# Response to the Secretary of State (Culture, Olympics, Media and Sport): Local Media – cross media ownership rules

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# Summary

In November 2009, after public consultation, we reported to the Secretary of State (Culture, Media and Sport) on our review of the media ownership rules, as required by statute. One of our recommendations was to significantly liberalise the local cross media ownership rules. Government now intends to implement this liberalisation.

Once this liberalisation is implemented the only prohibition on local cross media ownership will be that one person cannot own in a local radio coverage area:

- a local analogue radio licence; <u>and</u>
- a regional Channel 3 licence whose potential audience includes at least 50% of that radio station's potential audience; <u>and</u>
- one or more local newspapers which have a local market share of 50% or more in the coverage area ("**the Remaining Rule**").

The Secretary of State (Culture, Olympics, Media and Sport) has now asked Ofcom to look at the feasibility and implications of removing the Remaining Rule. The Secretary of State is required by statute to consult with us before making any changes to the media ownership rules which Ofcom has not already recommended.

In considering this request, we have updated our evidence for changes since our November 2009 recommendation. In summary, there are two relevant developments.

Firstly, the evidence shows a significant deterioration in the revenues available for local / regional newspapers between 2008 and 2009, accompanied by continued structural pressure on television and radio as the internet increases its share in a total advertising market that has been under pressure from broader economic circumstances. While there are signs of a recovery in the general advertising market this year, as we noted in our original report, these structural challenges are unlikely to ease.

Secondly, we note that Government policy in relation to local media has changed significantly since we published our original recommendations. The Government has placed emphasis on local media, in particular making proposals for local television, which have the potential to have a positive impact on both the diversity and plurality of news and information at the local level. Although this remains in development, and is therefore speculative at this stage, it is clearly a relevant development.

The issue that we highlighted in our earlier advice was that a combined ownership of the channel 3 television licence, a local commercial radio station and the main local newspaper(s) may confer too much control over the local news agenda into the hands of one person or company. Limited plurality of news and opinion in a local area could restrict local debate and accountability. This remains a serious consideration which needs to be weighed against the arguments for further relaxation.

As this report notes, the cornerstone of plurality in this context is the combination of the BBC and the commercial sector. With a BBC service (television at the regional level, radio and web based services more locally) there is a guarantee of a minimum of at least two providers of local news.

It is also important to note that competition policy may be relevant to the extent that competition authorities prevent concentrations in local media through the merger regime. The Secretary of State (Business, Innovation and Skills) also has the right to intervene in cross media mergers where he considers that it raises "public interest considerations", including considerations of the need for there to be "sufficient plurality".

All three of these factors exist as safeguards in addition to the residual restriction on cross ownership of local commercial media.

Ultimately, whether the remaining rule should be removed is of course a matter of judgement and one which is rightly made by Government and Parliament.

In making this judgement the risk of the concentration of control over local commercial news provision needs to be balanced against the arguments and factors which tend towards removal:

- Local media is facing significant economic pressure which the most recent evidence suggests is becoming more acute – removing the remaining rule could allow local media greater options to consolidate to respond to these pressures.

- While only a limited group of consumers (5%) consider the internet their main source of local news, there is a growing diversity of local news available through non-traditional media. There are therefore increasingly alternative sources of plurality.

- As noted, there are protections for plurality which would continue to operate – the combination of the BBC and the commercial sector, the public interest test operated by the Secretary of State and the merger regime would all continue to operate in parallel.

In addition, there are the potential benefits to diversity and plurality that may emerge in the coming years from the Government's policy on local television.

Finally, it is also worth noting that there is probably a reasonably low risk of the kind of consolidation that the remaining rule protects against actually occurring even if the rule was removed. At present the evidence suggests there is very limited interest in this form of consolidation.

The Secretary of State has also asked Ofcom to look at possible regulatory "barriers to entry" in local media. In summary, we do not consider that there are significant regulatory barriers to entry to the local media market (within our remit).

This paper is structured into four sections:

- **Section 1 – Context:** in this section we set out why we are undertaking this further analysis of the local cross media ownership rules and what we recommended to the Secretary of State in 2009.
- **Section 2 – Updating the evidence:** in this section we set out the evidence on which our 2009 recommendation was based. We also update our analysis for changes to the local media landscape since our 2009 recommendation.
- **Section 3 – Advice to the Secretary of State:** in this section we set out the factors to be taken into account in considering removal of the Remaining Rule.

- **Section 4 – Wider regulatory issues**: in this section we look at possible regulatory barriers to entry to local media, within our remit.

# Section 1 – Context

## Parliament put the media ownership rules in place to protect plurality

1.1 Parliament has put in place media ownership rules for television, radio and newspapers. In the interests of democracy, the rules aim to protect a plurality of viewpoints and give citizens access to a variety of sources of news, information and opinion.

## Ofcom has a statutory duty to review the media ownership rules

1.2 Ofcom has a statutory duty under section 391 of the Act to review the operation of the media ownership rules at least every 3 years. We must report to the Secretary of State (Culture, Olympics, Media and Sport) on our review, including on any recommendations to change the rules.

1.3 Under Schedule 14, Part 5, paragraph 17(1) of the Act, the Secretary of State (Culture, Olympics, Media and Sport) must also consult with Ofcom before it makes and changes to the media ownership rules, other than to implement changes recommended by Ofcom under its duty to review the rules. The purpose of this advice is to respond to such a request.

## We reported to the Secretary of State on our latest review in November last year

1.4 Last year, we conducted a review of the media ownership rules (our "**2009 Review**") in accordance with our statutory duty. We chose to undertake a public consultation for our review given the changes occurring in the media.

1.5 We published our Consultation Document in July last year ("**2009 Consultation Document**")[1] and our statement following the consultation in November last year ("**2009 Statement**").[2]

1.6 We have also recently undertaken other work relevant to local media. We published a discussion document on Local and Regional Media in the UK in September last year.[3] We are currently consulting on Ofcom's proposed approach to Local Media Assessments.[4] Local Media Assessments are a new element in the OFT's existing merger procedure. They are a more formalised way for Ofcom to assist the OFT in its assessment of mergers involving local media. They are not related to our duties to review the media ownership rules, or the role that we may play if the Secretary of State chooses to intervene in a media merger with a public interest test.

## Approach to our 2009 Review

1.7 Our aim in the 2009 Review was to consider whether the media ownership rules are still operating effectively in delivering the purposes that Parliament intended. To do this, we took into account Parliament's reasons for putting the rules in the place and the assumptions it made about the media environment when it enacted them.

[1] http://stakeholders.ofcom.org.uk/consultations/morr/
[2] http://stakeholders.ofcom.org.uk/consultations/morr/statement/
[3] http://stakeholders.ofcom.org.uk/market-data-research/tv-research/lrmuk/
[4] http://stakeholders.ofcom.org.uk/consultations/local-media-assessment-guidance/

1.8 We considered a range of factors that might have changed those assumptions, including consumer behaviour and whether the rules are stopping industry from adapting to economic pressures. Our approach has been to consider the appropriateness of the rules in the context of the current media landscape. However, we recognise that there are a number of ways that the media landscape could evolve and we considered a number of future scenarios in our 2009 Consultation Document.

1.9 In conducting our 2009 Review we were mindful of all our duties under the Act, including our general duty in carrying out our functions to secure the maintenance of a sufficient plurality of providers of different television and radio services (s. 3(2)(d) of the Act).

## The Secretary of State has asked us to revisit our recommendation on the liberalisation of the local cross media ownership rules

1.10 One of our recommendations was to liberalise the local cross media ownership rules. Government now intends to implement this liberalisation.

1.11 The Secretary of State (Culture, Olympics, Media and Sport) has asked us to revisit our advice and analysis on the liberalisation of the local cross media ownership rules and consider the implications of removing the one restriction left after liberalisation.

## Recap on our November 2009 recommendations

1.12 At the time of our 2009 Review the local cross media ownership rules restricted media ownership at the local level in three ways:

**Regional Channel 3 licence and local newspapers**

A person may not acquire (directly or indirectly) a regional Channel 3 licence if they run one or more local newspapers that have an aggregate market share of 20% or more in the area covered by the regional Channel 3 licence.

**Two of local analogue radio licences, local newspapers and regional 3 licences**

These restrictions are based on the points system for radio licences which underpins the radio ownership rules. This allocates points on the basis of coverage overlap.

In an area where there are three or more overlapping local radio analogue licences, a person who owns one or more local newspapers with a market share of 50% or more in the relevant coverage area, or the holder of the regional Channel 3 licence, may become the holder of one or more of those radio licences only if the points attributed to the licences held by that person would not account for more than 45% of the points available in the area.

**All of local analogue radio licences, local newspapers and regional Channel 3 licences**

No one person may hold at the same time:

- a local analogue radio licence; and
- a regional Channel 3 licence with a potential audience that includes at least 50% of the potential audience of the analogue radio service; and
- one or more local newspapers which have a local market share of 50% or more in the local coverage area.

1.13 We concluded in our 2009 Review that the local media industry is facing significant change. Cross media business models are one way the sector could respond. There may be limited instances, for example between press and radio, where synergies may provide consumer and industry benefits. Removal of the local cross media ownership rules could reduce barriers to achieving these synergies.

1.14 Research published in our 2009 Consultation Document showed that television (49%), newspapers (24%) and radio (12%) remain the main source of local news for most people, with indications that television may have become even more important over recent years. The internet has yet to become the main source of news for many people (4%).

1.15 Because we found that consumer behaviour is still centred on the use of television, radio and newspapers we considered that there was still a risk that complete removal of all the local cross media ownership rules could reduce protections for plurality. As we set out in detail in our 2009 Consultation Document (paragraphs 2.8 – 2.22), this is an interest Parliament considered was important when the rules were enacted. If total removal occurred, it would allow one commercial provider in a local area to operate alongside the BBC. The merger regime, including the media public interest test, would still operate, but they provide a less clear protection for plurality.

1.16 But we recognised that the local media industry is under pressure and changes to the rules now could help local media businesses respond. Giving industry the opportunity to respond is in the interests of citizens and consumers as it helps to ensure that local media continue, contributing to plurality. Some relaxation could help to ensure local content continues to be commercially provided, which would benefit citizens and consumers.

1.17 Research also showed that 67% of adults believed that local cross media ownership of television, newspapers and radio would not matter as long as they retained at least one of: a choice of national media; alternative sources from the BBC; or local news and information online.

1.18 As a result, we consulted on recommending that current rules are liberalised so that the only restriction would be on ownership of all three of: local newspapers (with 50% or more local market share); a local radio station; and the regional Channel 3 licence.

1.19 Consultation responses were generally supportive of our proposed recommendations to liberalise the rules. Eight respondents supported liberalisation. Of these, the Newspaper Society and the Guardian Media Group advocated complete removal. Three respondents – BECTU, Professor Hutchison from the Glasgow Caledonian University and Ofcom's Advisory Committee for Scotland – argued against liberalisation.

1.20 The Broadcasting Entertainment Cinematograph and Theatre Union (BECTU) and Professor Hutchison argued against liberalisation because of concerns about the implications for local media plurality. We took these arguments into account in putting forward our recommendation to liberalise, rather than remove, the rules. We proposed liberalisation rather than removal to strike a balance between enabling flexibility of industry to adapt to change while still retaining some protections for plurality.

1.21 Consumer Focus Scotland and Ofcom's Advisory Committee for Scotland raised concerns about the implications for plurality in Scotland. This issue has been raised by stakeholders in Scotland but we note that it would equally apply in the other devolved nations of Northern Ireland and Wales.

1.22 Liberalisation of the rules would allow a greater degree of consolidated ownership in Scotland, as in all the devolved nations. We also considered that some relaxation of local ownership rules benefits citizens and consumers by helping to ensure that local content continues to be commercially provided by enabling industry to adapt business models to respond to current challenges. However, in recommending liberalisation, rather than complete removal of the rules, we recognised the need to retain some protections for plurality.

1.23 Protections for plurality would continue to be provided in several ways. A protection for plurality across media would still be provided by the remaining restriction on the ownership of all three of the main sources of news (television, newspapers and radio) at the local level. The BBC would continue as an alternative source and the media public interest test and the merger regime (which may indirectly affect plurality by limiting consolidation on competition grounds) would continue to operate. The national media ownership rules would prevent a person from owning the regional Channel 3 licence if that person also runs one or more UK wide newspapers which have a UK wide market share of more than 20%.

1.24 We noted that if the Secretary of State (Culture, Media and Sport) chose to implement our recommendations, we would continue to monitor the operation of the rules in the devolved nations as part of our ongoing duty to review the media ownership rules at least every 3 years. The issue of plurality in the nations is also part of our general duty to secure a sufficient plurality of providers of different television and radio services.

1.25 Therefore, on balance, having taken into account the consultation responses, we considered that liberalisation was the appropriate recommendation to make. We recommended that the local cross media ownership rules be liberalised so that the only restriction is that one person can’t own all three of: a local radio licence, local newspapers (with 50% or more local market share) and the regional Channel 3 licence.

1.26 In making this recommendation we drew the Secretary of State’s (Culture, Media, Sport) attention to the submissions by Scottish stakeholders and noted that if our recommendations were implemented, we would continue to monitor the operation of the rules in the devolved nations as part of our ongoing duty to regularly review the media ownership rules.

1.27 We look in the next section at the evidence that we found to come to this recommendation.

# Section 2 – Updating the evidence

2.1 Our recommendation was based on a considered analysis of the evidence. We looked at a range of factors that might have changed the assumptions that Parliament made when it put the rules in place.

2.2 We considered consumer behaviour and whether the rules were stopping industry from adapting to economic pressures.

2.3 We have updated this evidence for changes that may have occurred since we made our recommendation in November 2009 and found the following.

## Consumers still rely on television, newspapers and radio as their main sources of local news

2.4 In Section 5, paragraphs 5.15 – 5.22 of the 2009 Consultation Document we set out our findings. The overall findings were that:

2.4.1 consumers value local content, especially local news. Four fifths of UK adults watch regional/local television news daily, and 92% watch it at least weekly. Local radio and local free newspapers are the next most commonly used sources of local news.

2.4.2 people are changing the way they access and consume local media and that newspaper circulations have been in slow and consistent decline for the last 30 years; and more recently there have been reductions in the consumption of regional television and local radio.

2.4.3 the internet has had a significant impact on the consumption of local media, particularly newspapers. We found that while the internet is the main source of local news for just 4% of adults, nearly one in ten (9%) of recent broadband adopters said that they spend less time reading local newspapers. A quarter of those accessing local websites on a weekly basis said that they did so instead of reading the hard copy.

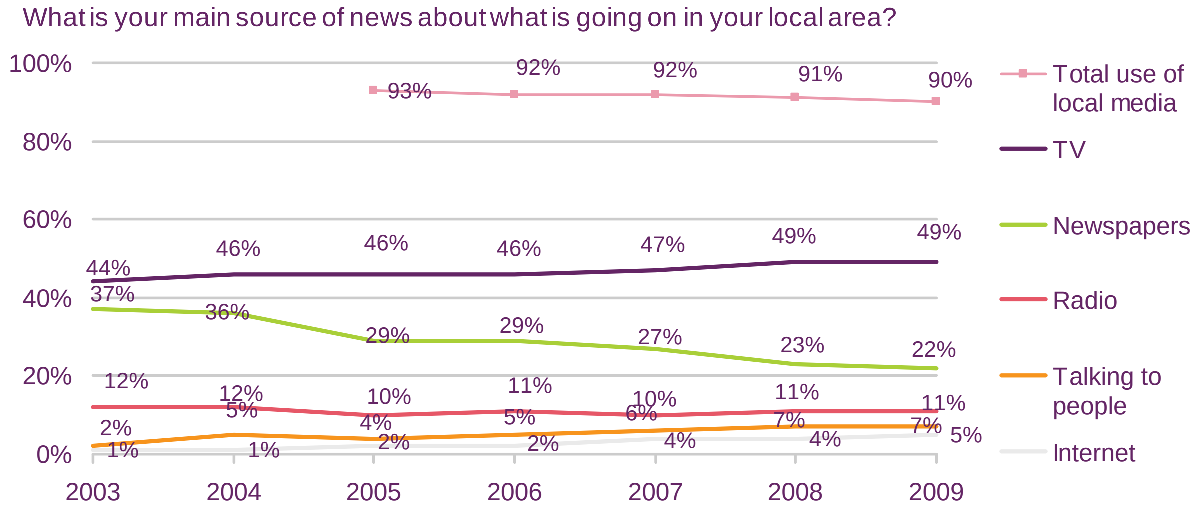
2.4.4 however, while new technology is having an impact, our evidence showed that television (49%); newspapers (24%); and radio (12%) remained the main source of news for a significant proportion of people.

2.5 The main evidence we considered in putting forward our recommendation related to consumers' main sources of local news, and their attitudes to the local cross media ownership rules.

2.6 In preparing this advice we have looked at research which is now available to year-end 2009. We have found that that there have not been any significant changes to our findings on the way people consume local news since our 2009 Review.

2.7 Figure 2.1 below shows our updated analysis. The broad trends noted in our 2009 Consultation Document continue. Television remains the most important source of local news for almost half (49%) of all adults in the UK. Twenty two percent (down from 24% in Q1 2009) use local newspapers as their main source of news and 11% (down 1 percentage point from Q1 2009) listen to local radio. By comparison, 5% of adults in the UK use the internet as their main source of local news, up 1 percentage point from Figure 8 in the 2009 Consultation Document.

**Figure 2.1 Consumers' main source of local news, 2003 - 2009**




*Q.85 SHOWCARD T. Can you tell me what, if anything, is your main source of news about what is going on in your own LOCAL AREA? By this I mean news of local and regional significance*
*Source: Ofcom's Media Tracker, 2009. Base: 2114 UK adults aged 15+.*

2.8 In the 2009 Consultation Document (paragraph 5.85) we set out our findings that 67% of adults felt that local cross media ownership of television, newspapers and radio would not matter as long as they retained at least one of the following (a) a choice of national media; and (b) alternative sources from the BBC or (c) local news and information online.

2.9 We have not been able to specifically revisit this research in the timeframe for this advice as this was research commissioned for the 2009 Review. However, we believe that these conclusions are unlikely to have changed significantly since 2009 given that the way in which people consume local news has not changed significantly.

## Economic pressure on industry continues

2.10 In section 4 (paragraphs 4.34 – 4.46) of the 2009 Consultation Document we set out our findings on the state of the local media industry. The key elements of these findings were that:

2.10.1 the local media sector is facing significant economic pressures as a result of the current economic climate and structural changes. This has led to a significant contraction in overall advertising spending.

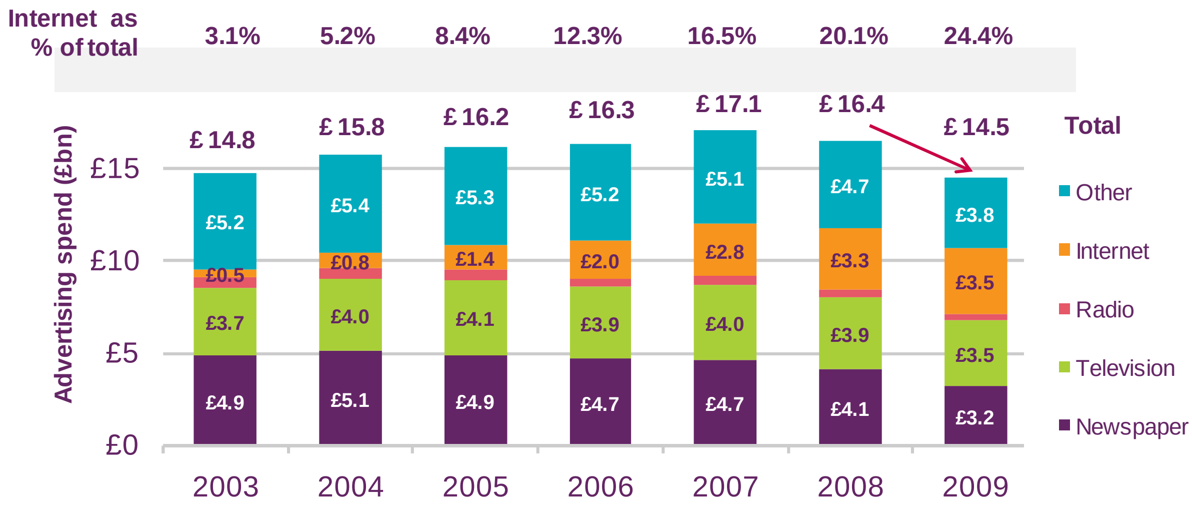
2.10.2 local media and in particular local press were under particular pressure, partly due to the effect of recession and partly due to structural changes that affect media industry.

2.11 In preparing this advice we have looked at research which is now available to year-end 2009. There have been relevant developments to our findings on the state of the local media industry.

2.12 Since publication of the 2009 Recommendation, we have observed further reduction in UK-wide advertising revenues in all media, with the exception of the internet, due to both structural and cyclical changes. The total level of advertising spend in 2009 was £14.5 billion, that is below its 2003 level. The extent of this fall would be even more significant if measured in real-term values, accounting for the effect of inflation.

There is continued structural pressure on television, radio and newspapers, while the internet continues to increase its share in total advertising (to reach nearly 25% in 2009).

**Figure 2.2 Advertising spend by medium 2003-2009 (in nominal prices)**




Source: Advertising Association statistics published by www.WARC.com
Note: All figures are nominal.

2.13 As we pointed out in paragraph 4.42 and in Figure 10 of the 2009 Consultation Document, 54% of local newspapers revenues come from classified advertising revenues (as opposed to 8.8% in case of national newspapers).

2.14 In Figure 9 of the 2009 Consultation Document we reported that according to Advertising Association advertising revenues in the newspaper industry overall fell from £4.7 billion in 2007 to £4.1 billion in 2008.

2.15 We have examined latest figures from the Advertising Association (Figure 2.3 below) and it is evident that further decline took place in 2009, in particular in local press. Data shows a significant deterioration in local and regional newspapers' advertising revenues, which fell by over a third between 2007 and 2009, from £2.75 billion to £1.71 billion. In comparison, the fall of advertising revenue among national newspapers fell by about a fifth over the same period.

2.16 The longer term outlook for the local media sector and particularly local newspapers remains uncertain. Despite the overall economic recovery, Advertising Association forecasts suggest local press advertising revenues may continue to fall in 2010 and 2011. While there are signs of a recovery in the general advertising market this year, as reported in our 2009 Consultation Document, the structural changes are unlikely to ease.

**Figure 2.3 Newspapers - advertising spend 2007-2010 (in nominal prices)**


Source: Advertising Association statistics published by www.WARC.com
Note: All figures are nominal.

## There have been two significant local media mergers since our 2009 Review

2.17 In Section 4, paragraphs 4.64 – 4.66 of our 2009 Consultation Document we noted that since 2005, there has been significant merger and acquisition activity in local media. Consolidation resulted in five major regional newspaper groups accounting for over 70% of newspaper circulation.

2.18 Since our 2009 Review, there have been two significant deals:

2.18.1 Sale of the Guardian Media Group's Regional Media division to Trinity Mirror. The deal included transfer of 30 local press titles and associated websites to Trinity Mirror for £7m cash and release of GMG from a long term printing contract – worth £37m. Three businesses of GMG Regional Media were not part of the deal: Channel M, and 2 local titles in Woking.

2.18.2 Sale of *The Independent*, *Independent on Sunday* and online businesses to a company controlled by Mr Lebedev (owner of the *Evening Standard*).

2.19 We note the views of several analysts and industry experts that interpret these deals as part of a trend towards consolidation within vertical local media sectors. Some analysts expect appetite for more merger and acquisition activity in the future as local media are under pressure to improve the bottom line.

## However, we have not seen evidence suggesting that there is significant commercial appetite to consolidate across all three media

2.20 In Section 5 (paragraphs 5.68 – 5.79) of the 2009 Consultation Document we noted that cross-media business models are a possible way the sector could respond to economic pressures.

2.21 We set out evidence that the potential synergies from cross-media consolidation are limited. For example, we cited the following evidence from Oliver & Ohlbuam analysis, which found that if it occurs, cross media consolidation is most likely between press and radio.

### Figure 2.4 Potential radio and press mergers

| Media Owners | Possible Market Structure | Issues and Drivers |
|---|---|---|
| Press + Major Radio Groups | • Macro UK wide mergers between major radio groups and major local press group | • Few news cost synergies to exploit – radio news is only a small proportion of overall radio costs<br>• No evidence of increased pricing power to drive revenues<br>• Global Radio and Bauer Radio focused on internal group synergy exploitation<br>• High major newspaper group debt likely to make the purchase of major radio group difficult |
| Press + Smaller Local Radio Groups | • Local press groups could purchase as smaller local radio groups and stations | • Difficult for major press groups to execute a national merger strategy to deliver macro-synergies at group level<br>• Unlikely to be interested in a piecemeal approach to radio station acquisition and synergies would then be limited<br>• Likely to be isolated examples<br>• Where already possible there are few examples of mergers between local stations and local press operations |

*Source: Oliver & Ohlbaum Analysis*

2.22 In addition, as we noted in our 2009 Consultation Document, in the short term, evidence from discussions with industry stakeholders indicates there is little immediate commercial appetite to consolidate across all three media. Many industry stakeholders felt that removal of the rules would have little impact on their businesses.

2.23 We have revisited this issue and we have not observed any cross-media consolidation among industry stakeholders. For example, the key local media mergers cited above have been within the newspaper industry. In particular, we have noted that although the commercial television channel in Manchester *Channel M* was part of the GMG's regional business arm, *Channel M* was not part of the GMG / Trinity deal this spring and remained part of GMG.

2.24 We concluded in our 2009 Review that in the short-term there was little immediate commercial appetite to consolidate across all three media. Since then, we have not observed any development that would suggest that this has changed.

## Ofcom's regulatory policy on local radio regulation has changed since our 2009 Review

2.25 Local radio stations also face difficult economic times, with high fixed costs leaving stations vulnerable when advertising declines. In the 2009 Consultation Document was also noted the challenges facing the local radio industry (paragraphs 4.50 – 4.53, 5.39 – 5.52).

2.26 Ofcom's new regulatory policy on localness regulation, following the Digital Economy Act, allows stations to merge and share programming within newly-defined large local areas, effectively allowing them to merge to achieve scale.

2.27 Adjacent stations in common ownership have an incentive to take advantage of this new opportunity, and many already have. For example, Heart-branded Devon stations owned by Global Radio in Barnstaple, Torbay, South Hams, Exeter and Plymouth will all be moving into a new centre in Exeter and will morph into Heart

Devon, producing a single local programme service for Devon for 7 hours a day on weekdays (4 hours a day at weekends), with local news throughout daytime and networked programming from Heart London at all other times.[5]

### In summary, the main development since our 2009 recommendation relates to the deterioration in revenues for local / regional newspapers

2.28 The local media industry continues to face long term structural challenges. The evidence since our 2009 recommendations shows a significant deterioration in the revenues available for local / regional newspapers between 2008 and 2009, accompanied by structural pressure on television and radio as the internet increases its share in a total advertising market that has been under pressure from broader economic circumstances. While there are signs of a recovery in the general advertising market this year, as we noted in our original report, these structural challenges are unlikely to ease.

2.29 We have found that that there have not been any significant changes to our findings on the way people consume local news since our 2009 recommendations. Television (49%), newspapers (22%) and radio (11%) continue to be consumers' main source of local news, and the internet does not yet play a sufficient role to consider it a significant alternative source of local news (5%).

### Developments in UK Government policy

2.30 In addition to the developments in consumer and market evidence noted above, a second further development relates to Government policy in relation to local media which has changed significantly since we published our original recommendations.

2.31 The Government's policy puts emphasis on local media, in particular, proposals for local television, which have the potential to have a positive impact on both the diversity and plurality of news and information at the local level. Although this remains in development, and is therefore speculative at this stage, it is clearly a relevant development.

### Major developments in media ownership regulation in other countries

2.32 We also set out in the 2009 Consultation Document an overview of major developments in media ownership rules covering 6 countries internationally. We also take this opportunity to update Government on relevant trends overseas since we published the statement for our 2009 Review.

2.33 Broadly speaking there has not been any significant change since then, though some countries' relevant authorities have indicated an intention to review media ownership rules in the next 12 months. Australia has recently announced its ambitions to review during 2011 and the future of local content and cross media ownership rules has been identified as an important aspect of such a review. Canada has indentified the need to review the communications regulatory regime in particular as it addresses licensing and ownership in light of convergence.

2.34 The FCC in the US is currently conducting its Quadrennial Review of Media Ownership, which it is required to do by Congress. This review will look at existing local television and radio ownership rules, the newspaper/broadcast cross-ownership rule, and the radio/television cross-ownership rules. The FCC's stated objective for

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[5] *North Devon Heart FM studios to close*, North Devon Gazette 22 June 2010, http://www.northdevongazette.co.uk/northdevongazette/news/story.aspx?brand=ndgonline&category=news&tBrand=devon24&tCategory=newsndga&itemid=DEED22%20Jun%202010%2007%3A37%3A29%3A737

ownership rules is to benefit consumers by promoting the three principal policy goals of competition, localism, and diversity. This should be completed by 2011.

2.35 Elsewhere in Europe media cross ownership rules are still in place in Finland, Sweden, Portugal and Poland.

# Section 3 – Advice to the Secretary of State

## Ultimately removal of the Remaining Rule is a matter of judgement for Government and Parliament

3.1 As explained above, Ofcom's role is to review the operation of the media ownership rules and recommend changes that it considers appropriate in light of its review.

3.2 Ultimately, whether the Remaining Rule should be removed is a matter of judgement and one which should be made by Government and Parliament.

3.3 Above we have noted the relevant developments since our recommendations. We now focus on the operation of the Remaining Rule, and the risk of the concentration of control over local commercial news provision which needs to be balanced against the arguments and factors which tend towards its removal.

## The operation of the Remaining Rule protects against the risk that too much control over the local news agenda is held in the hands of one person

3.4 Following our review of the media ownership rules last year we recommended significant liberalisation of the local cross media ownership rules. Government now intends to implement this liberalisation.

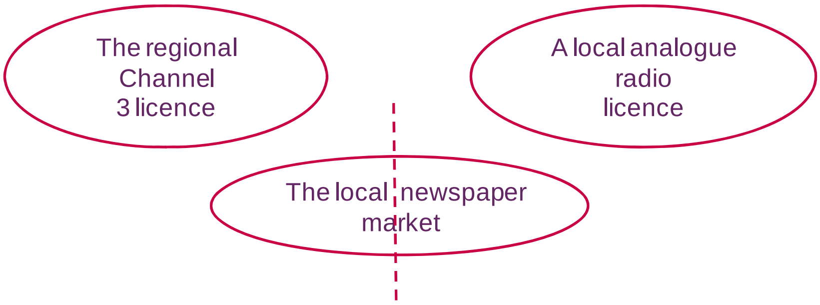
3.5 Once this liberalisation is implemented the only prohibition on local cross media ownership will be that one person cannot own in a local radio coverage area:

- a local analogue radio licence; and
- a regional Channel 3 licence whose potential audience includes at least 50% of that radio station's potential audience; and
- one or more local newspapers which have a local market share of 50% or more in the coverage area.

3.6 Figure 3.1 below explains different scenarios where the Remaining Rule could apply.

## Figure 3.1 Illustration of the operation of the Remaining Rule

Under the liberalised rules, no person is able to own more than two of the three out of:




| | Own person can own (subject to the application of the UK-wide rules & the merger regime inc. the public interest test)… | But not… |
|---|---|---|
| Scenario 1 | (i) The Channel 3 licence **and**<br>(ii) All of the local newspaper market. | A local analogue radio licence. |
| Scenario 2 | (i) A local analogue radio licence **and**<br>(ii) All of the local newspaper market. | The Channel 3 licence (which has a potential audience that includes 50% of the audience of the radio station.) |
| Scenario 3 | (i) The regional Channel 3 licence (which has a potential audience that includes 50% of the audience of the radio station); **and**<br>(ii) A local analogue radio licence **and**<br>(iii) Up to 49% of the local newspaper market. | The remaining 51% of the local newspaper market. |

3.7 The issue that we highlighted in our earlier advice was that a combined ownership of the Channel 3 television licence, a local commercial radio station and the main local newspaper(s) may confer too much control over the local news agenda into the hands of one person or company. Limited plurality of news and opinion in a local area could restrict local debate and accountability.

3.8 We proposed liberalisation because it could increase the flexibility of local media to respond to market pressures and benefit citizens and consumers by helping to ensure that local content continues to be commercially provided. However, we expressed caution about removing the Remaining Rule because consumers still rely on television, radio and press for local news and the Remaining Rule plays a role in providing some protection for plurality. This remains a serious consideration which needs to be weighed against the arguments for further relaxation.

3.9 In any of these scenarios for operation of the rule, we note that the cornerstone of plurality is the combination of the BBC and the commercial sector. With a BBC service (television at the regional level, radio and web based services more locally) there is a guarantee of a minimum of at least two providers of local news.

3.10 It is also important to note that competition policy may be relevant to the extent that competition authorities prevent concentrations in the local media through the merger regime (which may indirectly affect plurality by limiting consolidation on competition grounds).

3.11 In parallel, under the Enterprise Act, the Secretary of State (Business, Innovation and Skills) can intervene, at his discretion, in newspaper, broadcasting and cross media mergers if he believes that the merger raises “public interest considerations”. The media public interest considerations include the need to ensure the accurate presentation of news, free expression of opinion and plurality.

3.12 These three factors above exist as safeguards in addition to the residual restriction on cross ownership of local commercial media.

## There is a balanced judgement to be considered

3.13 Ultimately, whether the Remaining Rule should be removed is of course a matter of judgement and one which is rightly made by Government and Parliament. We have noted above the relevant developments since our 2009 Recommendations and areas where the evidence has not changed.

3.14 In making this judgement the risk we have outlined above, of the concentration of control over local commercial news provision, needs to be balanced against the arguments and factors which tend towards removal:

- Local media is facing significant economic pressure which the most recent evidence suggests is becoming more acute – removing the Remaining Rule could allow local media greater options to consolidate to respond to these pressures.
- While only a limited group of consumers (5%) consider the internet their main source of local news, there is a growing diversity of local news available through non-traditional media. There are therefore increasingly alternative sources of plurality.
- As noted, there are protections for plurality which would continue to operate – the combination of the BBC and the commercial sector, the public interest test operated by the Secretary of State and the merger regime would all continue to operate in parallel.

3.15 In addition, there are the potential benefits to diversity and plurality that may emerge in the coming years from the Government's policy on local television.

3.16 It is worth noting that there is probably a reasonably low risk of the kind of consolidation that the Remaining Rule is protects against actually occurring even if the rule was removed. At present the evidence suggests there is very limited interest in this form of consolidation.

## We also draw the Secretary of State's attention to the application of the rules in the nations

3.17 In making this judgement we also draw the Secretary of State's attention to the application of the local cross media ownership rules in Scotland, Wales and Northern Ireland. The Remaining Rule could provide some protection for plurality at the nations' level. As we noted in our 2009 Statement, particular concerns were raised by stakeholders in Scotland about the implications of liberalisation of the local cross media ownership rules for plurality in the nations. Consumer Focus Scotland and Ofcom's Advisory Committee for Scotland raised concerns. These would apply equally in Wales and Northern Ireland.

3.18 We took the concerns raised by our stakeholders into consideration in our recommendation for liberalisation and noted that if our recommendations were implemented, we would continue to monitor the operation of the rules in Northern Ireland, Scotland and Wales as part of our ongoing duty to regularly review the media ownership rules.

3.19 We note in this context that (as shown in Figure 3.2), the Channel 3 licence holder is a particularly important provider of plurality for local and regional news in the nations – especially in Northern Ireland where at 34%, UTV has a higher audience share in all homes than BBC Northern Ireland (26%).

**Figure 3.2 BBC One and ITV1/ STV/UTV early evening news bulletin shares, 2009**


*Source: BARB*
*Note: Labels refer to the ITV region where the audiences are resident as defined by BARB.*

# Section 4 – Wider Regulatory Issues

4.1 Government has also asked us to provide views on “whether there are any other barriers to entry to local media markets which [Government] might be able to remove or reduce”.

4.2 In answering this question, Ofcom has considered it appropriate to look at possible regulatory barriers to entry. More particularly, we have focused on the regulatory landscape which falls within our own remit – we have not looked at regulation which covers the activities of local media which we would not normally consider part of our remit (e.g. trading standards and newspapers).

4.3 We have not considered commercial/market barriers to entry to local media. We note that the Shott Review will look at the conditions necessary to make local television commercially viable in the United Kingdom. Ofcom is contributing wider views on local media to the Shott Review.

4.4 Having considered this issue, we do not believe that there are significant barriers to entry to the local media market (within our remit) resulting from the current regulatory regime.

4.5 In relation to this, there are three main areas of our regulation that we would like to highlight that could be relevant considerations.

## Spectrum availability

4.6 The principle potential concern is spectrum scarcity. Broadcast local media (radio and television) requires access to spectrum in order to reach local communities and markets. Historically, spectrum scarcity has been a particularly significant barrier to entry into local media markets although the emergence of digital technology has reduced the significance of this feature of the market.

4.7 There are three routes by which operators can gain access to suitable spectrum, depending on the type of service they wish to provide: via a Broadcasting Act licence, typically issued following a beauty contest; via a Wireless Telegraphy Act licence, typically awarded by an auction; or via purchasing capacity on an existing licensed multiplex (radio or TV) service.

4.8 However, we do note that there could be challenges for local media acquiring spectrum because it is generally packaged on a national basis or the quality and quantity of local allocations has been limited. It is possible that market based solutions could help resolve this.

4.9 In addition, our plans to make more spectrum available in the future will further reduce this issue and we expect this to dovetail with the Government’s plans for local television. This includes the possible release of geographic interleaved (GI) spectrum in the UHF band which could allow companies to buy spectrum suitable for a particular location. We note though that there could be issues associated with ensuring the technical compatibility of local media services with the existing digital broadcasting platforms (to ensure existing viewers and listeners can access local services via their current installations). We are considering the extent to which this could be a barrier to entry and, if so, how best to address this as part of the relevant forthcoming spectrum award programmes.

## Local radio regulation

4.10 Statute requires Ofcom to regulate for localness on commercial radio. Each local station must broadcast an appropriate amount of local material, a suitable proportion of which must be locally made. Ofcom also regulates to ensure a diversity of speech and music programming. We achieve this by each station having a format, based on the promises in its application or subsequently amended according to the considerations set out in statute (in particular music formats). Localness regulation has the effect of limiting the extent to which content can be networked by co-owned groups, in other words safeguarding local radio; and music format regulation differentiates stations in local markets, increasing consumer choice.

4.11 Compared with the capital costs of starting a radio business, the costs of compliance with these regulations is relatively low, and we do not consider they meet the high level that would constitute a 'barrier to entry' although they clearly effect the economics of any individual licensee. As we have noted before there is scope for a thorough review in this area but this would have to focus primarily on the legislative framework.

4.12 There are also requirements specific to community radio, regulating the content and operations of community stations to secure 'social gain'. The appetite for community radio licences, when Ofcom advertises these, suggests that these requirements are not a barrier to entry.

## Codes that govern content

4.13 In addition, local broadcasting (radio and television) is also currently subject to both European and UK rules (including the Ofcom Broadcasting Code and the BCAP Code) which set rules for both the content of programmes and in relation to advertising and other commercial communications (e.g. sponsorship and product placement).

4.14 For example, in relation to minutage restrictions for spot advertising, currently public service broadcasting (PSB) channels can schedule an average of 7 minutes of advertising an hour and non-PSBs can schedule 9 minutes an hour, There is also a limit (imposed at European level) of 12 minutes of commercial communications in any one hour.

4.15 In relation to teleshopping, PSB Channels can only schedule blocks of teleshopping between midnight and 6am. Non-PSB Channels can provide blocks of teleshopping at any time. Although we don't consider that the restrictions in relation to advertising and commercial communications are a barrier to entry into local media, we do recognise that they do impact on revenue raising opportunities.

4.16 In summary, we do not consider that there are significant regulatory barriers to entry to the local media market (within our remit). We note above three areas of our regulation that could be relevant considerations. The principle potential concern is spectrum scarcity.