 1991/1408) & 1995 (SI 1995/1925)

rather than sector by sector). The paper also considered the possibility of "permeable" ownership limits which could be exceeded following a public interest test, and rehearsed the arguments about whether such decisions should be taken by an impartial but unelected regulator or an accountable politician.

53. The *Consultation on the Draft Communications Bill* (May 2002) contained much more detailed proposals for cross-media ownership which were implemented in the **Communications Act 2003**. There were four key rules operating at national, regional and local level. These were:

1. Retention of the national rule concerning cross-media ownership between newspapers and ITV. This was expressed as follows:

    (a) no one controlling more than 20% of the national newspaper market may hold any licence for Channel 3;

    (b) no one controlling more than 20% of the national newspaper market may hold more than a 20% stake in any Channel 3 service;

    (c) *a company may not own more than a 20% share in such a service if more than 20% of its stock is in turn owned by a national newspaper proprietor with more than 20% of the market.*

This is often referred to as the "20/20" rule.

2. Retention of a parallel local rule: no one owning a regional Channel 3 licence may own more than 20% of the local/regional newspaper market in the same region.

3. Stricter application of the local radio ownership rules where potential owners had other media interests. The effect was to ensure that, in these cases, there would be a minimum of three media owners in each area. This was given effect as follows:

***If** a person controls:*

- *more than 50% of the local/regional newspaper market in the coverage area of a local radio station; **or***
- *a regional ITV licence with substantially the same coverage area as a local radio station*

***And** the radio station in question overlaps with two or more other stations, which also overlap each other (to form a cluster of 3 or more stations)*

***Then** that person is barred from owning more than 45% of the points in the radio station's coverage area.*

4. A local cross-media rule (the "local monopolies" rule) designed to ensure that there were no complete monopolies in areas with only one or two local radio stations. This rule was given effect as follows:

No one person may own a local radio licence if they also own both:

- *more than 50% of the local/regional newspaper market in the coverage area of a local radio station; and*

- *a regional ITV licence with substantially the same coverage area as a local radio station*

All other cross-media ownership rules were repealed.

Review of ownership rules

54. The C*onsultation on Media ownership Rules* (November 2001) suggested a biennial review of ownership rules by Ofcom and a power for the Secretary of State to make

changes by Order. Alternately, provisions could lapse after a set period unless renewed by Order[27].

55. The **Communications Act 2003** requires OFCOM to review all media ownership rules at least every three years. Ofcom make any recommendations for further reform to the Secretary of State, who can amend or remove rules by secondary legislation. The first review in 2006[28]recommended no change. In its *Digital Britain Final Report*, the Government asked Ofcom to consider specifically the impact of the current local ownership rules on the long term sustainability of local media[29]. As a result Ofcom produced a second report in November 2009[30].

56. In terms of cross-media ownership, Ofcom concluded that that national "20/20" rule should be retained, and that the local cross media ownership rules be liberalised so that the only restriction remaining would be on ownership of all three of: local newspapers (with 50% plus local market share); a local radio station; and a regional Channel 3 licence.According to Ofcom: "This liberalisation will increase the flexibility of local media to respond to market pressures. Consumers still rely on television, radio and press for news, so going further to complete removal of the rules could reduce protections for plurality."[31]

57. The Secretary of State asked Ofcom on 8 July 2010 to revisit its advice on retaining the "local monopolies" rule. Ofcom replied on 29 July and published a fuller version of the reply in August[32]. It recognised that there had been some changes in circumstances since their original report but that a decision on whether to remove this one remaining local rule "is a matter of judgement and one which is rightly made by Government and Parliament". Having considered the matter further, the

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[27] Para 6.6
[28]http://stakeholders.ofcom.org.uk/market-data-research/other/media-ownership-research/rulesreview/

[29] Chapter 5, paragraphs 74-77
[30] http://stakeholders.ofcom.org.uk/consultations/morr/statement/
[31] See One Page Summary
[32]http://stakeholders.ofcom.org.uk/binaries/consultations/morr/response-local-media/Local_Media_Final_Document.pdf

Secretary of State concluded that the remaining rule should also be removed and this was given effect by the *Media Ownership (Radio and Cross Media) Order 2011.*

58. The Government's view was that local media ownership rules (for television, radio and newspapers) placed unnecessary limitations on ownership within commercial media; that the rules were no longer appropriate in a converging digital world; and that removing regulatory barriers would help established industries adapt to new environments. The deregulation of the local media ownership regulations now enables partnerships between local newspapers, radio and Channel 3 television stations to promote a strong and diverse local media industry. It is, however, too early to assess the impact this change has had in practice.

Media Plurality Public Interest Test

59. There were calls in the Lords, in particular, for the Communications Bill to include a media plurality public interest test which would allow Ministers to prevent mergers which were deemed damaging to media plurality. The Government initially opposed the idea of such an additional safeguard on the grounds that the proposed protections were adequate, it would introduce uncertainty and be difficult to reach a decision on any particular case. Following lengthy debate in the Lords, however, the Government tabled a Government amendment to introduce a media plurality public interest test (often referred to as the "Puttnam amendment"). These provisions mean that the Secretary of State can ask OFCOM and, if necessary, the Competition Commission to investigate any merger which could have a damaging effect on plurality, diversity or standards.

60. In applying the test the Secretary of State takes into account the need for:

- a sufficient plurality of persons with control of media enterprises serving any audience;

- a wide range of high quality broadcasting that appeals to different tastes and interests; and
- a genuine commitment to Ofcom's standards code.

61. The Government produced further guidance on how the public interest test would be operated in practice. Partly due to lobbying from industry, Ministers indicated that they were not minded to exercise these powers were media ownership rules continued to apply or where, before the passage of the Communications Act 2003, no media ownership restrictions applied.

62. The Secretary of State has twice exercised his power to intervene in mergers on media plurality grounds. Firstly, when the Secretary of Statefor BIS intervenedin respect of the acquisition by BSkyB of 17.9% of ITV shares in 2006. A timeline of events is attached at **Annex D.**

63. The second time was in respect of the proposed acquisition by News Corp of the shares in BSkyB which it did not already own, and this is covered in ministerial written evidence.

Annex B

Radio points ownership regime

No one may have more than 15% of the total number of points in the radiolicensing system. The points system is calculated as follows in the 1991 Order:

Category of Service Points

National Radio	25
Category A local radio	15
Category B local radio	8
Category C local radio	3
Category D local radio	1
Restricted radio service provided otherwise than for a particular event	1

2) For the purpose of the table a local radio service falls -

(a) into category A if the number of persons over the age of 15 resident in the area for which theservice is provided exceeds 4.5 million;
(b) into category B if the number of such persons exceeds 1 million but does not exceed 4.5million;
(c) into category C if the number of such persons exceeds 400,000 but does not exceed 1 million;and
(d) into category D if the number of such persons does not exceed 400,000.

(3) In the case of a service provided on an amplitude modulated (AM) frequency the relevant number of pointsapplicable to the service by virtue of the table shall be reduced by one third.

Annex C

[ECJ Ruling]

Annex D

BskyB acquisition of a 17.9% stake in ITV plc

17 November 2006 – BskyB acquired a 17.9% stake in ITV plc

12 January 2007 – Office of Fair Trading (OFT) provisionally concluded that the acquisition represented a relevant merger situation for the purposes of the Enterprise Act 2002.

26 February 2007 - The Secretary of State issued an intervention notice in respect of this transaction citing the public interest consideration at Section 58(2C)(a) relating to the need for a sufficient plurality of persons with control of media enterprises.

27 April 2007 – The Secretary of State received reports from the Office of Fair Trading and Ofcom. OFT report concludes a relevant merger situation may have been created with BSkyB acquiring material influence over ITV and that this may be expected to result in a substantial lessening of competition such that the a reference to the Competition Commission is appropriate. Ofcom also concluded that a reference to the Competition Commission would be appropriate to examine further the potential impact on the sufficiency of plurality.

24 May 2007 - The Secretary of State referred the transaction to the Competition Commission under Section 45(2) of the Enterprise Act requiring the Competition Commission, in accordance with Section 47(2) of that Act, to conduct a detailed investigation into the effects of the transaction both on competition and on the specified public interest consideration.

26 June 2007 - The Secretary of State accepted statutory undertakings from BSkyB plc under paragraph 1(2) of Schedule 7 to the Enterprise Act for the purpose of preventing pre-emptive action. Such action is defined in paragraph 1(12) of Schedule 7 as action which might prejudice the Reference or impede the taking of any action by the Competition Commission or the Secretary of State.

20 December 2007 - The Secretary of State published the Competition Commission's final report. He has until 29 January 2008 to take and announce his final decisions on the transaction.

29 January 2008 - The Secretary of State announced his final decisions on the case, including decisions on remedies.

22 February 2008 – Sky challenged the Competition Commission's recommendation and the Secretary of State's acceptance.

26 February 2008 – Virgin Media challenged the Competition Commission's media plurality recommendation.

11 December 2008 – The Competition Appeal Tribunal ruled against Sky but in favour of Virgin Media's challenge that the proper test be applied to media plurality. However, this would not change any action to be taken by the Secretary of State, since the solution to the competition concern would also negate any impact on media plurality.

02 January 2009 - The Secretary of State published for consultation draft undertakings implementing the remedies announced in his decision of 29 January 2008.

2009 – Sky asked the Court of Appeal to overturn the decision of the Competition Appeal Tribunal as the Tribunal had not assessed the Competition Commission's decision to the required depth and had erred in assessing the Competition Commission's decision as to the standard of proof required and the correct counterfactual analysis

2009 – Sky, the Secretary of State and the Competition Commission challenged the Competition Appeal Tribunal's decision on how the correct media plurality test should be applied.

07 December 2009 - The Secretary of State published for consultation proposed modifications to the draft text of the final undertakings to be given by Sky.

21 January 2010 – The Court of Appeal ruled against Sky, and upheld the decisions made by the Competition Appeal Tribunal. The Court of Appeal allowed the separate challenge by Sky, the Secretary of State and the Competition Commission but it did not impact on the remedies imposed.

08 February 2010 - The Secretary of State accepts from Sky Final Undertakings to implement the remedies announced in the Secretary of State's decision of 29 January 2008.