Media Ownership Rules Review

Consultation

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Contents

One page summary

Ofcom has a statutory duty to review the operation of, and recommend any changes to, the media ownership rules including the media public interest test. We must report to the Secretary of State (for Culture, Media and Sport) at least every three years.

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

The media ownership rules operate in parallel to the merger regime, which aims to prevent consolidation that would substantially reduce competition in particular markets. The merger regime may indirectly protect plurality by doing so. The Secretary of State (for Business, Innovation and Skills) can also intervene in a media merger if it raises public interest considerations, including plurality.

In its Digital Britain Final Report Government asked us to consider specifically the impact of the current local ownership rules on the long term sustainability of local media.

Our evidence shows that even though consumers are increasingly using the internet as an alternative source of news, there is still strong reliance on television, newspapers and radio. Yet these industries are facing significant economic changes. These are most acute in local media. Subject to consultation, our recommendations are:

- To remove the local radio service ownership rules and the local and national radio multiplex ownership rules. 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 radio.

- To liberalise the local cross media ownership rules so that the only restriction is on ownership of all three of: local newspapers (with 50% plus local market share); a local radio station; and a regional Channel 3 licence. 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.

As there is little evidence of change that affects the operation of the remaining rules, subject to consultation, we do not propose to recommend any further changes to:

- The national cross media ownership rules which restrict cross ownership of Channel 3 and national newspapers, as they both remain significant sources of news.

- Ownership restrictions which apply to television and radio broadcasting licences to guard against undue influence, as these remain media with potential to influence society.

- The appointed news provider rule which helps ensure national and international news through Channel 3 is independent of the BBC and adequately funded, as Channel 3 remains the most watched alternative source of broadcast news after the BBC.

- The media public interest test which continues to provide a backstop for the Secretary of State (for Business, Innovation and Skills) to intervene to prevent media mergers on public interest grounds, including for the protection of plurality, as Parliament's original rationale is unaffected.

Given the changes underway in media consumption and in the media industry, it will remain important to test regularly whether the ownership rules continue to operate to protect plurality. In this consultation we welcome views and evidence on whether these recommendations are appropriate. After consultation and our final advice, the Secretary of State and Parliament will decide whether any changes should be made through secondary legislation.

Figure 1: Summary of the media ownership rules

Type	Principle	Geographic application	Media
Local radio ownership rules	Detailed rules about the number of analogue and digital radio licences one entity can own in specified geographical areas (the **local radio service ownership rules**) and limits on ownership of local DAB multiplexes whose coverage overlaps (the **local radio multiplex ownership rules**).	Local	Radio
Local cross media ownership rules	Rules which prevent one entity from owning different types of local media over specified market share levels.	Local	Radio, television (Channel 3) and newspapers
National cross media ownership rules	Rules which prevent one entity owning both a Channel 3 licence and one or more national newspapers with an aggregate market share of 20% or more. Also prevents the owner of one or more national newspapers (with an aggregate market share of 20% or more) owning more than a 20% interest in a company which holds a Channel 3 licence.	National	Television (Channel 3) and national newspapers
National radio multiplex ownership rules	A rule that one entity can't own more than one national radio multiplex.	National	Radio
Restrictions on holding broadcast licences	Rules which prevent or limit control of television and radio by certain owners whose influence might cause concern. (E.g. political parties and religious bodies.) There are also a number of qualified restrictions (e.g. Channel 4 and S4C may not hold Channel 3 or Channel 5 licences).	Both local and national (depending on specific rule)	Radio and television
Appointed news provider rules	Rules for the provision of national and international news to Channel 3 by an independent news source independent of the BBC, not under the control of political or religious bodies and suitably well funded.	National	Television (Channel 3)
Media public interest test	Rules which mean that for media mergers the Secretary of State (for Business, Innovation and Skills) may intervene on "public interest grounds". These grounds include media plurality. Ofcom's role in these cases is to provide advice as appropriate.	Both local and national	Radio, television and newspapers

Section 1

Executive summary

Media ownership rules help ensure people can access diverse viewpoints

1.1 Ofcom has a statutory duty to review the operation of, and recommend any changes to, the media ownership rules including the media public interest test. We must report to the Secretary of State (for Culture, Media and Sport) at least every three years.

1.2 Parliament has put in place media ownership rules to govern ownership of television, radio and newspapers. Their aim is to help protect plurality – giving citizens access to a variety of sources of news, information and opinion.

1.3 Ownership is a proxy for viewpoints because media owners are assumed to be in a position to influence what is said by the media they own and how it is said. They do this by having editorial control and the ability to affect the news agenda.

1.4 The rules reflect a balance between two policy aims:

- ensuring a range of viewpoints are available in national and local media; and
- allowing companies to innovate and have sustainable businesses.

1.5 The first is important for democracy because it helps encourage a culture of debate. The second benefits citizens by helping markets to deliver higher quality content. It helps consumers by encouraging thriving markets to deliver content with greater innovation.

The media ownership rules act in parallel to the merger regime, which can indirectly protect plurality

1.6 The media ownership rules are sector specific and separate from the merger regime, which applies to all sectors including media. The two statutory regimes operate in parallel. However, as they have different purposes, they may produce different outcomes depending on the facts of each case.

1.7 The purpose of the merger regime is to prevent consolidation which would lead to a substantial lessening of competition in particular markets. Although not its primary purpose, the merger regime may indirectly protect plurality by preventing too much consolidation in a particular market on competition grounds.

1.8 Ofcom does not have a role in reviewing the merger regime, except for the media public interest test, as part of this review of the media ownership rules.

The media public interest test gives the the option to intervene if a merger raises public interest considerations

1.9 The media public interest test was introduced by Parliament to allow the Secretary of State (for Business, Innovation and Skills) to intervene, at his discretion, in newspaper, broadcasting and cross media mergers if he believes they raise public interest considerations.

1.10 The media public interest considerations include the need to ensure the accurate presentation of news, free expression of opinion and plurality.

1.11 The ability of the Secretary of State (for Business, Innovation and Skills) to use this test is particularly important, as it can act as a mechanism for protecting plurality which is the main objective of the media ownership rules.

1.12 Ofcom has a role in reviewing the operation of the media public interest test, through this review of the media ownership rules.

Ofcom has a duty to review regularly the media ownership rules and make recommendations to the Secretary of State

1.13 Parliament gave Ofcom responsibility to review the operation, taken together, of all the provisions of the media ownership rules (including the media public interest test) at least every three years. We can review them more frequently if needed.

1.14 This responsibility stems directly from Parliament's liberalisation of the media ownership rules in 2003. Many prohibitions were removed at the time because Government believed that the rules were outdated and not flexible enough to accommodate changes happening in the media.

1.15 Parliament anticipated that in the future, further changes to the media ownership rules would be required as digital media grew. Changes in technology and behaviour could challenge the need to have the rules at all and could enable their further relaxation.

1.16 For example, the internet could provide more people with opportunities to get their news in new ways, delivering more choice in the range of viewpoints available to consumers. It could be suggested that this would mean that there would be no need for the rules because their public policy aim – plurality – would be less of a concern.

Our aim has been to consider whether the media ownership rules are still effective

1.17 This is our second review of the media ownership rules and we aim to consider whether the media ownership rules are still operating effectively in delivering the purposes Parliament intended.

1.18 To do this we have looked at Parliament's reasons for putting the rules in place and the assumptions made about the media environment when it enacted them.

1.19 We have considered a range of factors that might have changed these assumptions, including consumer behaviour, and whether the rules are stopping industry from adapting to economic pressures.

The Government has asked us to consider two specific issues about the local ownership rules

1.20 The most complex and detailed media ownership rules that exist relate to local radio ownership and local cross media ownership.

1.21 Government's Digital Britain Final Report highlights the challenges facing local media and notes the importance of news and local journalism for democracy. Government has asked us to consider two specific issues:

- the impact of the current local cross media ownership rules on the long term sustainability of the local media sector; and
- whether the current radio ownership 'points system' (referred to in this document as the local radio service ownership rules) is desirable or sustainable.

1.22 This document sets out our initial response to these issues for consultation.

The internet is a growing source of news but radio, television and newspapers remain important as main sources of news

1.23 Since 2003, we have seen significant growth in digital media. Consumers can now access news content across a variety of digital platforms. The most significant change we have seen since our last review is in broadband. Across the UK, take-up has increased from 4% in 2003 to 68% in early 2009.

1.24 The internet is a growing source of news and gives its users new ways to access and engage with news content.

1.25 However, despite the increased choice of platforms and content, behaviours in consuming news have not changed as quickly as might have been expected. Radio, television and newspapers remain important.

1.26 Television remains by far the most popular medium for UK news, with 74% of people in the UK using it as their main source of UK news. There are indications that television may have become even more important over recent years. Newspapers, radio and the internet are considered to be the main source of UK news by a broadly comparable number of consumers.

1.27 For local news and information, television (49%), newspapers (24%) and radio (12%) remain the main sources. The internet is used by 4% as a main source of local news.

The way people consume news has not yet changed significantly but the economics of supplying news content have changed

1.28 Changes in the economics of supplying news content are important because they have a direct bearing on the number and diversity of viewpoints available to the consumer, contributing to plurality.

1.29 Structural changes are underway in the newspaper, television and radio industries. They stem from changes in consumer behaviour, and the arrival of new competition for audiences and advertising revenue arising from the growth of digital platforms.

1.30 These changes create opportunities for businesses but they also create challenges. The recession heightens these challenges as the overall amount of money spent on advertising has fallen significantly. Online advertising is taking an increasing share of the remaining revenues.

Economic challenges are having an impact on national media

1.31 National newspaper circulation figures have been slowly declining for a number of years. The current economic environment adds to the pressure on newspaper businesses as it threatens advertising revenues.

1.32 Commercial radio is also challenged by these trends. The most pessimistic forecasts suggest that commercial radio's revenues could decline by 20% over the course of 2009, with some forecasting further declines in the future. There have also been significant trends towards consolidation in radio since our first review of the media ownership rules, with Global Radio and Bauer emerging as the largest groups.

1.33 In television, Ofcom's Second Public Service Broadcasting Review demonstrated that advertising funded broadcasting is facing significant structural pressures brought about by the migration to a fully digital market and that the impact of this is being exacerbated by the current economic downturn.

But the most immediate challenges are being seen in local media

1.34 Some of the most significant pressures are being seen in local media. Local and regional newspapers rely more heavily on advertising, particularly classified advertising, than their national counterparts. Our analysis suggests that commercial radio stations serving smaller areas are particularly vulnerable.

A summary of our intended recommendations for the Secretary of State, subject to consultation, is below

1.35 Below are our intended recommendations for the Secretary of State (for Culture, Media and Sport). We seek views and supporting evidence on whether these recommendations are appropriate.

	Rules	Recommendations for consultation
Local	Local radio ownership rules	Removal
	Local cross media ownership rules	Liberalisation so that the only restriction would be on ownership of all three of : a local newspaper (with 50% plus market share); a local radio station; and the regional Channel 3 licence.
National	National radio multiplex ownership rules	Removal
	National cross media ownership rules	No change
Both	Appointed news provider rules	No change
	Restrictions on holding broadcast licences	No change
	Media public interest test	No change

We recommend removal of the local radio service ownership rules

1.36 After Ofcom's Future of Radio Review in 2007, we recommended that the Secretary of State consider simplifying the radio ownership rules by:

- bringing both the local analogue and DAB services together into a single set of rules; and

- abolishing the local DAB multiplex ownership rules.

1.37 Government in its Digital Britain Final Report accepted these recommendations. However, it has now asked us to review whether the local analogue and DAB service rules (the local radio service ownership rules) are needed at all.

1.38 Given the financial pressures that stations face, removal may provide opportunities to make radio stations more viable by being under common ownership in given local markets, allowing more operational efficiencies.

1.39 At the same time, new research shows that a majority of consumers are not opposed to single ownership in radio, so long as they have an alternative source from their local BBC station (56% agreed while 20% disagreed).

1.40 The BBC would still provide a source of news independent from commercial radio. The merger regime and the media public interest tests would still operate, but they provide a less clear protection for plurality.

1.41 In this review, one option is to re-state our 2007 recommendations to simplify the radio ownership rules. We do not think that there is any evidence to cause us to retract those recommendations.

1.42 The continued pressures on the industry balanced against consumer views on ownership indicate it may be desirable to go further and remove these rules entirely. Our preferred option is therefore to strengthen our 2007 recommendation and recommend removal of the local radio service ownership rules.

We recommend liberalisation of the local cross media ownership rules

1.43 The local cross media ownership rules are designed to ensure plurality across the three most influential local media - newspapers, radio and television.

1.44 The local media industry is facing significant change. The growth of digital media offers new opportunities. But these changes mean that local and regional television, newspaper and radio businesses are under economic pressure, which is being exacerbated by the recession.

1.45 Cross-media business models are one way the sector could respond and removal of the local cross media ownership rules could help encourage this. There may be limited instances, for example between press and radio, where potential synergies may provide consumer and industry benefits.

1.46 Views from stakeholders and analysis suggest that there is little immediate commercial appetite to consolidate across media. Current trends are to consolidate within the newspaper and radio industries.

1.47 Research also shows 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 is yet to be the main source of news for many people (4%).

1.48 If all local cross media ownership rules were removed now (together with the local radio service ownership rules, as proposed) there could be one commercial provider in a local area operating alongside the BBC. The merger regime and the media public interest tests would still operate, but they provide a less clear protection for plurality.

1.49 Given the evidence about the relatively limited appetite for consolidation across media; and as consumer behaviour is still centred on the use of television, radio and newspapers, a risk remains that complete removal of the rules could reduce protections for plurality. This is an interest that Parliament felt was important when the rules were enacted.

1.50 But we recognise that the local media industry is under pressure and changes to the rules now could help local media businesses respond.

1.51 Research also shows 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: a choice of national media; alternative sources from the BBC; or local news and information online.

1.52 Therefore, on balance, we are minded to recommend that the current rules be liberalised so that the only restriction would be on ownership of all three of: local newspapers (with 50% plus local market share); a local radio station; and the regional Channel 3 licence.

1.53 However we recognise there are arguments for and against the options for future changes to the rules. As a result, we seek views supported by evidence on this recommendation before we put it to the Secretary of State (for Culture, Media and Sport).

We recommend removal of the national radio multiplex rules

1.54 We think that there may no longer be a need for the specific national multiplex ownership rule. In our view, it does little to guarantee plurality.

1.55 Government's stated policy priority in respect of DAB is to achieve a digital upgrade with the target date of 2015, and we suggest that it may also wish to remove the national multiplex rule from this point of view, in case there is a tension between placing restrictions on multiplex ownership and encouraging investment in DAB transmission.

We recommend retaining the national cross media ownership rules

1.56 Parliament's purpose in enacting the national cross media ownership rules was to prevent individuals from accumulating too great a share of the national media voice by having significant interests across different types of media.

1.57 Evidence indicates that television remains an important source of news. ITV1 remains the most watched national news provider after the BBC, with 21.7% of total news hours watched on ITV1 in 2008. This has declined from 25.9% in 2006, when we undertook our last review. However, it still reaches a very large number of people every week.

1.58 Overall circulation of national newspapers has also declined since our last review, although circulation levels still remain significant. Newspapers also retain an important role in setting the news agenda.

1.59 We think it is reasonable to conclude that there has not yet been such significant change in national media to mean that the current national ownership rules are no longer appropriate to achieve the purpose intended by Parliament.

1.60 Our proposal for consultation is therefore to recommend to the Secretary of State (for Culture, Media and Sport) that the current rules be retained.

We recommend retaining the restrictions on holding broadcast licences

1.61 The restrictions on holding broadcast licences were introduced to protect against undue influence through television and radio by certain owners whose influence over content might cause concern. Parliament placed restrictions on bodies including political parties and religious groups.

1.62 The restrictions are placed on television and radio due to an underlying assumption that these are media with the potential to influence significantly society.

1.63 Evidence suggests that despite the growth of digital media, television and radio remain influential. As a result, our preferred option at this stage is not to recommend any changes to these restrictions.

We recommend retaining the appointed news provider rule

1.64 The appointed news provider rule aims to ensure that the provision of national and international news to Channel 3 is independent of the BBC and suitably well funded.

1.65 Channel 3 remains the most watched source of broadcast news after the BBC, as it was when the rules were liberalised in 2003. As a result, our proposed recommendation is no change to this rule.

We recommend retaining the media public interest test in its current form

1.66 Since our last review, the Secretary of State (for Business, Innovation and Skills) has intervened in the public interest over Sky's acquisition of a 17.9% stake in ITV. The case was appealed to the Competition Appeal Tribunal and more recently to the Court of Appeal.

1.67 The media public interest test continues to play an important backstop role, giving the Secretary of State (for Business, Innovation and Skills) the ability to intervene to prevent media mergers on public interest grounds, including safeguarding plurality.

1.68 We have considered recommending removal of the media public interest test in its current form. However, we do not believe that there is evidence to suggest that the conditions underlying Parliament's decision to include a public interest test for media mergers have changed.

1.69 Ofcom's duties are aligned with securing a number of the public interests which are provided for by the test. We do not consider that removal is an appropriate option. Our preferred option is to recommend that the media public interest test is retained in its current form.

The longer term is uncertain and there are a number of factors which might have an impact on whether the rules remain appropriate and effective

1.70 There are a range of ways that the media landscape may evolve in the future, influenced by a number of factors, including consumer behaviour and technological developments.

- In one future world, where the media landscape is vibrant with a wide range of players, the media sector naturally provides lots of choice for consumers. This could potentially render the rules superfluous as diversity and plurality are delivered.

- In a scenario where media business models are under increasing financial pressure, there is likely to be a push for industry consolidation. In these circumstances it would be necessary to consider the impact of the rules on the increasingly delicate balance between availability of viewpoints and sustainability of businesses.

- Under another scenario, the rules could be directed to the wrong part of the industry. For example, the potential for most editorial influence could shift from the point of consumption to the point where news is gathered. This could occur if there was a significant increase or decrease in the number of providers available at different points in the value chain. In this scenario a different means of regulating ownership might be more appropriate.

1.71 Specific media environments create different challenges for the effectiveness of the rules. It is therefore important that, in line with statute, Ofcom continues to review the media ownership rules regularly to test how changes in the media landscape have an impact on whether Parliament's purpose is being achieved.

This review is published alongside proposals for the future regulatory framework for local radio services

1.72 This review is published alongside Ofcom's consultation Radio – the Implications of Digital Britain for Localness Regulation. This is our review of the regulatory framework for local commercial radio which we are consulting upon in a separate document.

The next step is to seek views before we issue our final recommendations

1.73 We welcome your views and supporting evidence on our recommendations to the Secretary of State (for Culture, Media and Sport) set out in this report. Reponses are due **by 17 September 2009** before making our final recommendations to the. Your views will be taken into account as we decide on our final recommendations for the Secretary of State.

1.74 We are due to provide our final advice to the Secretary of State (for Culture, Media and Sport) by 13 November 2009. It is then for the Secretary of State to decide whether to amend the rules through secondary legislation using his powers under the Act, to be then laid before Parliament for approval.

Consultation questions

General evidence

1. *We welcome any further evidence on our assessment of the media economic landscape, including key examples of international regulatory best practice that you believe may be relevant to this review.*

We seek views and supporting evidence on the following issues. Local media ownership rules

2. *We seek views and supporting evidence on our recommendation to remove the local radio service level ownership rules.*

3. *We seek views and supporting evidence on our recommendation that the local cross media ownership rules be liberalised.*

National media ownership rules

4. *We seek views and supporting evidence on our recommendation to retain the national cross media ownership rules.*

5. *We seek views and supporting evidence on our recommendation to remove the national multiplex rules.*

Restrictions on broadcasting licences

6. *We seek views and supporting evidence on our recommendation to retain the restrictions on broadcast licenses.*

Appointed news provider rule

7. *We seek views and supporting evidence on our recommendation to retain the appointed news provider rule.*

The media public interest test

8. *We seek views and supporting evidence on our recommendation to retain the media public interest test in its current form.*

Section 2

Rationale for the media ownership rules

2.1 This section explains, based on our analysis of Hansard and relevant Government discussion papers, why Parliament put the media ownership rules in place and the assumptions made when it did so. This provides the context for us to test whether the rules are still achieving their intended purpose.

The key points covered in this section are:

- The media ownership rules help ensure people can access a diverse range of viewpoints, which is important for democracy.
- Ownership is used as a proxy for viewpoints because owners of media outlets are assumed to be in a position to influence what is said and how it is said.
- The media ownership rules were first introduced in 1990 and were significantly liberalised in 2003.
- The current rules are based on several key assumptions about the state of the media landscape.

The media ownership rules help ensure people can access a diverse range of viewpoints, which is important for democracy

2.2 Parliament has put in place media ownership rules to govern ownership of television, radio and newspapers. Their aim is to help protect plurality – giving citizens access to a variety sources of news, information and opinion so that they can participate in democracy in an informed way.

2.3 The rules reflect a balance between:

- ensuring a range of viewpoints are available in national and local media; and
- allowing companies to innovate and have sustainable businesses.

2.4 The first is important for democracy. The second benefits citizens by helping markets to deliver higher quality programmes. It helps consumers by encouraging thriving markets to take risks and deliver content with greater creativity.

Ownership is considered a proxy for viewpoints

2.5 Ownership is considered a proxy for viewpoints because media owners are assumed to be in a position to influence what is said and how it is said, by having editorial control and setting the news agenda.

2.6 However, as outlined in our first Review of the Media Ownership Rules in 2006, it is important to note that this proxy is imperfect:

- *Ownership plurality does not always ensure a plurality of news sources*. For example, local commercial radio stations often have separate owners but obtain their national news programming from the same source.

- *Ownership plurality does not necessarily ensure editorial or viewpoint diversity.* Journalists, editors and producers may have a more direct impact on the views expressed in a media outlet than the outlet owners. Editorial viewpoint and agenda setting is not always dictated by ownership. For example, ITV and Channel 4 have different news agendas, but they both source their national news from ITN. Also relevant is the argument that, in some cases, different sources of news offer similar perspectives, thus reducing the diversity of voice sought by ensuring different ownership.

2.7 Nevertheless, ownership is the best proxy available at present to ensure plurality in the media.

The media ownership rules were first introduced in 1990

2.8 To understand the rules as they currently exist, it is important to take into account the way that they have developed since they were first introduced by Parliament.

2.9 The media ownership rules were introduced as part of the Broadcasting Act 1990 and have been amended twice since then, once in the Broadcasting Act 1996, and then into their current form by the Communications Act in 2003 ("the Communications Act").

2.10 Government explained the need for media ownership rules in an early review of the media ownership rules, prior to the 1996 Broadcasting Act:

> *"…media ownership controls were needed to establish how much of the media market any one person or organisation should be permitted to control, both within and across individual media sectors, in order to maintain a diverse and pluralistic industry."*[1]

2.11 In 1995, when Government first reviewed the media ownership rules, it re-stated that the rules were built on the assumption that television, radio and newspapers have a unique role in the free expression of ideas and opinion, and thus in the democratic process. The justification for a special regime to regulate ownership of the media, in a manner which does not exist in other sectors, is the power of the media to influence and form opinion which makes it an industry like no other.[2]

2.12 When the Communications Bill passed through Parliament in 2002/03, this argument was re-iterated by the responsible Minister who stated that *"we believe that specific rules on media ownership are needed to retain the balance of different media viewpoints that make democracy work."*[3]

2.13 The media ownership rules were designed to deliver this rationale in different ways for different media. This is largely for historical reasons as the rules were designed to address the needs of the media - whether television, radio or newspapers - according to circumstances at the time.

2.14 For example, Parliament believed that television and radio, had greater potential influence than other forms of media and it was therefore appropriate that it should be subject to tighter regulation.

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[1] Media Ownership: The Government's Proposals', May 1995.
[2] Media Ownership: The Government's Proposals', May 1995.
[3] Dr. Kim Howells, who was Minister for Tourism, Film and Broadcasting, House of Commons Communications Bill, Standing Committee E, 30 January 2003.

2.15 Television and radio ownership were also regulated because spectrum scarcity has traditionally meant that there has been a limit to the number of broadcasting and radio licences available.

2.16 Newspapers were developed within the context of a loose regulatory framework and are self-regulated.

The media ownership rules were significantly liberalised in 2003

2.17 The media ownership rules were liberalised with the introduction of the Communications Act in 2003 and certain specific prohibitions were removed. Government believed that they were outdated and not flexible enough to accommodate changes in media markets.[4]

2.18 Other factors which affected Government's decision to review the rules were a desire to have rules which addressed the communications sector as a whole; to bring newspaper ownership regulation in line with that of other media; and to create an environment in which companies in the UK could grow, reduce costs, attract new investment and develop new products and services for the benefit of consumers and to compete in a changing global market.[5]

2.19 A Department of Culture, Media and Sport (DCMS) consultation at the time also identified that the barriers between different media were becoming blurred, and that increasing convergence of technologies, as well as the development of broadband and the greater availability of spectrum, would bring greater convenience and greater choice, thus reducing concerns about the sources of news and information being in too few hands.[6]

2.20 The main changes which were implemented in 2003 were:

- the ban on non-European Economic Area nationals holding broadcast licences was lifted;
- the rules that prevented joint ownership of Channel 3 were repealed;
- restrictions on the ownership of Channel 5 by people with significant newspaper interests were lifted; and
- in radio, the limit based on population coverage was removed which provided scope for more consolidation at a national level, subject to the merger regime.

2.21 The most complex and detailed rules that remain apply to local radio and local cross media ownership. Rules also exist to restrict the cross ownership of a major national newspaper and a Channel 3 licence, as the main commercial alternative to the BBC for television news provision.

The current rules are underpinned by several key assumptions

2.22 Based on this history and analysis of the debates that were held when these rules were passed by Parliament, the current rules are formed on several key assumptions:

[4] Section 3, Consultation on Media Ownership Rules, DCMS, 2001.
[5] As above.
[6] As above.

- Television, radio and press are important sources of news and viewpoints and can have a significant influence over the population.
- If television, radio and press are controlled by a limited group of people or certain types of people they might exercise undue influence.
- The greatest scope for influence in the value chain is at the point of consumer interface (therefore it is ownership of the media that is important).
- There is a risk of lack of diversity in television and radio particularly because these media rely on transmission by spectrum, which has historically been a scarce resource.
- The state of the media is such that the rules strike the correct balance between the citizen goal of diversity and the consumer goal of company freedom to develop sustainable businesses.

The media ownership rules act alongside the merger regime, which can indirectly protect plurality

2.23 The media ownership rules act alongside the merger regime. The merger regime is a separate statutory regime, administered by the Office for Fair Trading and the Competition Commission, which may indirectly have the effect of protecting plurality by preventing some consolidation in a particular market, albeit on competition grounds, rather than for plurality related reasons.

2.24 It is because the primary concern of the merger regime is not plurality of the media that Parliament introduced the media ownership rules to specifically focus on plurality. Dr Kim Howells, the then Minister for Tourism, Film and Broadcasting, highlighted this in the debate around the media ownership rules in 2003, stating that *"competition law alone will not guarantee that a significant number of different media voices will continue to be heard*."[7]

2.25 The media ownership rules and the merger regime are two separate statutory regimes which have different purposes, and therefore they may produce different outcomes depending on the facts of each case.

2.26 For example, a merger between two radio stations may be considered by the Office of Fair Trading and the Competition Commission not to result in a substantial lessening of competition and therefore be cleared on competition grounds.

2.27 However, the operation of the media ownership rules may still prohibit the merger going ahead on plurality grounds. Alternatively, it is possible that such a merger is permitted under the media ownership rules, but prohibited on competition grounds.

2.28 Therefore, there may be some limited protection for plurality in the media through general competition law provisions if the media ownership rules did not exist. However the merger regime alone could not guarantee plurality, as it seeks to protect competition rather than plurality.

2.29 As outlined in Government's Digital Britain Final Report, through the operation of the merger regime, Ofcom will play a new role in providing the OFT with a Local Media Assessment in local and regional newspaper mergers.

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[7] House of Commons Communications Bill, Standing Committee E, 30 January 2003.

The media public interest test also works alongside the rules and gives the Secretary of State a backstop power to intervene

2.30 There is an additional measure in the merger regime in relation to media mergers. This is the media public interest test which plays an important safeguard role in providing the Secretary of State (for Business, Innovation and Skills) with the power to intervene in media mergers to protect public interest considerations, which include plurality. We explain the media public interest test in section 9.

The Broadcasting Code also acts alongside the media ownership rules to ensure due impartiality

2.31 Another piece of regulation which acts alongside the media ownership rules, by ensuring that news provision is not biased, is section 5 of the Ofcom Broadcasting Code. This aims to ensure that television and radio news must be reported with due accuracy and presented with due impartiality.

2.32 The Broadcasting Code does not apply to newspapers. Newspapers are self-regulated by the Press Complaints Commission and there is no corresponding impartiality requirement for newspapers.

2.33 The Broadcasting Code does not impose any requirements in relation to the news agenda set by television and radio broadcasters. The media ownership rules are intended to ensure plurality of voice in the media which is not the same as impartiality or accuracy.

Section 3

Context and approach to this review

3.1 Having set out why Parliament put the media ownership rules in place, this section explains what Ofcom's duty is in reviewing them and describes how we have undertaken this review.

The key points covered in this section are:

- Ofcom has a duty to review regularly the media ownership rules and make recommendations for any change to the Secretary of State.
- We first reviewed the media ownership rules in 2006.
- There have been a number of policy developments relating to the media ownership rules since we undertook our last review.
- Our approach in this review has been to consider whether the rules are operating effectively to deliver the purposes Parliament intended.
- This review is being published alongside our consultation on Radio – the Implications of Digital Britain for Localness Regulation.

Ofcom has a statutory duty to regularly review the media ownership rules and make recommendations for any change to the Secretary of State

3.2 To complement the liberalisation of the rules in 2003, Ofcom was given the responsibility of reviewing the rules at least every three years and to make recommendations to the Secretary of State on whether or not the rules should be amended.

3.3 This is because it was anticipated that, as take up and use of digital media grew, more people would get their news through new sources like the internet and further relaxation might be required to take account of this change.

3.4 As a result, Ofcom has a duty under section 391 of the Communications Act to carry out a regular review, at least every three years, of the operation of the media ownership rules.

3.5 This review is conducted within the context of that legislation. The matters covered in this report are therefore limited to those set out below. Any recommendations made concern only the exercise of the powers of the Secretary of State.

Ofcom's Statutory Duty

Under section 391 of the Communications Act 2003, Ofcom is required to report to the Secretary of State on the functioning of the media ownership rules at least every three years. Those rules are set out in the following legislative provisions:

- schedule 2 to the Broadcasting Act 1990 (restrictions on the holding of broadcast licences);
- schedule 14 to the Communications Act (restrictions of the holding of certain radio licences, cross media ownership and additional provisions relating to religious bodies);
- sections 280 and 281 of the Communications Act (Channel 3 news provider);
- section 283 of the Communications Act (Channel 5 news provider); and
- part 3 of the Enterprise Act 2002 (insofar as it relates to intervention by the Secretary of State in connection with newspaper or media mergers).

As part of this review, Ofcom is to make recommendations to the Secretary of State as to the exercise of his powers in relation to media ownership. Those powers are powers to:

- amend or repeal the rules on the restrictions on holding broadcast licences;[8]
- amend or repeal the rules on cross media ownership between Channel 3 and newspapers;[9]
- amend or repeal the rules on the holding of radio multiplex licences;[10]
- impose restrictions on the holding of local radio licences;[11;]
- amend or repeal the rules on the appointed news provider for Channel 3;[12]
- appoint a news provider for Channel 5;[13] and
- make amendments to the rules on media mergers as to the definitions used, the jurisdictional criteria and the public interest considerations to be taken into account.[14]

3.6 In addition, one of Ofcom's core duties under the Act is to ensure plurality in television and radio. Section 3(2) of the Communications Act requires Ofcom, in carrying out its functions, to further the interests of citizens and consumers by

[8] Section 348(5) of the Act and Paragraph 16, Schedule 14 to the Communications Act.
[9] Paragraph 6, Schedule 14 to the Communications Act.
[10] Paragraph 10, Schedule 14 to the Communications Act.
[11] Paragraphs 11, 12 and 13, Schedule 14 to the Communications Act.
[12] Section 282 of the Communications Act.
[13] Section 283 of the Communications Act.
[14] Sections 44(11), 58(3) and 56(6A) of the Enterprise Act 2002.

securing “the maintenance of a sufficient plurality of providers of different television and radio services.”

3.7 Ofcom does not regulate the editorial content of newspapers or their websites. This is done by the Press Complaints Commission, an independent body which deals with complaints from members of the public about the editorial content of newspapers and magazines.

3.8 Nevertheless, newspapers do form part of the cross-media ownership rules, and Ofcom has responsibility for reviewing these as well as the other media ownership rules.

We first reviewed the media ownership rules in 2006

3.9 Ofcom’s first Review of the Media Ownership Rules was in 2006.[15] At this time we did not make any recommendations for change, finding that no significant problems had arisen in applying the rules – we found that while the media landscape was changing rapidly, the assumptions underpinning the rules remained valid.

3.10 However, when examining the radio rules again more specifically as part of the Future of Radio Review in 2007, we recommended some changes to the local radio ownership rules, further details of which are explained in section 5.[16]

Since our last review, there have been a number of policy developments relating to the rules

House of Lord’s Communications Committee Inquiry – The Ownership of the News

3.11 In June 2008, the House of Lords Communications Committee published its report into The Ownership of The News.[17] The inquiry examined the effect of ownership on news provision and looked at the state of newsgathering in a climate of falling newspaper circulation and television news audiences.

3.12 The key points arising from the report were:

- Concerns about the concentration of media ownership are still valid, even though there has been an increase of news sources with the advent of the internet.
- The impact on news gathering should be the prime consideration when examining media mergers. Local journalism is particularly at threat from profit seeking and journalism is often one of the areas where resources are cut in a bid to be more cost-efficient.
- The local cross media ownership restrictions should be lifted, but any mergers must be carefully monitored, with the media public interest test applied if necessary.

[15] Review of the Media Ownership Rules, 14 November 2006: http://www.ofcom.org.uk/research/media_owners/rulesreview/rules.pdf
[16] The Future of Radio: Localness on analogue commercial radio and stereo and mono broadcasting on DAB, Statement, 7 February 2008: http://www.ofcom.org.uk/consult/condocs/futureradio07/statement/statement.pdf
[17] http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcomuni/122/122i.pdf

- The media public interest test should be used more flexibly by Government when examining media mergers. While final responsibility should be left to the Secretary of State, Ofcom should also have the power to issue an intervention notice. It should investigate mergers purely on the basis of public interest, in contrast to the Competition Commission, which should only investigate on competition grounds.

- The analogue and digital local radio ownership restrictions should be amalgamated.

3.13 Ofcom's response can be found at www.parliament.uk/documents/upload/Ofcom%20response.doc

Culture, Media and Sport Select Committee Inquiry on The Future for Local and Regional Media

3.14 In March 2009, the Culture, Media and Sport Committee launched an inquiry into the future of local media. This inquiry will examine the extent of plurality required in local media markets and the future of local radio and television news.[18]

The Government's Digital Britain Final Report

3.15 In June 2009, the Government's Digital Britain Final Report noted this review of the media ownership rules. It went on to observe that media ownership rules are "a layer of constraint over and above the competition rules set out in the media mergers regime" and that the Government believed that "an arguable case could now be made for greater flexibility in the local radio and cross media ownership rules to support consolidation of local media groups which taken together would allow for greater economies of scale and a sustainable local voice alongside that of the BBC."[19]

3.16 For radio, in its Digital Britain Final Report Government accepts the recommendations for change which we made in our Future of Radio Statement in 2007. It also stated that Government looks towards Ofcom to assess whether the existing 'points system' in radio ownership remains desirable and sustainable.

Conservative Party's Creative Industries Review

3.17 In April 2009, the Conservative Party launched its Creative Industries review, chaired by Greg Dyke. This review is due to be published in the autumn and is likely to include analysis on the media ownership rules.

3.18 As part of that process Roger Parry published a consultation paper in July 2009 proposing the creation of "Local Media Companies" on the basis of greatly relaxed media ownership rules.

[18] A list of the areas which the CMS Select Committee inquiry on the Future for Local and Regional Media sought views on is available here: http://www.parliament.uk/parliamentary_committees/culture__media_and_sport/cms090325a.cfm
[19] Paragraphs 74 – 75, Digital Britain Final Report.

Our approach in this review has been to consider whether the rules are operating effectively to deliver the purposes Parliament intended

3.19 Within this context and given our statutory duties, in this review we are considering whether the media ownership rules are still operating effectively in delivering the purposes Parliament intended.

3.20 **Section 2** looks at Parliament's reasons for putting the rules in place. It considers the assumptions that Parliament made about the media environment when it enacted them.

3.21 **Section 4** looks at the changing media landscape to assess changes in consumer trends and in the television, radio and newspaper industries.

3.22 **Sections 5 - 9** take each of the specific media ownership rules in turn and consider whether the operation of the rules or the factors identified in the changing media landscape might require any changes to the rules. We ask whether the purposes Parliament intended continue to be delivered by the media ownership rules. We identify different options for the rules going forward.

3.23 Finally, **section 10** looks at the trends in media consumption and supply that might affect the operation of the rules in the future. It considers what the implications might be for the rules if a range of hypothetical future scenarios come about.

3.24 In our 2006 Review of the Media Ownership Rules Review we undertook several international comparisons to benchmark the level of media ownership regulation in the UK against other countries. We have not repeated this detailed analysis of international comparisons again for this review. However, we would welcome views and supporting evidence about any relevant international examples, for instance of changes to a media ownership framework or regulatory best practice that could be significant or have an impact on our considerations in this review.

3.25 In this consultation we welcome your views on our recommendations to the Secretary of State (for Culture, Media and Sport) for each of the media ownership rules.

This review is published alongside proposals for the future regulatory framework for local radio services

3.26 This review is published alongside Ofcom's consultation Radio – the Implications of Digital Britain for Localness Regulation. This is our review of the regulatory framework for local commercial radio which we are consulting upon in a separate document.

Section 4

The changing media landscape

Introduction

4.1 This section examines changes in consumer behaviour and the economics of the media sector. This helps us to understand whether the assumptions made by Parliament about the media environment in enacting the rules, described in section 2, are still appropriate.

4.2 It sets out evidence about developments in the media sector. Where data are available it examines trends since 2003, when the media ownership rules were last changed by Parliament.

The key points covered in this section are:

- Digital platform take-up has grown significantly since the media ownership rules were put in place. While the internet provides new opportunities to discover and consume news, traditional platforms remain important.
- Television remains consumers' main source of news across the UK but in local media other forms of media play a greater role than at the national level.
- The way people consume news has not yet changed significantly, but the economics of supplying news content has, as advertising revenues are falling as a result of structural and cyclical changes.
- Economic pressures are being felt most keenly at a local level, particularly by local radio and newspapers.
- However national media is also facing challenges, for example free-to-air broadcasters are also under pressure.
- Media ownership patterns have not changed substantially in delivering national news, except in radio. In contrast, there has been significant merger and acquisition activity in local media.

By considering consumer behaviour since the media ownership rules were changed by Parliament we can understand whether the rules are still effective

4.3 In this section we consider major consumer trends since Parliament last changed the media ownership rules in 2003.

4.4 As an example, the effectiveness of the media ownership rules might be undermined if use of the internet has had a significant impact on people's use of newspapers, television and radio.

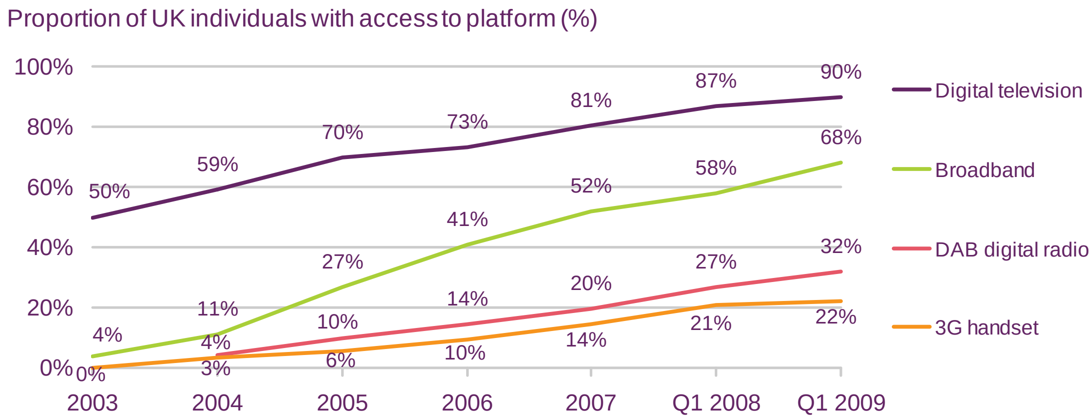
4.5 The aim of the media ownership rules is to help protect a plurality of viewpoints and to give citizens access to a variety of sources of news, information and opinion. Therefore, when looking at developments in the media sector we have focussed on the delivery and consumption of news content. However, we note that other types of content (for example, specialist publications and current affairs and factual programming) can also play a role in improving our understanding of the world.

Digital platform take-up has grown significantly since the media ownership rules were put in place

4.6 In 2003 most people got their news content from one or more analogue television, analogue radio or newsprint. But today consumers can access digital platforms including digital television, DAB radio, broadband internet and 3G handsets.

4.7 Over the last five years all the main digital platforms have seen increases in take-up (see figure 2). Digital television is now most prevalent, with nearly nine in ten adults having access. Broadband is the second most-widespread platform with take-up at 68%. When we last reviewed the media ownership rules in 2006 broadband take-up was only 41% and only 4% had broadband when the rules were amended in 2003.

Figure 2: Growth in take-up of the main digital platforms, 2003-2009



Source: Ofcom Technology tracker 2003-2008.
Notes: Digital television data from Digital TV update during Q1 2003, Q1 2004, Q1 2005, Q1 2009. 3G handset data from Technology Tracker. DAB radio data from RAJAR.

4.8 The take up of digital platforms has resulted in changes to the way news is provided. We consider the opportunities provided by the internet below. In television, news has changed with the advent of digital television as it allows for more channels. New, niche audiences can be targeted and this has resulted in the creation of specialist news programmes that cater to specific audiences. Dedicated news channels, such as BBC News or Sky News, provide constant updates throughout the day and are supported by a range of interactive options.

4.9 In the future, trends in other platforms such as 3G networks may also become important as platforms can influence the structure and shape of news content and how it is consumed. For instance a large increase in use of 3G services may lead to more people choosing to access news content on the move and in bite-size chunks. Currently self-reported 3G handset take-up appears low at around 22%. But as most new phones sold have 3G capability, it is possible that this figure reflects consumer awareness and use of handset capability, rather than actual penetration.

The internet provides new opportunities to discover and consume news

4.10 As figure 2 identifies, broadband has seen the most dramatic growth of any digital platform since our last review.

4.11 One of the significant impacts of the increase in broadband use is that consumers have a wider choice of news content providers online. Many traditional news providers from television, radio and press distribute content in this way, allowing them to provide almost instantaneous updates and offer interactive content. This content is often offered on a free to the user basis and supported by advertising.

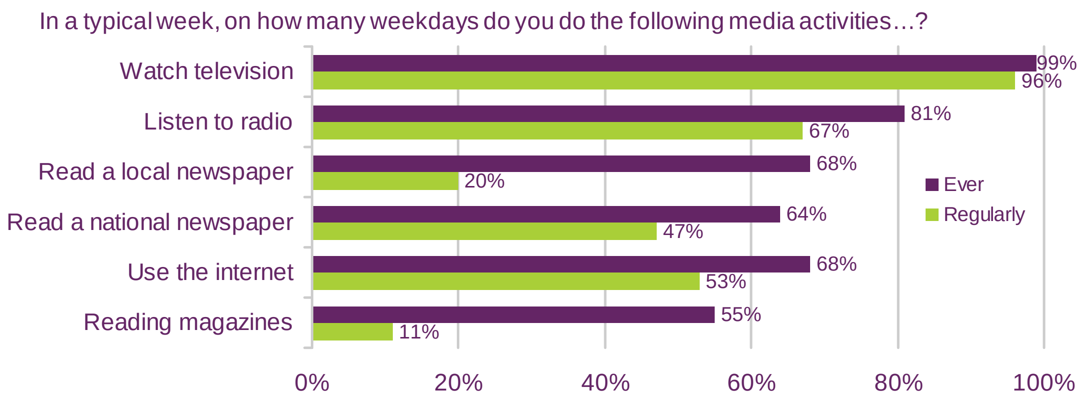
4.12 For example, all major newspapers, radio stations and television channels have online sites. In addition to building on their traditional products, these sites offer new and innovative ways of delivering content. Examples include catch-up television and radio services such as the BBC's *iPlayer* and ITV's *itvplayer*, and internet radio stations such as *Sun Talk*, launched by the Sun newspaper.

4.13 Consumers can also access news content produced by non-traditional and online-only providers. This ranges from commercially-produced content to not-for-profit or amateur material. Blogs and the news distribution potential of social platforms such as *Facebook* and *Twitter* can also be important and influential sources of news.

But traditional platforms remain important, with television the most popular by far

4.14 Despite the growth of broadband take-up and the increase in the range of sources available to consumers, our research suggests that people still value traditional sources of media in addition to the internet.

Figure 3: Use of different media by UK adults, 2009



Source: Ofcom media tracker, April 2009.
Note: Directly comparable trend data from the time of our last review not available.

4.15 96% of people claim to watch television regularly (at least three days out of five), significantly higher than the 67% who claim to use radio regularly (the next most popular platform). This indicates the enduring importance of television as a platform.

4.16 Just over half of people claim to use the internet regularly in a typical working week. This is just ahead of regular use of national newspapers at 47% while local newspapers are only regularly read on a weekday by 20% of consumers.

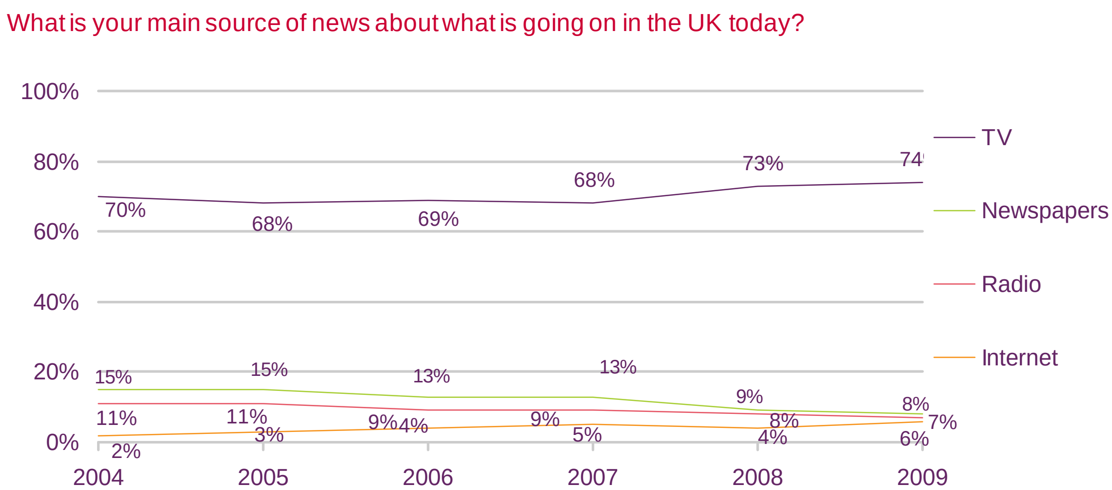
4.17 Older adults (65+) were more likely than all other age groups to watch television and read local newspapers every weekday. Younger age groups (15-24) were least likely to ever read a local or national paper or listen to the radio during the week but were the age group driving weekly use of magazines. Use of the internet was lowest amongst older adults (65+), DE socio-economic groups and lower income households while use was higher than average amongst non-white UK adults.

4.18 Looking specifically at UK news content, reliance on television is even more pronounced.

Television remains consumers' main source of news across the UK

4.19 Figure 4 shows that television is the main source of UK news for the overwhelming majority of people. Almost three-quarters (74%) of people say it is their main source of UK news, maintaining the increase noted between 2007 (68%) and 2008 (73%).

Figure 4: Consumers' main source of UK news, 2004-2009



Source: Ofcom media tracker, April 2009.
Note: Data not available for 2003. 2004 – 2008 based on rolled yearly data, not directly comparable with 2009 data. Figures for 2009 may change as further data is gathered this year.

4.20 No other platform was cited by more than 8% of people as their main news source. Newspapers have declined in importance as a main source of news from 15% of people in 2004 to 8% in 2009. At the same time the daily circulation of national newspapers has fallen from 12 million to 10.8 million copies per day.

4.21 In contrast the internet has grown in importance with 6% of consumers rating it as their main source of news. As a result national newspapers, radio and the internet are considered to be main sources of news by a broadly comparable number of consumers.

4.22 Use of the internet as a main source of UK news was highest amongst younger adults. 10% of 15-44s claim that the internet is their main source of UK news. And age is not the only factor, affluence also has an impact. Around one in ten (12%) adults in a household with an annual income of £30,000+ claim to use the internet as their main source of UK news which compares to 3% of those with an annual household income of up to £17,500.

4.23 The use of these media as a main source of news is only part of a complex picture of consumption habits today. This does not consider secondary sources of news. Research suggests that at least a fifth of adults visit national news websites.[20]

[20] Source: Ofcom Local Media Research, April-May 2009.

Television remains the most trusted source of news

4.24 Research conducted for Ofcom's discussion document New News, Future News[21] looked at audience perceptions of the impartiality of different news sources and also at the levels of trust they accorded to different news sources. TV and radio news is subject to requirements of due impartiality.[22] New News, Future News argued that this requirement may have contributed to the high level of trust accorded to television news by users. However, it also noted that people may trust news outlets they readily recognise as being partial, if the 'partiality' of the outlet fits with their own views.

4.25 Ofcom's 2008 Media Tracker results show that a higher proportion of adults consider television to be impartial than any other source.

Figure 5: Perceived impartiality of media platforms, 2008

All adults (% saying impartial)	2008
TV	42
Radio	35
Teletext	26
Internet	21
Press	17
Magazines	14

Q: How impartial do you think each of the following news sources is? (7 point scale; results collated on "impartial, very impartial, extremely impartial"

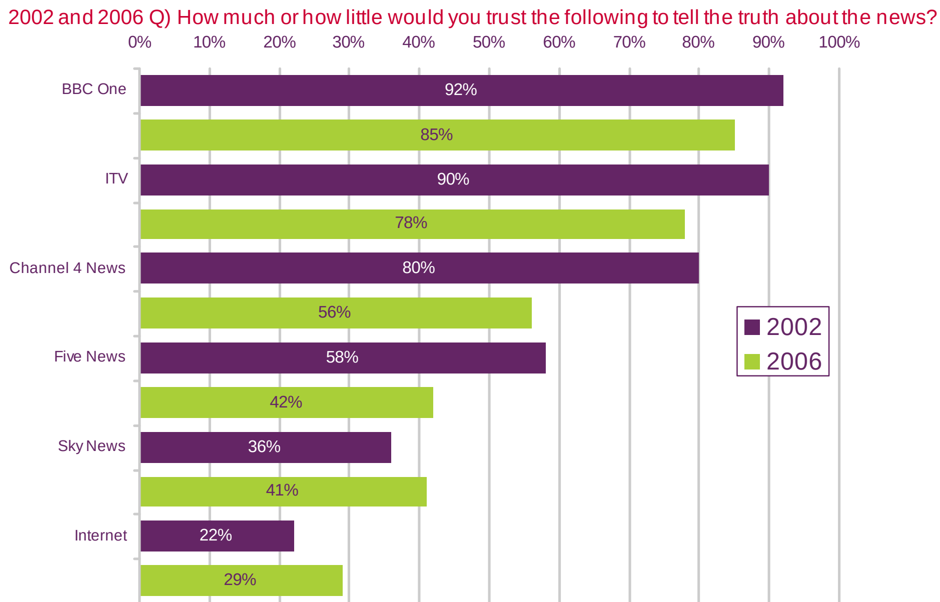
Source: Ofcom Media Tracker 2008, n=2046

4.26 The 2008 Media Tracker also asked respondents to make a choice between platforms asking which source they trusted most to present a fair and unbiased news coverage (when thinking about news in the UK). The majority of respondents chose TV (71%), with 9% choosing radio and 4% choosing the press and 4% choosing the internet.

4.27 New News, Future News found that audiences say they want television news to be impartial. However, as the figure below illustrates, people's faith in the credibility of any news source has decreased, apart from the internet. That said, the greatest levels of trust were in television. The traditional public service broadcasting channels were seen as more credible than other commercial broadcasters, and trust in the BBC was greater than for any other source.

[21] http://www.ofcom.org.uk/research/tv/reports/newnews/newnews.pdf
22 See Ofcom's Broadcasting Code: http://www.ofcom.org.uk/tv/ifi/codes/bcode/undue/

Figure 6: Trust in news 2002 – 2006



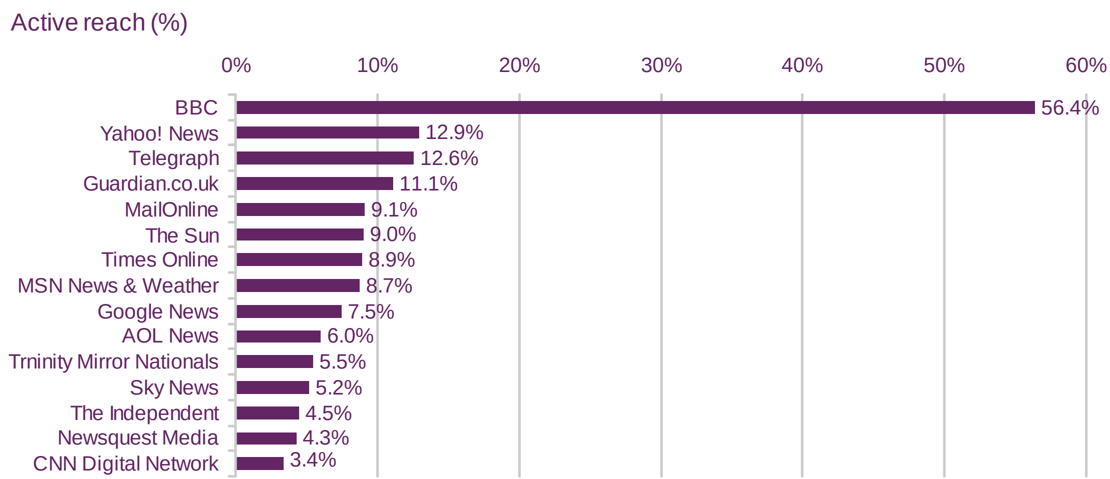
Ofcom research conducted for New News Future News, 2007.
Base: All who answered question, 4938 (2002) and All adults 16+ (1011) (2006) TNS omnibus
Note: the increase in trust in Sky News is not significant at the 99% confidence level

Consumers are turning to trusted sources when consuming news online

4.28 Online content is provided by existing television, newspaper and radio news providers as well as purely online operations.

4.29 Figure 7 shows the active reach of the fifteen most popular current affairs and global news websites. It demonstrates that a number of the trusted traditional press and television brands also have significant levels of reach through their online sites. New media providers also feature.

Figure 7: Active reach of current affairs and global news sites, 2009



Source: Nielsen NetView, February 2009.
Note: Active reach is defined as the number of all active 2+ unique persons who visited the site or used the application.

In local media, television is important but other forms of media play a more important role

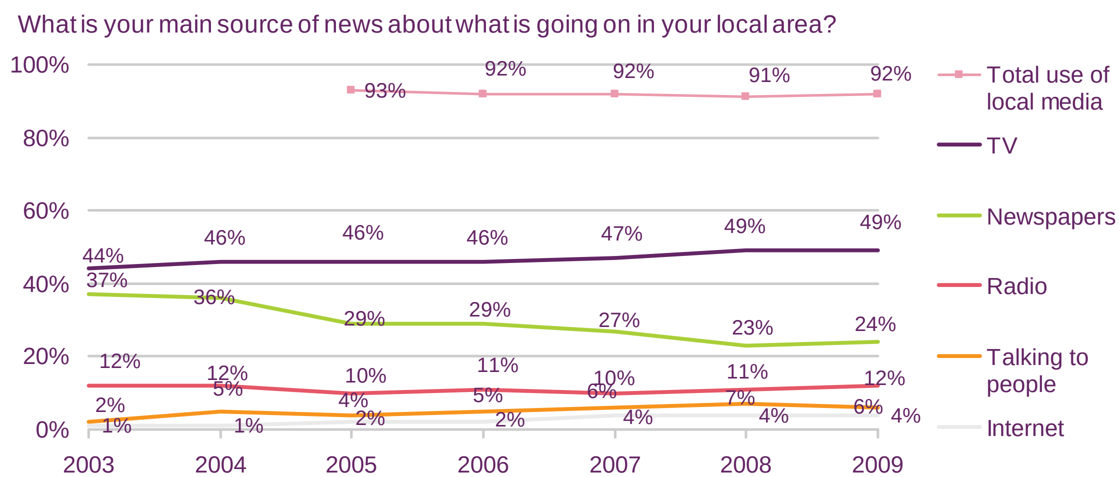
4.30 The situation is different when it comes to local news. Television is still the most important platform and has become even more important in recent years, with 49% of people citing it as their main source of local news. But other media play a more important role than they do nationally and consumption is more evenly spread, with newspapers and radio serving as a main source to a greater degree than nationally (see figure 8).

4.31 Nearly a quarter (24%) claims that newspapers are their main source of local news, although this is down from over a third (36%) in 2004.

4.32 The internet plays a relatively small role as a main local news source. 4% say it is their main source, which is less than those who say that their main source for local news is talking to others.

4.33 However, the internet does appear to be having an impact on the consumption of other local media sources for some people, particularly newspapers. While noted as the main source for relatively few adults (4%), in total a third of broadband customers said they used commercial local websites on a weekly basis. Nearly one in ten recent broadband adopters said they spend less time reading local newspapers and a quarter of those who access local newspaper websites said they do so instead of reading the hard copy.[23]

Figure 8: Consumers' main source of local news, 2004-2009



Source: Ofcom media tracker, April 2009.
Note: 2004 – 2008 based on rolled yearly data, not directly comparable with 2009 data. Figures for 2009 may change as further data is gathered this year.

The economics supporting the supply of news are changing and traditional businesses are under pressure from short term and long term changes

4.34 Alongside developments in the consumption of news content, we need to consider changes in the supply of news content. This is because the supply of news content has a direct bearing on the number and diversity of viewpoints available to the consumer.

[23] Ofcom's BBC MIA research, June 2008.

4.35 We also need to consider the pressures on sustainability of businesses for delivering news content. If businesses are struggling to be sustainable and the rules are hindering their ability to respond to market conditions, then there may be a case for recommending a change to the rules.

The way people consume news has not yet changed significantly, but the economics of supplying news content has

4.36 While the way in which people consume news has not yet changed significantly, the economics of supplying news content has. In particular, the economics of advertising-funded business models has changed. This is for two main reasons:

- **Long-term or 'structural' change** – long-term or 'structural' change comes from changes in consumer behaviour, such as changes in audience consumption habits. This can be driven by new competitors. Most recently this has been the arrival of digital platforms which compete directly for audiences and advertising revenue. New competitors can also change market dynamics, for example online advertising is driving advertising prices downwards as it offers a substantial advertising inventory. Structural changes challenge the way businesses of established providers such as newspapers, radio stations and commercial public service broadcasters make money.

- **Short-term or 'cyclical' change** – Short-term or 'cyclical' change comes from the macroeconomic environment, such as the current downturn. This can compound the effect of pre-existing structural change as competition becomes more intense or financing becomes more difficult. For example the recession has caused problems for companies with large debt burdens.

4.37 Structural change can represent an opportunity. For some the internet has helped reduce content production and publication costs. It also provides new ways to engage with consumers and so can offer new ways to make money from advertising, subscription or direct payment. For consumers it provides access to a wider range of regularly updated and often free-to-access content.

Advertising is facing structural and cyclical changes

4.38 It is important to understand the effect that these structural and cyclical changes are having on advertising as advertising is vital to many of the businesses of the main news media.[24]

4.39 The most obvious long term trend has been the huge growth in internet advertising (see figure 9). Internet advertising spend has grown at a compound annual rate of 48% in each of the past five years. In contrast, television has seen advertising spend stand still, while all other platforms have seen a decline in advertising expenditure in nominal terms. In real terms (accounting for inflation) the decline has been even steeper. Newspaper advertising spend has fallen steepest of the main media, from a high of £5.1bn in 2004 to £4.1bn in 2008. Whilst traditional media providers have seen some revenues from online advertising, for example television channels or newspapers gaining advertising revenue through their websites, this is often not sufficient to make up for any decline they have seen in their other advertising.

[24] The commercial public sector broadcasters and most internet sites rely on advertising to provide the great bulk of their revenues. According to the Advertising Association 79% of regional press revenue and 44% of national press revenue comes from advertising.

Figure 9: Advertising spend by medium, 2003-2008

Source: The Advertising Association/WARC (www.WARC.com).
Note: CAGR = compound annual growth rate. All figures are nominal.

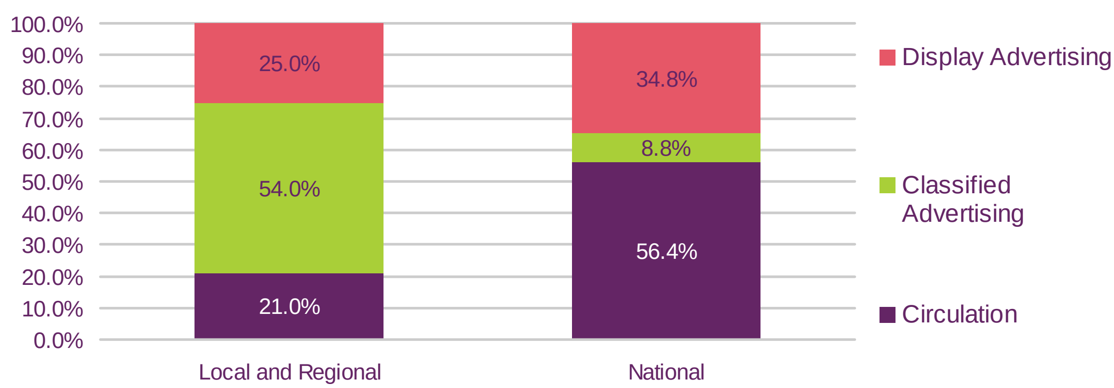
4.40 Figure 9 also shows the impact of the economic downturn on advertising. After growing every year from 2003 to 2007, total advertising expenditure fell in 2008 by nearly 4% to £16.4bn. All main media except the internet recorded large falls in advertising expenditure in 2008. Newspapers have suffered most with a 12% decline in advertising spend last year.

Evidence suggests that the economic pressures are particularly significant for local and regional television, radio and newspapers

4.41 Structural change in advertising has put pressure on traditional commercial local media – newspapers, television and radio.

4.42 Newspapers rely on advertising and circulation revenues but the proportion varies depending on whether they are national, regional, and also whether they are weekly, daily or an entirely advertising funded free sheet.

Figure 10: Newspaper revenue shares by type, 2007

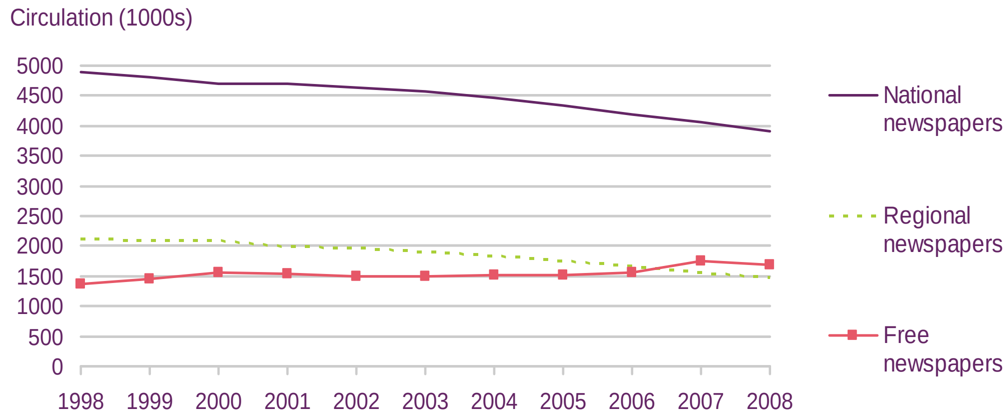


Source: Ofcom/Oliver & Ohlbaum Analysis/ The Advertising Association/WARC (www.WARC.com).
Note: revenues from leaflets and other sources are included within advertising revenues.

4.43 Figure 11 shows that circulation for national, local and regional newspapers has been declining for a number of years. Local and regional newspapers have been able to maintain circulation revenues through cover price rises. However it is debated whether this can be maintained in the longer term.

4.44 Circulation also drives the advertising revenues of national, local and regional newspapers as advertising revenues are influenced by the size of the audience that the newspapers can provide to advertisers.

Figure 11: Newspaper circulation by type, 1998 to 2008

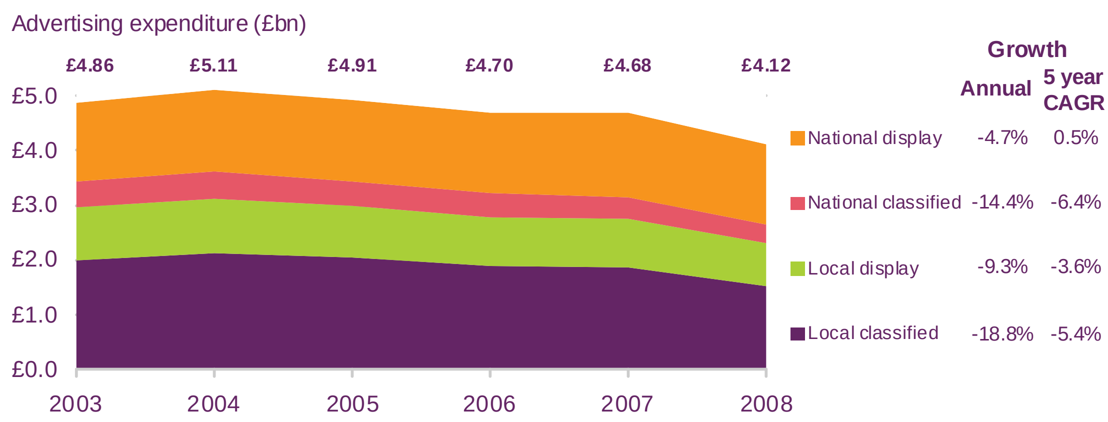


Source: World Advertising Trends 2008, WARC (www.warc.com).

4.45 Advertising is facing challenges as both display and classified advertising have been declining since 2004. Classified advertising has been particularly affected and figure 12 shows that local newspaper classified advertising revenue has declined by a notional 5.4% each year since 2003 and 18.8% during 2008 alone.

4.46 The major local classified sectors (property, recruitment and automotive) have all been affected by the recession and this has contributed to an 18.8% decline in local classified revenues in 2008.This is because classified advertising is particularly threatened by online competition, for example through general sites such as *Craigslist*, or specific sites such as recruitment portal as *Monster.com*.

Figure 12: Components of newspaper advertising revenue



Source: Source: The Advertising Association/WARC (www.WARC.com).
Note: CAGR = compound annual growth rate. All figures are nominal.

National newspapers are also challenged by these conditions

4.47 Total national newspaper circulation has declined by an average of 2.8% a year for the past four years, and almost every individual newspaper has seen a circulation decline over the same period.[25] As a result circulation revenue is under pressure.

4.48 National newspapers have also not been immune from changes in advertising expenditure. But importantly, they rely much less on classified advertising than regional newspapers as show in figure 10 and their circulation revenue (cover prices) accounts for over half of their total revenue (56.4%).

4.49 As a result national newspapers are facing pressure from the economic downturn and the rise of online competitors, but to a lesser degree than the local and regional press.

In radio, industry pressures continue, with pessimistic forecasts suggesting that commercial radio's revenues could decline further this year

4.50 Radio advertising revenue is declining in the current economic downturn. In addition to the economic downturn while radio consumption overall has held steady, total listening hours for local commercial radio fell by 14% between Q1 2000 and Q1 2009. This has a resulting impact on airtime sold and therefore revenues raised.

4.51 Ofcom analysis suggests that this is particularly serious for smaller radio stations which tend to have lower margins, and so less protection from declining advertising revenues. Our analysis indicates that on average stations with a measured coverage area (MCA) of less than 300,000 people made a slim profit, but our own analysis and a recent study conducted on Ofcom's behalf by Value Partners provided evidence that many of the 146 stations in this category are currently loss making.[26]

4.52 In a pessimistic scenario of 20% declines in revenues our analysis suggests that the smallest stations were most likely to become unprofitable. In this situation larger stations would also see their margins substantially reduced.

4.53 For more detail see Ofcom's report published alongside this review: Radio – the Implications of Digital Britain for Localness Regulation.

In television, Ofcom's Second Public Service Broadcasting Review highlighted pressures facing the free-to-air broadcasting model

4.54 Free-to-air advertising-funded broadcasting is also facing structural pressures brought about by the move to digital television. ITV1's share of viewing in digital homes has declined from 19.3% in 2003 to 17.2% in 2008. It has responded by developing a digital portfolio of channels and ITV's portfolio audience share is holding. Other commercial broadcasters are facing related pressures and reduced revenues.

4.55 In January 2009 we published the conclusions of our Second Public Service Broadcasting Review. The review noted the significant pressures on free-to-air commercial broadcasters from both structural and cyclical change.

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[25] Source: Ofcom/MediaTel/ABC.

26 'UK Radio – Flow of Funds', produced by Value Partners on behalf of Ofcom, 19 February 2009; and 'UK Radio – Flow of Funds Phase 2: Impact of regulatory relaxations' produced by Value Partners on behalf of Ofcom, 5 May 2009.

4.56 Analysis conducted for the review by Oliver & Ohlbaum suggested that television advertising revenue may decline by 20% in real terms between 2006 and 2012. While it may return to moderate growth thereafter, it may well not return in real terms to previous levels.

4.57 To address declines in advertising revenue, commercial public service broadcasters have already, and are likely to continue to, cut back on their commitments to programme investment. The business models of ITV plc and Five are under pressure, and Channel 4's economic model is no longer sustainable.

4.58 Regional television news is one of the areas of public service broadcasting content most valued by audiences. ITV regional news regularly attracts 20% of the available audience, delivering significant reach and impact. In our Second Public Service Broadcasting Review, we concluded that regional news on Channel 3 was at risk because increased penetration of digital television and audience fragmentation had resulted in a reduction in the value of PSB licences. Our analysis suggested that the value of the regional Channel 3 licences would likely go into deficit before digital switch over is completed, which challenges the long term viability of regional television news.

4.59 As part of that review, Ofcom carried out work to assess the appropriateness of each of the programme quotas to reflect the declining value in the benefits of holding Channel 3 licenses. The outcome of this was that from 2009, Channel 3 programme quotas for regional news, regional non news, current affairs and out of London production have been modified to reflect the decrease in the value of holding public service broadcasting status.

Media ownership patterns have not changed substantially in delivering national news content, except in radio

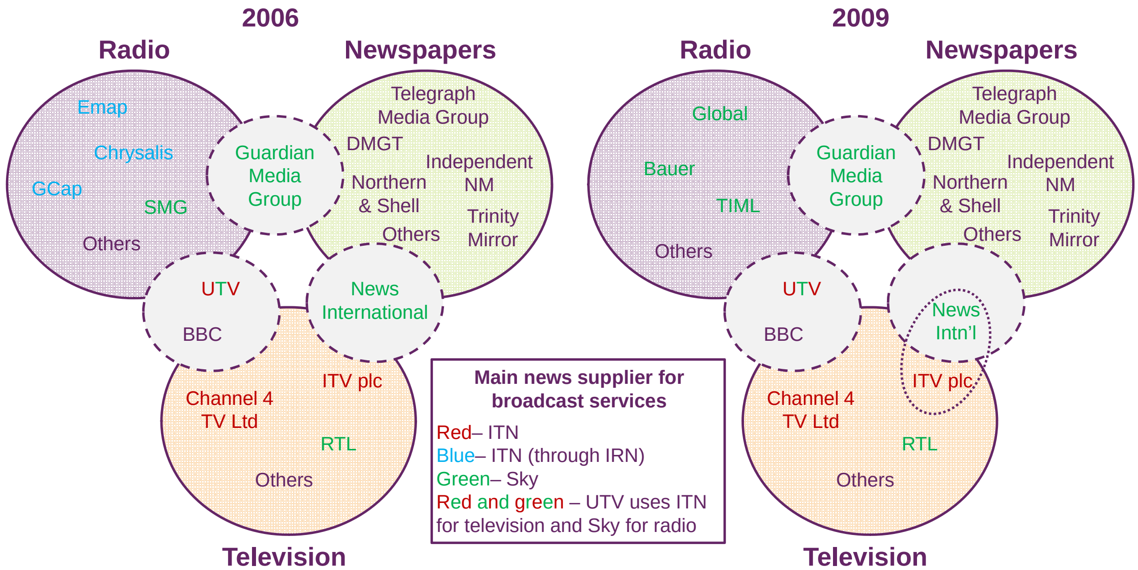
4.60 The media ownership rules assume that ownership is a proxy for viewpoints. Significant changes in ownership will have a bearing on the continued relevance of the media ownership rules. We have therefore conducted a high level analysis of the major changes in ownership within the media landscape.

4.61 Figure 13 provides an illustrative overview of the changes in ownership of companies involved in delivering national news content since our last review. The greatest change is that there has been consolidation in the radio sector, with Global Radio and Bauer emerging as the largest radio groups. Further detail on consolidation in radio is set out in section 5.

4.62 Also BSkyB has acquired a 17.9% stake in ITV plc. In 2007 the Competition Commission ruled that Sky must sell down this stake to below 7.5%. BSkyB has appealed this decision and the legal process is ongoing.

4.63 Whilst not a change in ownership, there has also been an important change in news supply in 2009 as Sky has taken over the Independent Radio News contract from ITV. As a result Sky now provides nearly all of the national news for radio through Sky Radio News.

Figure 13: Major national media organisations involved in UK wide news content delivery, 2006-2009



Source: Ofcom

Note: This diagram is illustrative only, in particular:

i) The dotted line connecting News International and ITV is intended to denote the fact that News International has a 39% stake in BSkyB, and that BSkyB in turn has a 19% stake in ITV. It is not intended to make any comment as to the degree of control this ownership structure confers in practice.

ii) Guardian Media Group also owns one local television channel, Channel M, which is not represented on this diagram.

iii) Nearly all the companies in this diagram also deliver news content online. There are also countless groups not represented on this diagram who deliver news content online.

In contrast, there has been significant merger and acquisition activity in local media

4.64 Consolidation has been a recent trend amongst commercial local media players, resulting in the creation of some large groups. For example:

- Since 2006, most of the main newspaper groups have acquired or disposed of titles or groups of titles. As a result, the five major regional newspaper groups account for over 70% of newspaper circulation.

- In radio, the two largest commercial radio groups now account for 39% of commercial local radio services.

4.65 Consolidation has been primarily within a single media platform, although there is some cross-media ownership between regional newspapers and radio (for instance, Guardian Media Group and Tindle), and between regional television and radio (UTV).

4.66 A further development is the launch of free daily citywide newspapers in major metropolitan areas. These include *Metro* (with 14 localised editions throughout the UK), *thelondonpaper* and *London Lite*, while the *Manchester Evening News* is distributed free of charge in Manchester on weeknights. There have been high-profile examples of acquisitions too: Alexander Lebedev purchased a 75% stake in the London Evening Standard in January 2009.

Changes in the news industry may mean the point of influence changes in the future

4.67 The current media ownership rules are based on the assumption that ownership of the media is a proxy for viewpoints. Again, if there have been significant changes in the media landscape, which make this assumption irrelevant, then this could have a bearing on whether the rules are still effective in achieving Parliament's purpose.

4.68 Figure 14 shows a simplified supply chain for the current delivery of news content. It provides an overview of the key groups involved in the supply of news to consumers.

Figure 14: Simplified supply chain for the delivery of news content

Newsgathering	Aggregation	Distribution (consumer interface)	Consumption
• **Television** – BBC – ITN – Sky News – Others	• **Television** – Content packaged into news bulletins and schedules	• **Television** – BBC channels – ITV1 – C4 channels – Five – Sky – Others (inc. local TV)	• **Television** – BBC channels 35%, ITV1 18%, C4 channels 8%, Five 5%, Sky News 0.4%
• **Radio** – IRN/Sky – Sky Radio News – BBC – Local journalists – Other	• **Radio** – Packaging of local and national content into bulletins	• **Radio** – BBC stations (10 nat, 46 local) – 4 nat commercial stations – c.300 local stations Global, Bauer, TLRG, UTV, GMG, other – Local/national mux operators	• **Radio** – BBC network 47%, nat. commercial 10% – Local commercial 31%, BBC local 9%
• **Press** – Newspaper editorial teams – Agency content (AP, AFP, Reuters, PA) – Syndicated content & freelance	• **Press** – Major press groups operate own presses. Few share. – Content and advertising package into printed copies	• **Press** – Local/national papers delivered, handed out for free or sold at retail	• **Press** – 20 regional groups control 97% circulation – Nat newspapers 10.8m circulation – Sun 3.1m, Mail 2.3m, Times 0.6m, Guardian 0.4m
• **Online** – Agencies – Syndicated content – Individuals & blogs – Offline players (BBC, newspapers, Sky)	• **Online** – Content packaged into websites – Online aggregation (Yahoo!, Google, RSS feeds etc)	• **Online** – National and international websites – Personalised supply (RSS etc)	• **Online** – News & info sites active reach: – BBC 54%, Assoc. Newspapers 18%, News Corp. newspapers 16%, Yahoo! News 11%

18

Source: Ofcom

4.69 Under the assumption that ownership is a proxy for viewpoints then the point of influence in the supply chain lies at the 'consumer interface'. That is, where media providers interact directly with consumers through newspapers, websites or broadcast transmissions.

4.70 At present, we have no evidence to suggest that this is no longer the case because it is at this point of the value chain that the supplier continues to have editorial influence over what should be included in the news agenda.

We welcome any further evidence on our assessment of the media landscape, including key examples of international regulatory best practice that you believe may be relevant to this review.

Section 5

Local media ownership rules

Introduction

5.1 In this section we consider the local radio and local cross media ownership rules. Following the liberalisation of the rules in 2003, the most complex and detailed ownership rules that remain are for local media.

The key points covered in this section are:

- Parliament put the local ownership rules in place to ensure plurality in local media. Government has asked us to consider whether changes to the local radio ownership rules and the local cross media ownership rules might be appropriate.

The local radio ownership rules

- The commercial radio sector continues to struggle. Removal of the local radio ownership rules would reduce regulation on an industry that is facing difficult market conditions.
- At the same time, new research shows that a majority of consumers are not concerned about one entity owning different radio stations.
- We seek views and supporting evidence on our proposed recommendation to the remove the local radio service ownership rules.

The local cross media ownership rules

- The local media industry is facing significant change. Local and regional television, newspaper and radio businesses are under economic pressure.
- Cross-media business models are one way the sector could respond. Evidence suggests there is limited commercial appetite to consolidate across media.
- Television, newspapers and radio are still the main source of local news for most people. The internet is yet to be a main source of local news for many people.
- If all local cross media ownership rules were removed now there could be one commercial provider in a local area operating alongside the BBC.
- Given consumer behaviour, a risk remains that complete removal of the rules could reduce protections for plurality.
- But we recognise that the local media industry is under pressure and changes to the rules now could help some local media businesses respond.
- On balance we are minded to recommend that the rules be liberalised.
- We recognise there are arguments for and against the options for future changes to the rules and we seek views supported by evidence on this recommendation before we put it to the Secretary of State (for Culture, Media and Sport).

The local ownership rules were put in place to ensure plurality in local media

5.2 As section 2 explained, the goal of the local radio ownership rules and the local cross media ownership rules is to ensure that citizens can access diverse viewpoints and participate in local democracy in an informed way.

5.3 The current rules are targeted at areas where the government identified particular risks to local media plurality – radio and cross media ownership.

- The **local radio ownership rules** are designed to ensure plurality of voice in local radio and prevent a 'monopoly of voice' within the commercial radio sector for a given local area. The current rules do this by setting ownership restrictions at both the service level (the **local radio service ownership rules**) and, for DAB, at the multiplex level (the **local radio multiplex ownership rules**).

- The **local cross media ownership rules** are designed to ensure plurality across what were considered to be the three most influential local media - TV, local newspapers and radio. They apply to regional Channel 3 licences as the historical main provider of regional news. Allowing cross media ownership could risk domination of the local news "voice" by allowing coordinated cross-platform content.

5.4 We analyse both these rules in this section. In conducting our analysis, we take into account their combined impact in ensuring an overall level of plurality in local media. A key question is whether the local media sector has changed enough to mean that the rules no longer strike the correct balance or target the appropriate risk areas.

When we last reviewed the local media ownership rules we recommended some changes to the local radio ownership rules and no changes to the local cross media ownership rules

5.5 In our 2006 review we stated that we would consider the rules which affect radio in our subsequent Future of Radio – the Next Phase consultation.[27] This was because we felt it was important to consider the media ownership rules which affected radio in the context of other changes to the structure, licensing and regulation of commercial radio as a whole.

5.6 Following the Future of Radio – the Next Phase consultation we recommended that the Secretary of State consider:

- simplifying the local analogue and DAB services rules by bringing together the local analogue and DAB services rules into a single set of rules; and

- simplifying the local DAB multiplex ownership rules, or removing them entirely.

5.7 We concluded that, in the context of the sector at that time, the local cross media ownership rules should not be removed because they were still important for plurality in local media.[28]

[27] http://www.ofcom.org.uk/consult/condocs/futureradio07/nextphase.pdf - see discussion of ownership beginning p50.
[28] See Ofcom's The Future of Radio: The Next Phase: Statement and further consultation, 22 November 2007, p.65. paras.4.99 - 4.101.

Government has accepted our recommendations to simplify the local radio ownership rules

5.8 Our recommendations have not been implemented by Government to date, but in its Digital Britain Final Report Government stated that it accepted our recommendations to simplify the local radio ownership rules.[29]

5.9 As section 3 explains, Government's Digital Britain Final Report discusses the importance of news and local journalism for democracy as well as the challenges facing local media. It asked us to consider two specific issues in this review:

- the impact of the current local ownership rules on the long term sustainability of the local media market; and
- whether the current radio ownership 'points system' (i.e. the local radio service ownership rules) are any longer desirable or sustainable.

5.10 Government noted that it believed that a case could be made for greater flexibility in the local cross media ownership and radio ownership rules to allow greater consolidation which could contribute to the sustainability of local voices alongside the BBC.

The UK local media landscape is diverse

5.11 The UK's local and regional media sector includes approximately 1300 regional and local newspaper titles, over 350 BBC, commercial and community-based local radio stations, regional television news bulletins delivered by both publicly-funded and commercial providers, a small local television sector and a range of local commercial, public and community-based media.

5.12 The types of organisation delivering local media are varied and widespread, ranging from public limited companies, private companies, media trusts, local government and the BBC to a range of community groups and individuals.

5.13 The local media landscape is also diverse in terms of what is provided at which level of 'localness', with different forms of media being prevalent at different sizes of targeted geographic area. These boundaries are blurred and may overlap.

[29] Government's Digital Britain report Final Report, Chapter 5, paragraph 76.

Figure 15: Summary of local and regional media

Type of media	Number of services / publications	Examples of operators/ comment
Local and regional newspapers	c.1300	Trinity Mirror, GMG, Johnston Press Newsquest, Archant, DC Thompson, Alpha Newspaper Group
Local commercial radio	325 stations	Bauer, Global, UTV, GMG Radio, UKRD
Channel 3 television	8 TV bulletins in England plus 2 in Scotland, 1 in Wales and 1 in Northern Ireland. Sub-regional obligations in 6 regions	ITV Plc, STV, UTV, Channel TV
BBC Regional TV news	12 main programmes plus 3 English opts	BBC also produces news for nations Welsh and Gaelic language services
Local TV	4 RSLs active. Very limited number of cable/satellite only local channels	Mixture of community groups, small firms and GMG (Channel M)
BBC Local and Nations Radio	40 local stations in England – 2 national services in Wales, 2* Scottish national service, 2*NI service	Includes non-English language stations in Wales and Scotland Some opts in Scotland and England
Community radio	146 stations broadcasting	Run by not-for profit geographic and non-geographic focussed community groups
Internet	Diverse range of sites – many thousands operating .	Includes wide range of community groups, sites operated by traditional media groups , online only operators and search engines / content aggregators. BBC operates a series of local websites for the English regions, Northern Ireland, Scottish and Welsh regions and the Crown Dependencies

Consumers value local content, and particularly value local news[30]

5.14 Our evidence indicates that nine out of ten UK adults consume some form of local news, information or other content through television, radio, newspapers or the internet.

5.15 Regional/local television news is by far the most commonly used source of local media – used daily by four fifths of UK adults and at least weekly by 92%.[31] Local radio and free local newspapers are the next most commonly used sources with just over half using each of these at least on a weekly basis (55% and 54% respectively).

5.16 Most weekly users of local media tend not to rely on one single source for their regular local news and information (88%). As such, for the majority of adults each platform plays a complementary role in providing relevant news and information and enabling people to keep in touch with their local community.[32] Around two-fifths said they use two local media sources (35%); a third use three (34%); and just under a fifth said they use four or more local media sources at least weekly (17%).

[30] Ofcom Local Media Research, April-May 2009.
[31] The majority of respondents would have responded on the basis of viewing regional programming on television.
[32] 90% agreed that local media makes them feel in touch with their local community.

5.17 Consumers value not only local content but also their preferred way of accessing it. Local media was consumed by most respondents in allocated 'slots' and tended to form part of their daily or weekly routines. As such it was difficult for them to differentiate between the importance of the local content and the means of accessing it.[33]

5.18 Local/regional television was considered very important (9-10 out of 10) by over half of weekly viewers (54%) compared to 62% for national television. Local and national radio was considered very important by equal proportions of regular users (39% and 38% respectively). Paid local newspapers were considered important by more regular users than free local newspapers (35% vs. 24% respectively) compared to 43% for national newspapers.

5.19 Consumers use local media for a wide range of reasons, but local news was the content considered important by the highest proportion of regular users. Around half (49%) of regular local news consumers rated news as very important compared to around a third for weather (35%) and sport (31%).[34]

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

5.21 The internet has had a significant impact on the consumption of local media, particularly newspapers. While the internet is the main source of local news for just 4% of adults, nearly one in ten (9%) of recent broadband adopters say they spend less time reading local newspapers and a quarter of those accessing local websites on a weekly basis say they do so instead of reading the hard copy.[35]

5.22 However, while new technology is having an impact, our evidence shows that television (49%), newspapers (24%) and radio (12%) remain the main source of local news and information for most people. The internet is yet to be the main source of news for a significant proportion of people (4%) although it has increased over the past three years (see figure 8).[36]

The local media sector is facing major challenges, partly driven by the growing take-up and use of the internet

5.23 As we discuss in section 4, the local media sector is also facing significant economic pressures as a result of structural change in advertising markets.

- Overall display advertising revenues for television, radio and newspapers have been static or in slow decline for several years. This has affected TV and local radio most seriously as they derive a greater degree of their revenue from display advertising.

- Classified advertising revenues (particularly property, motors and jobs), have been undergoing a long term shift from local newspapers to the internet, partly driven by UK-wide internet sites, like *Rightmove* and *Autotrader*. This has had a major impact on local newspapers that rely on classified advertising for a significant proportion of their revenues.

[33] Ofcom Local Media Research, April - May 2009.
[34] 'Very important' defined as score of 9-10 out of 10.
[35] Ofcom BBC MIA research, June 2008.
[36] Ofcom Media Tracker, April 2009.

5.24 The recession has accelerated these structural trends. It has led to a marked deterioration in advertising revenues across the sector. This places additional pressure on industry margins. Many local media companies have responded with cost efficiencies, redundancies and closures. The longer term outlook for the local media sector (and particularly local newspapers) is uncertain.

5.25 In this context we now consider the local radio ownership rules and the local cross media ownership rules.

The local radio ownership rules limit the number of radio licences in an area that can be held by a single entity and restrict local DAB multiplex ownership

5.26 The radio ownership rules limit the number of analogue radio licences that can be owned by one entity in a local geographical area. These rules effectively guarantee that where there are more than two commercial radio services in addition to the BBC, at least two will be owned by different entities. This is sometimes described as the '2+1' rule, the '1' signifying the BBC.

5.27 There are also rules on the ownership of DAB multiplexes that apply to local and national radio. We consider the national DAB multiplex rules in the next section.

Radio is the main source of local news for some people

5.28 Radio is the main source of local news and information for 12% of adults. Television (49%) and press (24%) are the sources of news relied upon most by consumers (see figure 8).

5.29 Among respective regular listeners, local radio is considered as important as national radio (38% vs. 39% rated importance of 9-10 out of 10). The listening share of local commercial radio (compared to other radio types) has held steady at around 32%.[37]

5.30 As well as the BBC's local services, the community radio sector provides another voice alongside commercial local radio. Although the community radio sector is relatively small at present, Government's stated intention to migrate large local services to DAB by the end of 2015 could result in much more spectrum becoming available to launch new community stations.

Research suggests most people are not concerned about single ownership of commercial local radio

5.31 New research conducted to inform Ofcom's understanding of current local media consumption suggests that a majority of consumers are not opposed to single ownership in radio. Around three-fifths (59%) of adults agreed that single ownership in radio was acceptable as long as news remained impartial and accurate, as is required under Ofcom's Broadcasting Code.

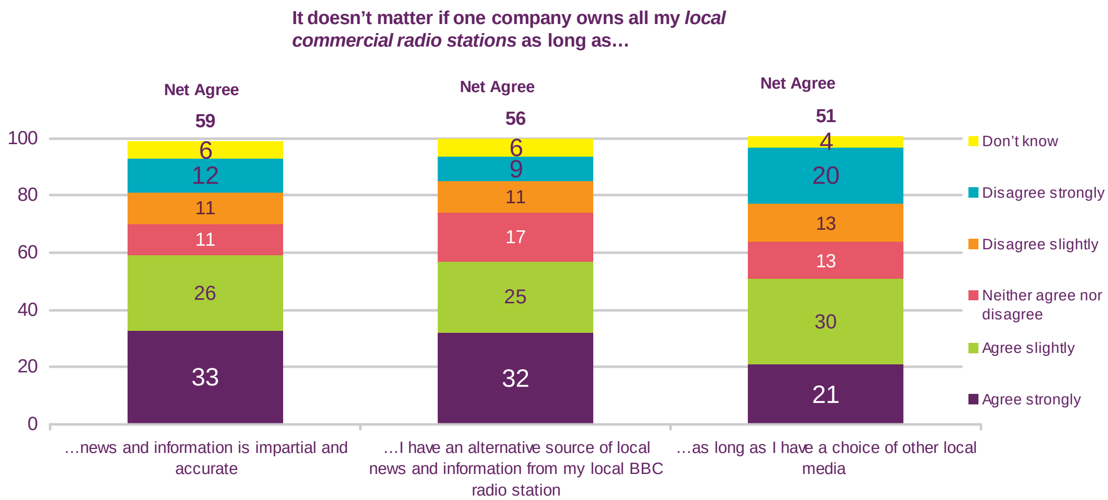
5.32 There were indications that the main concern around single ownership in radio related to potential bias, although radio was considered less influential than press.[38]

5.33 Around half (51%) agreed that a choice of other local media sources was an acceptable alternative to single ownership of all local commercial radio stations.

[37] Ofcom Local Media Research, April-May 2009.
[38] As above.

5.34 The ability of radio to provide information 'on the move' may have impacted acceptability of this option as opposed to concerns around delivery of local content via other sources. Given that the non-local content (e.g. music genre) was the primary driver for choice of local radio station it is not surprising that while most were fairly relaxed about single ownership in radio this was under the proviso that it did not lead to a reduction in choice of radio stations.[39]

Figure 16: Attitude towards single ownership within local commercial radio



Source: Ofcom local media research, April-May 2009
Base: All UK adults (509-525)

There have been three important market developments in local radio since our last review

5.35 As noted, the local media sector is experiencing significant challenges. More specific to radio, since we made our recommendations about the radio ownership rules in 2007, there have been three key relevant developments:

- a continuing increase in DAB penetration, and a Government policy of digital upgrade to take place by 2015, but an emerging picture of difficulties with viability of DAB services and multiplexes under the existing licensing structure;
- ongoing pressures on the commercial business models for analogue local radio, given cyclical and structural declines in advertising revenues; and
- further consolidation of ownership in the radio sector.

There has been an increase in DAB penetration, and government mandated migration will increase this further

5.36 30.7% of households have DAB[40], a year on year increase from 25.9%, and a slightly higher proportion of all adults (32.1%) now live in a DAB household. DAB household

[39] Ofcom Local Media Research, April-May 2009.
[40] RAJAR, Q1 2009

penetration was 21.7% at the time of our last consideration of the radio ownership rules[41].

5.37 Government's stated policy in the Digital Britain Final Report of a digital upgrade for radio should drive DAB penetration still further.

5.38 Our recommendation in 2007 was that the local analogue and DAB services rules be simplified, possibly by bringing together both into a single set of rules.[42] The increase in DAB penetration would strengthen the case for simplification by combination of analogue and DAB service rules.

Financial pressures in the commercial radio sector are considerable

5.39 In 2008, radio industry revenues fell year on year by 6.3%. The most pessimistic forecasts suggest that commercial radio's revenues are forecast by some to decline by up to 20% over the course of 2009, and the potential for further declines between now and 2012.[43]

5.40 If these forecasts are borne out, our analysis suggests that many stations, particularly those outside the major metropolitan areas, could be loss-making by the end of 2009.

5.41 Competition for audiences is increasing, as new sources of audio content gain ground. The gradual migration to digital platforms, and particularly to DAB, puts a strain on stations' resources, with many having to pay for transmission on multiple platforms.

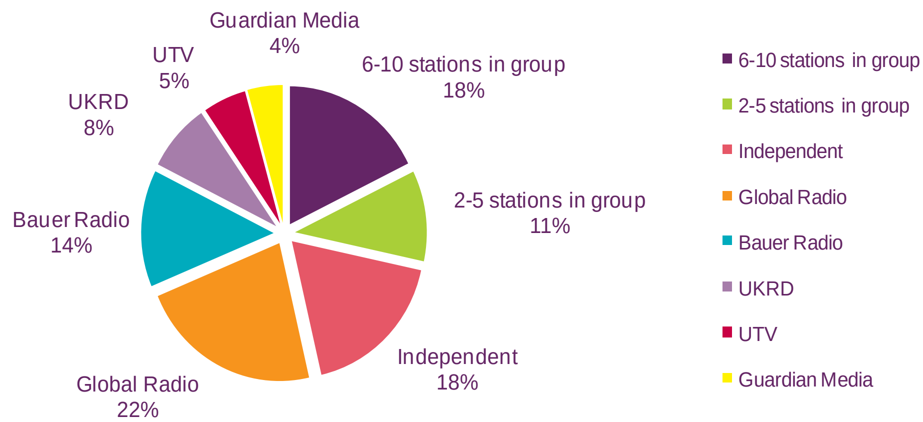
5.42 All these factors mean that the viability of smaller stations is currently under question. This analysis is explored at greater length in our consultation on Radio – the Implications of Digital Britain for Localness Regulation.

There are clear trends towards consolidation

5.43 The radio industry is already dominated by consolidated groups, with 82% of stations already in common ownership (see figure 17).

[41] Future of Radio Statement 4.29, at http://www.ofcom.org.uk/consult/condocs/futureradio07/nextphase.pdf.
[42] Future of Radio Statement 4.82.
[43] *Future of UK Commercial Radio*, produced for Ofcom by Change Agency, 15 March 2009. This is published as an annex to Ofcom's consultation Radio – the Implications of Digital Britain for Localness Regulation for further research.

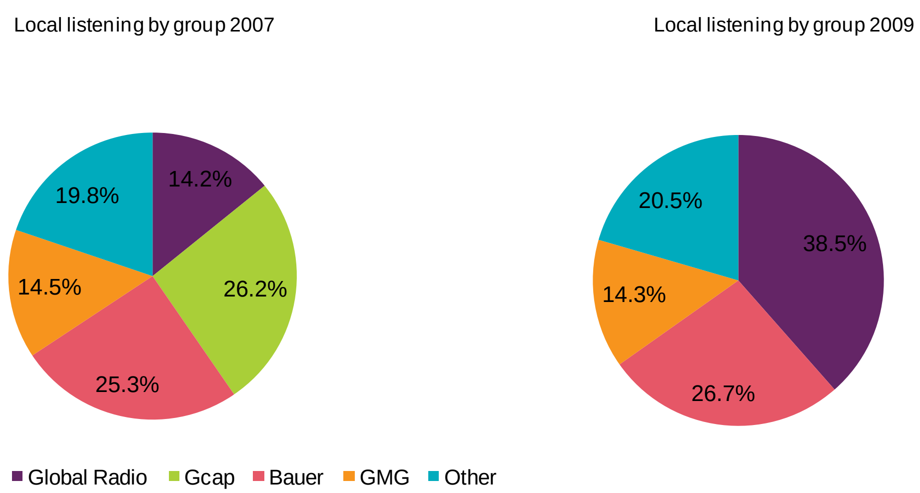
Figure 17: Number of commercial analogue stations owned, by group[44]



Source: Ofcom
Note: The percentages are derived from a universe of stations rather than licenses

5.44 Around the time of our previous consideration of the radio ownership rules, the radio sector was undergoing ownership changes. In early 2007, 80% of commercial radio listening was in the hands of publicly quoted companies. Shortly after, Global purchased Chrysalis (July 2007), Bauer acquired Emap Radio (January 2008), and then Global purchased GCap (June 2008). By mid 2008, 87% of commercial radio listening was in private hands (now 85%, see Figure 18).

Figure 18: Commercial listening by group ownership, 2007 compared to present



Source: Rajar/Ipsos/MORI/RSMB Q1 2007 and Q1 2009

5.45 This consolidation was possible because the local radio service ownership rules act at the level of individual overlapping services and not at group level.

Further consolidation could provide synergies

5.46 Our analysis of the cost structures of the radio industry suggests that significant costs are highly inflexible, meaning that there are few opportunities to reduce costs.

[44] CMR 2008

Figure 19: Breakdown of cost base of radio industry into fixed and variable components (fixed in grey)

Cost category	Constituent costs	Value £m	% of total	Key driver
Sales and marketing	External commission	5.2	1%	Commissions paid to external sales houses
	In-house sales costs	78.1	15%	Commissions, bonuses and salaries for in house sales staff
	Station marketing costs	31.2	6%	Display advertising, marketing at events, etc
Transmission	Transmission	60.6	12%	Transmission costs based on platform
Production	Programming	74.6	15%	High quality studio talent and journalistic staff
	Commercials production	22.9	4%	High quality studio talent and additional fees for voiceover artists
Rights	Rights	46.0	9%	Rights fee structure dictated by rights collection agencies, high base fees for stations existing on multiple platforms
G&A	G&A	189.9	37%	Management salaries, utilities, insurance, transportation, memberships, research
Total		508.6	100%	

Source: Flow of Funds analysis by Value Partners for Ofcom, 2009. Note that G&A includes central costs for groups of stations, e.g. interest repayments on group financing.

5.47 There are already synergies being exploited by consolidated stations (such as central marketing and sales teams). Other opportunities for cost reduction lie in programming and premises (the latter contained in General and Administrative, (G&A), above).

5.48 The principal constraint currently preventing further savings in programming and premises are the licensing localness requirements. Ofcom is currently exploring new ways of regulating localness on commercial radio, which we are consulting on in parallel to this review.

5.49 However, some additional synergies could be possible if stations were commonly owned in the same local market, for example greater integration of sales teams.

5.50 Revenues are dependent on a number of factors, including geographical location, local competitiveness of the radio market, and audience targeted, but above all, on the scale of the station, as defined by its MCA (measured coverage area).

5.51 Our proposals on localness regulation, published in parallel in our consultation on Radio – the Implications of Digital Britain for Localness Regulation, will also address this aspect of station viability. The proposal is that stations should be allowed to merge in order to increase their scale and thus profitability through a new set of defined areas in which station can collocate and share programming. We believe this is the primary change which will help ensure the viability of local radio, rather than changes to the ownership regulation.

5.52 In conclusion, alternative regulation of ownership might allow some cost reductions beyond those currently possible, and may also allow greater diversity of service in local markets of sufficient size. There could be consumer benefits if stations were potentially more viable, and more differentiated in terms of their content offering.

The merger regime and the local radio ownership rules

5.53 Group takeovers such as those described above may require disposal of a handful of individual stations. There could be two reasons for this: the application of the ownership rules by Ofcom, and the application of the merger regime by the OFT/Competition Commission.

5.54 As explained in section 2, the media ownership rules and the merger regime are statutory regimes which operate in parallel to each other. They have different purposes and can have different outcomes. The media ownership rules are intended to protect plurality and the merger regime is intended to prevent consolidation which would lead to a substantial lessening of competition in particular markets. A merger may clear the ownership rules but be prohibited on competition grounds. In such cases, the merger regime may be a more stringent threshold than the ownership rules.

5.55 The opposite could also be true: disposals may be required under the media ownership rules where none or not as many are required under the merger regime. To illustrate, in the most recent acquisition, of GCap by Global, there was an increase in concentration of local station ownership in the Midlands. Ofcom's application of the ownership rules would have required the disposal of four AM services. Separately, in addressing the competition concerns of the OFT, Global gave undertakings that it would dispose of eight services, three AM and five more valuable FM ones. Disposing of these met (and exceeded) the requirements of the media ownership rules.

We are now consulting on recommending removal of the radio local ownership service rules

5.56 As said, Government has stated that it accepts our recommendation to simplify the local radio service ownership rules. However, it has asked us to consider whether we should go further and recommend their total removal.

5.57 There are arguments in favour of removing the rules:

- The financial pressures that stations face may provide some evidence to remove the rules, if stations might be made more viable by being under common ownership in given local markets. Alternative regulation of ownership might allow some cost reductions beyond those currently possible. This could lead to consumer benefits if stations were more viable. The opportunities for consolidation could be increased if the rules were removed rather than merely simplified as we previously recommended.

- The rules are detailed and complex regulation on an industry that is facing financial difficulties.

- New research shows that a majority of consumers are not opposed to single ownership in local commercial radio. If the rules are removed, the BBC's local services and the community radio sector will continue to play a role alongside commercial local radio.

- There is a risk that the application of the rules could act to reduce choice for consumers in local markets. This could occur in cases where the operation of the rules requires station disposal and a buyer cannot be found for stations that must be disposed of. This risk could be heightened in the current economic climate.

- Finally, the Secretary of State will retain the discretion to intervene in the public interest if he believes that a merger raises public interest considerations, including plurality.

5.58 However, there are arguments against removing all the rules, instead of opting to restate our previous recommendation to simplify the local radio service ownership rules:

- We do not have strong evidence that the media ownership rules have operated to prevent consolidation that would make a significant difference to industry viability.

- The increase in DAB penetration and the move by the Government to develop DAB indicates there are additional arguments to combine the rules relating to analogue and digital services into a single set of rules, as we previously recommended.

- Although the merger regime and the media public interest test would remain, these do not apply to the granting of new licences or the provision of new local digital services.

5.59 A related point is the fact that radio is relied upon by 12% of adults as a main source of local news and information. Television (49%) and press (24%) are the sources of local news relied upon most by consumers (see figure 8). While the use of radio as a main source of news by 12% of the population has not changed since the rules were changed by Parliament in 2003, we note that this evidence suggests that a majority of users would not be significantly affected by this change in the rules.

5.60 Taking these arguments into consideration, we believe that on balance there is a case for recommending removal of the local radio service ownership rules. Given the new consumer research that indicates consumers are not opposed to single ownership, and the fact that the industry is facing pressures and the rules represent detailed and complex regulation, it may be disproportionate to maintain the local radio service ownership rules, balanced against the relative benefits that the rules achieve for citizens and consumers. We are minded to go further than our 2007 recommendations, and recommend removal of the local radio service ownership rules.

We seek stakeholder views and supporting evidence on our recommendation to remove the local radio service ownership rules.

Local radio multiplex rules

5.61 Our 2007 recommendations to the Secretary of State included the suggestion that the local DAB multiplex ownership rules should be simplified. In its Digital Britain Final Report Government accepted this recommendation.

5.62 We have not found any evidence to suggest that we should change our recommendation on this. Common ownership could secure investment in DAB transmission, at a time when there is continuing fragility of the DAB market, and a government intention (announced in the Digital Britain Final Report) to pursue a policy of digital upgrade that will require investment in and re-planning of local DAB multiplexes.

Local cross media ownership rules

The rules prohibit the cross ownership of local media in three ways

5.63 The local cross media ownership rules restrict ownership in three ways:

- **Regional 3 licence and local newspapers**

5.64 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**

5.65 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. It is a complicated system and a detailed explanation of it is set out in Annex 5.

5.66 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**

5.67 No one person may hold at the same time:

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

There is little immediate commercial appetite to consolidate across media

5.68 In section 4, we described the economic pressures currently being experienced in local media.

5.69 These pressures are relevant to our consideration of the media ownership rules because if businesses are struggling to be sustainable and the rules are hindering their ability to respond to market conditions, there may be a case for recommending a change to the rules. This would be of direct benefit to citizens and consumers because relaxation could help ensure sustainability and therefore the ongoing availability of viewpoints to the consumer.

5.70 Cross-media business models are one way the sector could respond. This could provide consumer benefits (for example, a cross-platform experience) and be an efficient and effective way of delivering news content.

5.71 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.

5.72 At present, few providers operate across all media platforms, with most concentrating businesses on a single platform. There is, however, some cross media ownership between regional newspapers and radio (for instance, Guardian Media Group and Tindle) and between regional television and radio (UTV).

5.73 Analysis by Oliver & Ohlbaum suggests that at present there may be greater scope for cost saving and revenue benefits from *intra* media mergers than *cross* media mergers. As an example, there is significant pressure for consolidation within local and regional press at present.

5.74 Between ITV regional television and press there could be synergies due to the potential to co-ordinate news gathering and share some overhead costs.

5.75 Between radio and press, potential cost synergies exist as a result of merging newsgathering, advertising sales and overhead management operations. This is due to the relative scale of these businesses geographically. However, the potential synergies may still be limited because:

- most radio stations journalists also present the news on air;
- few brands advertise on both radio and press and advertising sales methodology differs considerably for radio and press; and
- radio management roles are specific to radio functions.

5.76 It is not clear that a greater level of cross ownership between radio and press would deliver any revenue synergies.

5.77 The limited number of cross platform mergers to date is also evidence suggesting that potential synergies may not be a significant commercial driver.

5.78 If it occurs, cross media consolidation is most likely between press and radio, which could play out as set out in the following table.

Figure 20: 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 • No evidence of increased pricing power to drive revenues • Global Radio and Bauer Radio focused on internal group synergy exploitation • 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 • Unlikely to be interested in a piecemeal approach to radio station acquisition and synergies would then be limited • Likely to be isolated examples • Where already possible there are few examples of mergers between local stations and local press operations

Source: Oliver & Ohlbaum Analysis

5.79 However, commercial pressure is not the only consideration when reviewing the operation of the media ownership rules. This needs to be balanced against ensuring there is a range of viewpoints available across the media relied upon most by consumers for local news.

Newspapers, television and radio all remain important sources of news

5.80 The local cross media ownership rules are designed to ensure plurality across what government considered were the three most important local media - regional television, local newspapers and radio.

5.81 As discussed above and in section 4, while the internet is having an impact on consumption of other local media sources, television, newspapers and radio are still the main sources of local news for the majority (see figure 8).

Two-thirds of adults agree that local cross media ownership of television, press and radio is acceptable under certain circumstances

5.82 In new research conducted to inform Ofcom's understanding of current local media consumption, press, radio and television were considered the three key established and engrained sources of local media – most respondents were used to dipping in and out of all three and hence were used to accessing local news from various providers.[45]

5.83 Ofcom's research on local media indicates that while instinctively respondents were initially concerned about the idea of cross media ownership most perceived the BBC to provide an adequate and trustworthy alternative service to commercial providers[46].

5.84 Anxiety was driven by concerns around the potential for reduction in quality and loss of 'localness' as well as concerns around impartiality. Even amongst those not

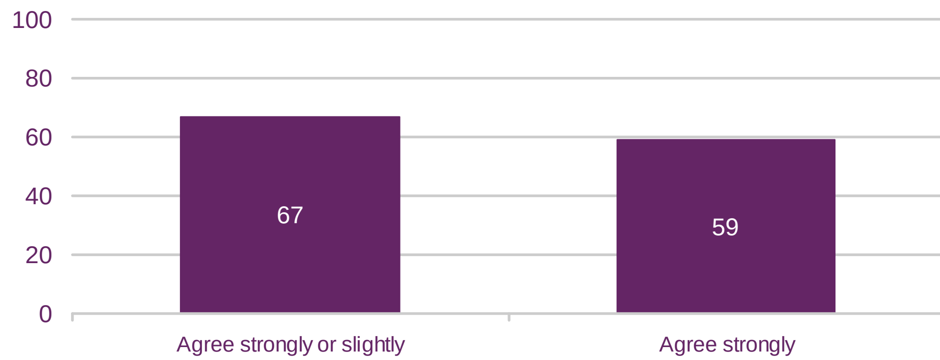
[45] 41% use radio and TV and newspapers at least weekly.
[46] Local media qualitative research, April 2009.

opposed to cross media ownership there was a general feeling that any alternative multi local media provider should retain: 'local personality', a 'friendly feel' and 'alternative broadcasting times'.

5.85 In total 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 b) alternative sources from the BBC or c) local news and information online. The majority were in strong agreement (59%). 16% disagreed with local cross media ownership in all of the circumstances described.

Figure 21: Attitude towards cross media ownership

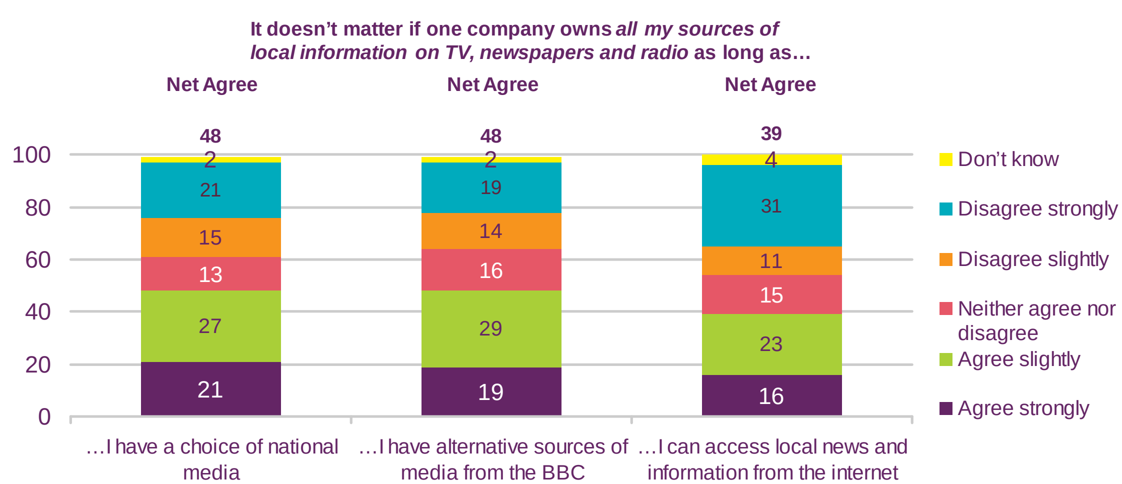
% agree as long as retain a choice of national media and/or alternative sources from BBC and/or local content online



Source: Ofcom local media research, April-May 2009.
Base: All UK adults (509).

5.86 Analysis of agreement with each of the individual statements indicates that support for cross media ownership would decline if only one or two of these provisos were assured. There was least support for only ensuring local content was available online – responses to this scenario were polarised with two-fifths in agreement and two-fifths in disagreement.

Figure 22: Attitude towards cross media ownership



Source: Ofcom local media research, April-May 2009.
Base: All UK adults (509) .

We are now consulting on whether we should recommend liberalisation of the local cross media ownership rules

5.87 In reviewing the local cross media ownership rules we have examined three possible recommendations to the Secretary of State.

5.88 The first is whether the local cross media ownership rules should be removed entirely; the second is whether we should retain the rules as they currently are; and the third is the potential to liberalise the rules. We consider each of these in turn and draw from the evidence set out above.

Option 1 - Remove the rules entirely

5.89 One option is that we recommend that all the rules relating to local cross media ownership are removed.

5.90 The arguments in favour of this option are:

- Research shows a majority of people are not concerned about local cross media ownership.
- There are varied and widespread sources of local news, which also operate alongside the BBC to contribute to local media plurality.
- Removing the rules would reduce regulation on a sector that is facing significant change creating economic pressures.
- The Secretary of State will retain the discretion to intervene in the public interest if he believes that a merger raises public interest considerations, including plurality.

5.91 The arguments against removing the rules are:

- While there are other sources of local news, consumer behaviour has not yet significantly changed. People still rely on television, newspapers and radio as their main source for local news. Therefore the reasons that Parliament put the rules in place remain.
- Evidence suggests there is little immediate commercial appetite to consolidate across media – current trends are to consolidate within the newspaper and radio industries. Removal of the rules is unlikely to significantly help the sector as a whole respond to economic pressures.
- If the rules are removed at the same time as the local radio service ownership rules are removed, there is potential for one commercial entity to own, and set the news agenda across, the three main sources of news in a local area.

Option 2 - Retain the rules as they currently are

5.92 Another option is that we recommend the rules be retained in their current form.

5.93 The arguments in favour of this option are:

- Evidence suggests there is little immediate commercial appetite to consolidate across media – current trends are to consolidate within the newspaper and radio industries. Removal of the rules is unlikely to significantly help the sector as a whole respond to economic pressures.

- Consumer behaviour has not yet significantly changed. People still rely on television, newspapers and radio as their main source for local news. Therefore the reasons that Parliament put the rules in place remain.

- The operation of the existing rules is not discretionary and provides a clear framework for industry.

5.94 The arguments against this option are:

- Research shows a majority of people are not concerned about local cross media ownership.

- Retaining the current rules may not provide sufficient flexibility for local media businesses to adapt to operate across media in future. However, the way that local media will change in the future is uncertain.

Option 3 – Liberalise the rules

5.95 Another option is to recommend liberalising the rules so that one operator cannot own all of the local media.

5.96 This could be done by removing the detailed restrictions on local cross media ownership which prohibit any combination of cross ownership across a local analogue radio licence, a regional Channel 3 licence and one or more major local newspapers.

5.97 Instead as a safeguard retaining only the restriction (based on the current provisions, including definitions, set out in existing secondary legislation) that no one person may hold at the same time:

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

5.98 This would allow some consolidation (for example, between radio and newspapers) while protecting a minimum level of plurality in local areas.

5.99 The key arguments in favour of this option are that:

- As described above, consumer behaviour has not yet significantly changed. People still rely on television, newspapers and radio as their main source of local news and that means that owners of these sources can still exert influence in local news. This option retains a minimum protection for plurality. This is an interest that Parliament felt was important when the rules were enacted.

- We recognise the local media industry is under pressure and some liberalisation, if proportionate, could help local media respond. Evidence suggests the greatest potential for synergies exists between cross consolidation of local press and radio.

- Research shows a majority of people are not concerned about local cross media ownership.

- Liberalising the rules so that they allow greater consolidation between two different media but still restricting ownership of all three media could be the appropriate balance between the two policy aims of ensuring a minimum level of plurality and allowing companies the freedom to innovate.

5.100 The key arguments against this option are that:

- Evidence suggests there is little immediate commercial appetite to consolidate across media – current trends are to consolidate within the newspaper and radio industries.

- While it is uncertain how developments in local media will progress, if cross media models are pursued, this option may not be sufficiently flexible to allow industry to adapt. In that case, removal might be a more appropriate option.

5.101 On balance, taking all these arguments into account, we believe that some liberalisation is the most appropriate recommendation. This ensures some rules are still in place restricting full cross-media ownership of the main sources of local news and thereby ensuring a minimum level of plurality in local media. On the other hand, it provides some flexibility for limited instances of cross-media consolidation to occur, which may help industry respond to economic pressures.

5.102 In the medium to long term, further changes to the local cross media ownership rules may be appropriate as the market develops and cross media businesses emerge – however it is not yet clear how this will develop. Both changes in consumer behaviour, and the way that local media businesses are developed will need to be taken into account.

5.103 The liberalisation we are suggesting represents our view on the appropriate balance between the two policy aims of ensuring a minimum level of plurality and allowing companies the freedom to innovate. However, we recognise there are arguments for and against all these options for future changes to the rules. As a result, we seek views supported by evidence on this recommendation before we put it forward to the Secretary of State.

We seek views and supporting evidence on our recommendation that the local cross media ownership rules be liberalised

Section 6

National media ownership rules

Introduction

6.1 In this section, we consider the rules which apply specifically to the national media sector. The section looks at the national cross media ownership rules (which relate to Channel 3 and to national newspapers) and the national radio multiplex ownership rule.

The key points covered in this section are:

<u>The national cross media ownership rules</u>

- The national cross media ownership rules prohibit cross-ownership of Channel 3 and national newspapers. Parliament put these rules in place to allow a level of cross media ownership while protecting plurality and diversity in national media.
- We have found that Channel 3 and national newspapers remain important sources of national news.
- Although public service broadcasters share has declined, it is still the majority of viewing and public service broadcasters still have a strong position of influence. Although ITV 1's share of overall viewing for national news has declined, it still has the largest share after the BBC.
- The market shares of national newspapers have been broadly constant.
- Our proposed recommendation is that the national cross media ownership rules are retained.

<u>The national radio multiplex ownership rules</u>

- We also consider the arguments for retaining or removing the national radio multiplex ownership rule. The rule currently does not apply as there is only one national multiplex.
- The most likely scenario under which a second national multiplex will be launched, will see it being created from the existing regional multiplexes, as we discuss in our consultation on Radio – the Implications of Digital Britain for Localness Regulation published concurrently. Government's Digital Britain Final Report proposed changes to legislation that would allow this.
- In the case of multiplexes, ownership is not a direct proxy for voice, and that in the case of the television multiplexes, there is no ownership restriction.
- In the national digital radio market, Government's primary policy is one of digital migration, and ownership may be a secondary consideration to this.
- Our proposed recommendation is that the national multiplex rule is removed.

National cross media ownership rules

The rules prohibit cross-ownership of Channel 3 and national newspapers

6.2 The national cross media ownership rules prevent:

- one entity owning both a Channel 3 licence and one or more national newspapers that have an aggregate market share of 20% or more; and
- the owner of one or more national newspapers (with an aggregate market share of 20% or more) owning more than a 20% interest in a company which holds a Channel 3 licence.

These rules allow some cross media ownership but at the same time protect plurality in national media

6.3 Parliament's purpose in enacting the national cross media ownership rules was to prevent individuals from accumulating too great a share of the national media voice by accruing significant interests across different types of media.

6.4 The overarching aim of the national cross media ownership rules is to create a regulatory framework which allows a level of cross-ownership between television and newspapers (thereby allowing commercial freedom and innovation), but which limits it where necessary to help ensure consumers have access to a range of news providers and thus a level of plurality.

6.5 The current rules refer specifically to Channel 3 and national newspapers as, at the time the rules were enacted, they were both considered to have a high level of potential influence.

6.6 As noted in section 2, the national cross media ownership rules operate separately from the merger regime and the media public interest test.

Television and national newspapers are still important sources of national news

6.7 Section 4 explores the changes underway in consumption of national news.

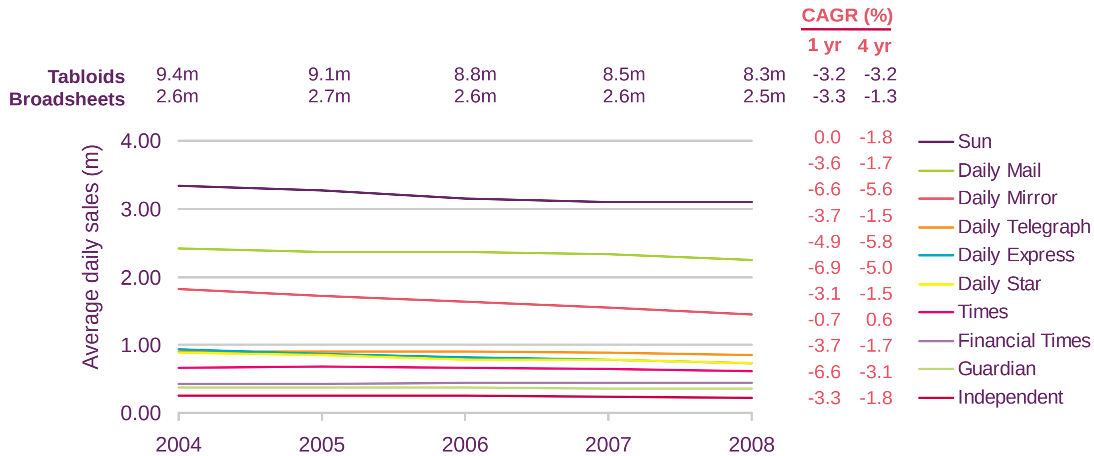
6.8 Although many consumers now have access to an increasing range of television channels and to the internet, our evidence shows that television and newspapers are still important main sources of national news.

6.9 Figure 4 shows that the internet is a growing source of news, but television is the main source of UK news for the overwhelming majority of people. Almost three-quarters (74%) of people say it is their main source of UK news (see figure 4).

6.10 Newspapers have declined in importance as a main source of news but are still the main source for 8% of consumers in 2009. They also are regularly used with 47% of consumers regularly reading them each weak day. So while newspapers importance may have declined as a main source of news, they remain a significant source of news and also have an important role in setting the news agenda.

6.11 If we look at the circulation figures for national newspapers, we find a modest but steady decline. The average daily sales of broadsheet newspapers fell by 1.3% between 2004 and 2008 and for tabloids the fall over the same period was 3.2%.

Figure 23: National daily newspaper circulation, 2004-2008



Source: Ofcom/ABC/MediaTel. Excludes Saturday Financial Times and all Sunday newspapers.

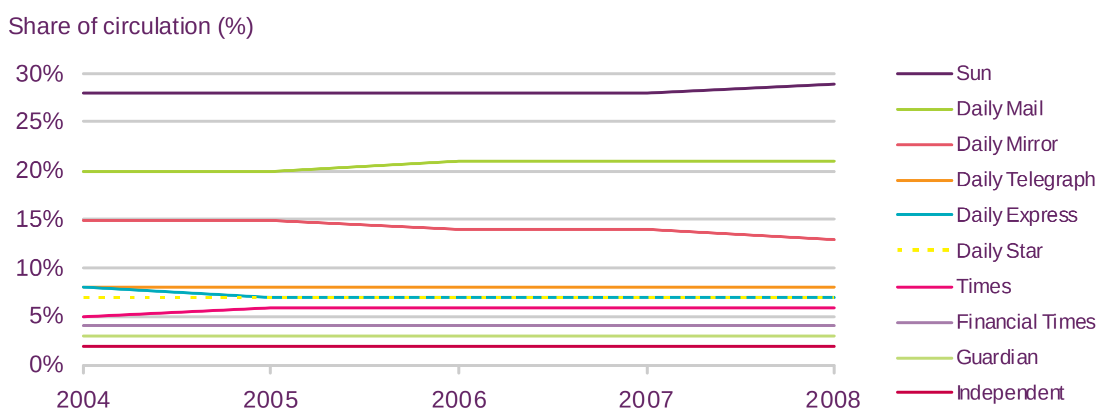
6.12 In addition to overall circulation declines the industry is facing challenges from the economic downturn and online alternatives.

There have not been significant changes in ownership patterns of national newspapers and market share has not changed significantly

6.13 Since 2006 there have not been any significant overall changes in ownership among national newspaper groups.

6.14 At an individual title level the market shares of the main national newspapers have remained broadly constant since these national cross media rules were enacted. For example, the figure below shows the circulation share of the major national daily newspapers (excluding Sunday papers).

Figure 24: Major national daily newspapers - share of circulation, 2004-2008



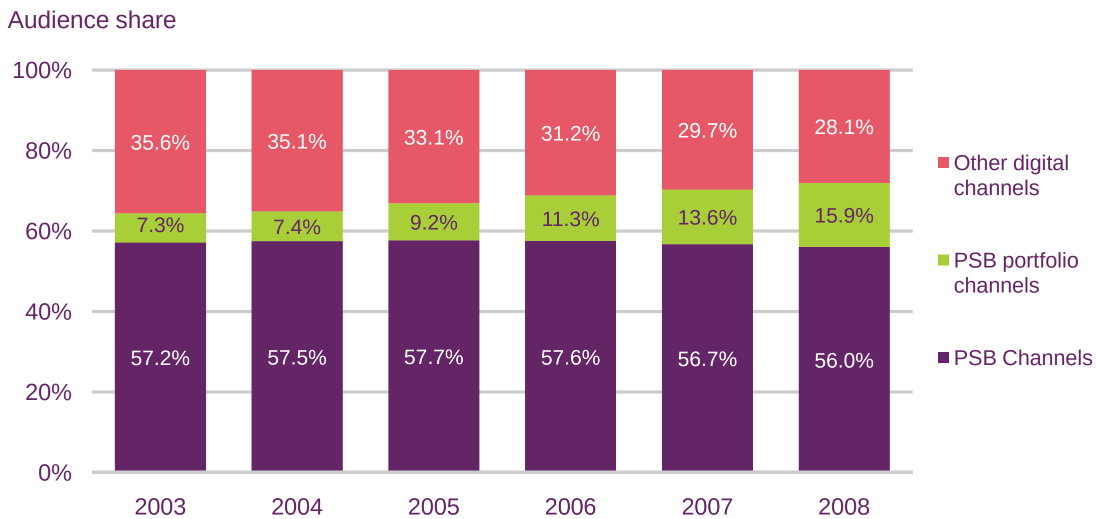
Source: Ofcom/ABC/MediaTel. Excludes Saturday Financial Times and all Sunday newspapers.

Public service broadcasters still have a strong position of influence

6.15 Although share for public service broadcasters has declined, it is still the majority of viewing and public service broadcasters still have a strong position of influence.

6.16 In multichannel homes, the five main public service broadcaster channels shed 1.2% of their share during 2008. But their portfolio channels[47] all continued to attract a growing share of viewing. As a result, the combined share of the five PSB services and their portfolio channels rose by 1.6 percentage points, or 2.3%, to reach 71.9% in 2008.

Figure 25: PSB and portfolio shares in multichannel homes



Source: BARB

ITV's portfolio share has increased

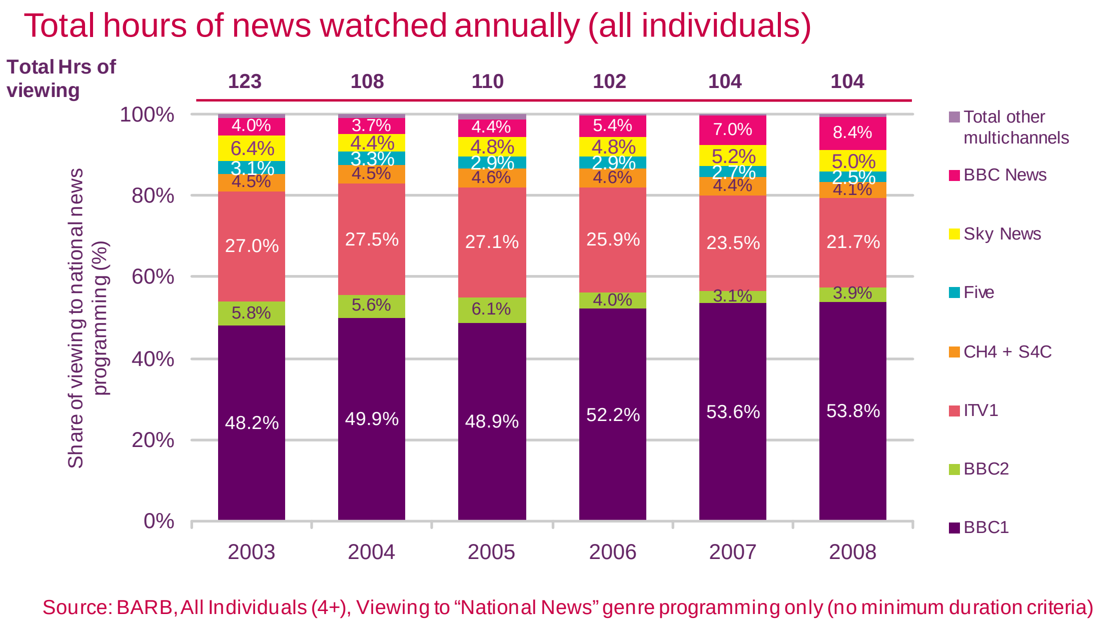
6.17 ITV's digital channels have played an important role in offsetting ITV1's falling share and the broadcaster has managed to build its overall viewing share in multichannel homes over the past five years. In 2008, the main channel attracted a 17.2% share of viewer hours in multichannel homes, down by 0.4 percentage points since 2007 and by 2.1 percentage points since 2003. Over the same period the digital-only channels' collective share rose from 2.9% in 2003 to 5.3% in 2008. The net result was a 0.5 percentage point increase in ITV's portfolio share, to 22.6%.

ITV1' s share of overall viewing to national news has declined but it still has the largest share other than the BBC

6.18 In terms of the audience share specifically for news, we have found that while ITV1's audience share for news programming is declining, it remains the second largest provider of free-to-air national news after the BBC.

[47] BBC Three, BBC Four, CBeebies, CBBC, BBC News, BBC Parliament, ITV2, ITV3, ITV4, CiTV, Men & Motors, GMTV2, E4, More4, Film4, 4Music, Fiver, Five USA.

Figure 26: Total hours of news watched annually, 2003-2008



6.19 While changes to the broadcasting market may change this mix, to date ITV1 remains the most watched alternative source of news after the BBC.

6.20 This evidence indicates that, despite the rapid increase in the take up of digital television and broadband since our last review, it does not appear that the original rationale for the national cross media ownership rules being applied to national newspapers and Channel 3 has been undermined.

We are now consulting on whether the national cross media ownership rules should be retained

6.21 In reviewing the national cross media ownership rules, we have examined three possible options for recommendation to the Secretary of State.

6.22 The first option is whether we should recommend that the national cross media ownership rules be removed entirely. The second is whether the rules should be expanded to encompass a greater number of national cross media ownership scenarios; and the third is whether the rules should be retained as they are.

Option 1 – Remove the rules entirely

6.23 One option we have looked at is whether the rules could be removed entirely.

6.24 This recommendation would be appropriate if the extent of change in the sector at the national level means that the rules are no longer needed to protect plurality.

6.25 For example, if newspaper readership and/or ITV1's viewing share had declined dramatically it could be argued that there would no longer be the potential for an undue level of influence in national media if a single owner controlled both a national newspaper and a Channel 3 licence.

6.26 However, we have found that ITV1 continues to have a significant audience share, particularly in news. While its audience share for news is declining, it remains the second largest provider of free-to-air national news after the BBC.

6.27 Similarly, while there has been a decline in newspaper readership, it remains a significant media.

6.28 We do not think that the evidence shows a significant enough change in consumer behaviour to mean that newspapers and ITV1 no longer have the scope to have a significant influence in national news. Therefore we don't think it is appropriate to remove the rules.

Option 2 – extend the rules to cover more national cross media ownership scenarios

6.29 Another potential option would be to recommend that the rules be expanded to cover more national cross media ownership possible scenarios. For example, the rules could be extended to include other PSBs at a national level.

6.30 However, for extension of the rules to be a rational recommendation, we would need to identify evidence showing that the consumption patterns of traditional media have changed to such an extent that there is now a greater threat to the provision of plural views in other areas. We do not consider that the evidence supports this.

6.31 For example, there remains a significant gap between ITV1 and the provider with the next greatest audience share for national news (Ch 4 + S4C at 4%).

6.32 As consumption patterns and ownership distribution are still broadly the same as when the rules were enacted in 2003, we therefore don't think that there is a strong argument to extend the rules.

Option 3 – retaining the national cross media ownership rules as they are

6.33 We think it is reasonable to conclude that Parliament's rationale for putting the rules in place is still applicable given the evidence that the way people consume national news has not yet changed significantly, and in particular the two key pieces of evidence that:

- National free-to-air television and newspapers are still important sources of national news; and
- ITV1 remains the second most significant free-to-air national news provider after the BBC.

6.34 We therefore think that it is appropriate that we recommend to the Secretary of State that the national cross media ownership rules are retained in their current form.

We seek views and supporting evidence on our recommendation to retain the national cross media ownership rules

National Radio Multiplex rules

Developments in the multiplex market and the Digital Upgrade policy announced by Government suggest the primary policy concern is DAB

6.35 At a national level there are no service level radio ownership rules (as opposed to the local level) – there are only rules about multiplex ownership.

6.36 As noted in the preceding section:

- There are rules concerning ownership of radio digital multiplexes: limiting common ownership of multiplexes whose coverage overlaps; and also rules barring ownership of more than one national DAB multiplex.

- Our 2007 recommendations to the Secretary of State included the suggestion that the local DAB multiplex ownership rules should be simplified, or abolished entirely; but the restriction on one person controlling more than one national DAB radio multiplex should be retained.

- In Government's Digital Britain Final Report it accepted these recommendations.

6.37 We have considered whether to recommend retaining the rule or abolishing it.

6.38 At the time of our previous Statement, a second national DAB multiplex licence had been awarded to 4Digital Group ("4DG"); new local DAB multiplex licences were also being awarded.

6.39 Subsequently, 4DG decided not to proceed with their portfolio of national DAB services, and the industry (through the Digital Radio Working Group) has spent much of the past year trying to overcome the obstacles to further DAB take-up. Newly awarded multiplex licences have postponed their launch dates due to uncertainty in the market. Several national and local DAB services have closed (although some new ones have launched).

6.40 Government's Digital Britain Final Report makes recommendations for changing the structure of the industry in order to achieve a digital migration in 2015.

6.41 Arqiva has completed its takeover of Digital One (the national DAB multiplex) and also of Global Radio's (local) multiplex interests. It is possible that a second or further national DAB multiplex may be advertised at some point in the future. We suggest in our radio consultation published concurrently with this document that a second national multiplex could be created from the merger and extension of existing regional multiplexes.

6.42 In the case of multiplexes, ownership is 'once-removed' as a proxy for voice: the possibility is that services carried on those multiplexes may then themselves have ramifications for share of voice available to consumers. Multiplexes could exert influence only indirectly, as gatekeepers for those services.

6.43 Government's stated intention is to achieve migration to digital for national and large local radio services currently carried on FM, by the end of 2015. In considering whether to continue to regulate multiplex ownership, it may wish to consider this as the primary policy goal.

6.44 Government's Digital Britain Final Report proposed new legislation that would give Ofcom powers to allow the creation of a second national multiplex, and our radio consultation published concurrently, makes the proposal that we should allow this.

6.45 We note that there are no equivalent ownership restrictions on television multiplexes and that television generally is considered a more significant medium for news than radio.

We are now consulting on whether the national multiplex rules should be removed

6.46 In conclusion, with regard to the multiplex rules operating at the national level, diversity of services and access by operators to launch services are the two public purposes that these ownership rules are trying to achieve. Multiplex ownership rules do not achieve this in themselves, and could be a possible disincentive to investment, at a time when Government wants to see new services launched on the DAB platform So provided that there are licence conditions to ensure services have fair and open access to multiplex capacity at both a local and national level, there may no longer be a need for specific multiplex ownership rules.

We seek views and supporting evidence on our recommendation to remove the national multiplex rules

Section 7

Restrictions on broadcast licences

7.1 In this section, we review the general and qualified restrictions on who can hold a broadcast licence. We assess whether the operation of the rules, or any changes in consumer behaviour or market developments identified in section 4, might result in the need for the rules to be revised.

7.2 We consider three possible options for the restrictions. Whether the rules should remain in place as they are; whether some, but not all of the rules might need to be revised; or whether all of these rules should be removed.

The key points covered in this section are:

- These restrictions include a list of general and qualified restrictions on who can hold a broadcast licence.
- They were introduced to protect against undue influence through television and radio by owners whose influence over content might cause concern.
- Evidence suggests that despite the growth of digital media, television and radio remain influential.
- As a result, our preferred option at this stage is not to recommend any changes to these restrictions.

These restrictions include general and qualified restrictions on who can hold a broadcast licence

7.3 The media ownership restrictions on holding a broadcast licence fall into two categories:

- general disqualifications, for those who are prohibited from holding all types of broadcast licence; and
- qualified restrictions, for people who are prohibited from holding certain types of broadcast licence.

7.4 We explain these in further detail below. The restrictions are complex and apply differently to different organisations and licences. We have provided a summary below and in Annex 4. In this section we explain the reasoning supporting these restrictions, based on our analysis of Parliament's intention at the time.

General disqualifications

7.5 The general disqualifications list organisations and individuals who are prohibited from holding any broadcast licence. Broadcast licences are granted under the Broadcasting Act 1990 or the Broadcasting Act 1996 for independent television services, independent radio services, digital terrestrial television broadcasting and digital terrestrial sound broadcasting ("a broadcast licence").[48]

[48] It is a criminal offence to provide broadcasting services without a licence (sections 13 and 97 Broadcasting Act 1990).

7.6 Organisations that cannot hold a broadcast licence are:

- local authorities;[49]
- political bodies;
- advertising agencies; and
- persons who, in the opinion of Ofcom, are subject to undue influence by a disqualified person such as to act against the public interest.

7.7 The BBC[50] and Welsh Authority[51] are also prohibited from holding a broadcast licence. This is because they are licensed separately.

7.8 In addition, any organisation or individual who is named as a restricted person under Part II, Schedule 2 of the Broadcasting Act 1990 is prohibited from holding a broadcast licence.

Qualified Restrictions

7.9 Qualified restrictions prevent certain organisations from holding some types of broadcast licences.

7.10 In cases of qualified restrictions, Ofcom can and does grant different types of broadcast licences to organisations.

(i) Religious Bodies

7.11 Religious bodies are prohibited from holding the following licences:[52]

- channel 3 licence;
- channel 5 licence;
- a national sound broadcast licence;
- a public teletext licence;
- an additional television service licence;
- a television multiplex licence; and
- a radio multiplex licence.

7.12 However, subject to the approval of Ofcom, religious bodies may hold other types of broadcast licences.[53] Further detail is provided below.

(ii) Publicly funded bodies

[49] Subject to the provisions of section 142, Local Government Act 1972 which allows local authorities to broadcast information relating to their activities.
[50] The licence of the BBC is not granted under the Broadcasting Act 1990 or the Broadcasting Act 1996, but by Royal Charter.
[51] Similarly, the S4C Authority, which is responsible for the provision of Welsh language television programme services, is not licensed under the Broadcasting Acts 1990 or 1996. It was established under the Broadcasting Acts 1980/81.
[52] Schedule 14 Part 4 Communications Act and Section 2, Part II, Schedule 2, Broadcasting Act 1990.
[53] Guidance for religious bodies applying for a Broadcasting Act licence, http://www.ofcom.org.uk/tv/ifi/tvlicensing/guidance_notes_and_apps/guide_rel_bod/

7.13 Publicly funded bodies (i.e. those receiving more than 50% of their funding from the public purse) cannot hold radio services licences, with the exception of restricted service licences (RSLs).[54] RSLs are licences which are issued for a particular establishment, or other defined location, or a particular event, in the UK.

(iv) Broadcasting bodies

7.14 BBC subsidiaries are prohibited from holding the licences for:

- regional or national Channel 3 services;
- channel 5 services; and
- national, local or restricted radio services.[55]

7.15 Channel 4 and S4C subsidiaries may not hold Channel 3 or Channel 5 licences.[56]

These restrictions were introduced to protect against undue influence through television and radio by owners whose influence over content might cause concern

7.16 The rationale for the disqualifications and restrictions on holding a broadcast licence was primarily to protect against undue influence through television and radio by owners whose influence over content might cause concern. The assumption behind these restrictions, as outlined in section 2, was that television and radio are particularly influential media.

7.17 When Parliament introduced these rules, different restrictions were placed on different bodies, based on Parliament's judgement about the types of organisations that might cause concern, such as political parties and religious bodies. Looking in more detail at specific organisations, and through our analysis of the second reading of the Bills, we have identified specific reasons why Parliament decided that certain organisations could not hold any, or could not hold certain types of, broadcast licences. There are broadly two objectives for the restrictions: undue influence and plurality.

Undue influence

(i) Advertising agencies

7.18 Based on analysis of parliamentary debates at the time, the rationale for disqualifying advertising agencies from holding any type of broadcast licence was undue influence and a risk of unfair commercial advantage in the advertising market.

(ii) Local authorities

7.19 Local authorities are prohibited from holding a broadcast licence. The restriction was introduced as Parliament believed that local authorities might influence the editorial content and the agenda of broadcasts.

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[54] Section 3, Part II, Schedule 2, Broadcasting Act 1990.
[55] Section 5(A), Part II, Schedule 2, Broadcasting Act 1990.
[56] Section 5(A), Part II, Schedule 2, Broadcasting Act 1990.

7.20 However, there is an exception to this which allows local authorities to hold a radio service licence in order to broadcast information relating to their activities. Ofcom has not awarded any broadcast licence to a local authority for this purpose to date.

(iii) Political bodies

7.21 Political bodies are prohibited from holding a broadcast licence on the grounds of due impartiality.

7.22 Parliament was concerned about the undue influence which political bodies might have if they owned a broadcast licence, particularly given that the number of broadcast licences available was very limited at this time due to scarcity of analogue spectrum.

(iv) Religious bodies

7.23 As with political bodies, Parliament restricted religious bodies from holding certain types of broadcast licences because it was concerned that they would have undue influence.

7.24 However, Parliament did not prohibit religious bodies from holding all types of broadcast licences. Religious bodies are able to apply for other types of licences such as restricted television service, digital television programme service and television licensable content service licences.[57]

7.25 To date, Ofcom has issued the following broadcast licences to religious bodies:

- 1 local commercial radio licence;
- 3 DAB programme service licences;
- 12 television licensable content service (TLCS – cable and satellite television licences);
- 10 community radio licences; and
- several satellite radio licences.[58]

Plurality

(v) Broadcasting bodies

7.26 BBC subsidiaries, Channel 4 and S4C are disqualified from holding the licence for Channel 3 or Channel 5.

7.27 This rule was put in place by Parliament to maintain plurality in television. It was important to prohibit ownership of multiple licences, particularly when there were so few licences available on free-to-air analogue television.

[57] Under Part 4, Schedule 14 of the Communications Act, Ofcom will consider the appropriateness of religious bodies to hold a licence. Guidance for religious bodies applying for a Broadcasting Act licence is available at: http://www.ofcom.org.uk/tv/ifi/tvlicensing/guidance_notes_and_apps/guide_rel_bod/

[58] Radio Licensable Content Service (RLCS) licences.

7.28 Therefore, subsidiaries of the BBC, and Channel 4 and S4C, which were already able to broadcast on television, were prohibited from applying for other licences under the Broadcasting Acts.

We did not recommend any changes to these restrictions in our 2006 review

7.29 In 2006 we reviewed the rules on disqualifications and restrictions on holding a broadcast licence and we did not recommend that the Secretary of State change any of these rules at that time.

7.30 In particular, we looked at the rules on religious ownership of broadcast licences. Here we found that in most cases the situation with regards to spectrum scarcity and influence was similar to that in 2003.

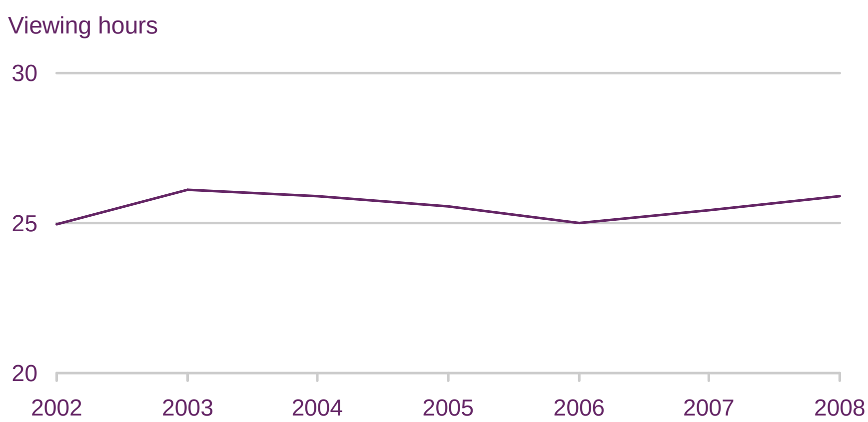
7.31 We also recommended in the 2006 review that Ofcom retain the discretion to decide whether or not to allow religious bodies to hold broadcast licences which are not subject to a general disqualification.

Despite the growth of digital media, television and radio remain influential

7.32 The assumption behind these ownership restrictions was that television and radio are particularly influential media. We therefore consider whether this assumption has been affected by changes in consumer behaviour since 2003.

7.33 Television is the media most regularly used by consumers, with 96% of people using it regularly each working week (see figure 3). Total hours of television viewing per head of population have remained broadly steady since 2003.

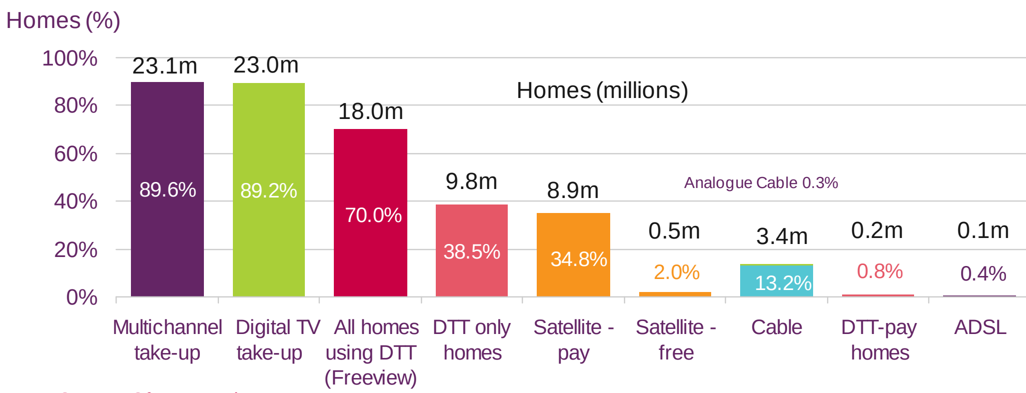
Figure 27: Year on year changes in average viewing hours by head of population



Source: Ofcom analysis

7.34 The greatest change since 2003 is that there has been growing take up of digital television. Television audiences have fragmented across a number of platforms as 89% of homes now have access to multichannel television through DTT, Satellite, Cable or ADSL. Each of these platforms offers multiple channels beyond the traditional five analogue broadcasters.

Figure 28: Multichannel television take-up, Q1 2009

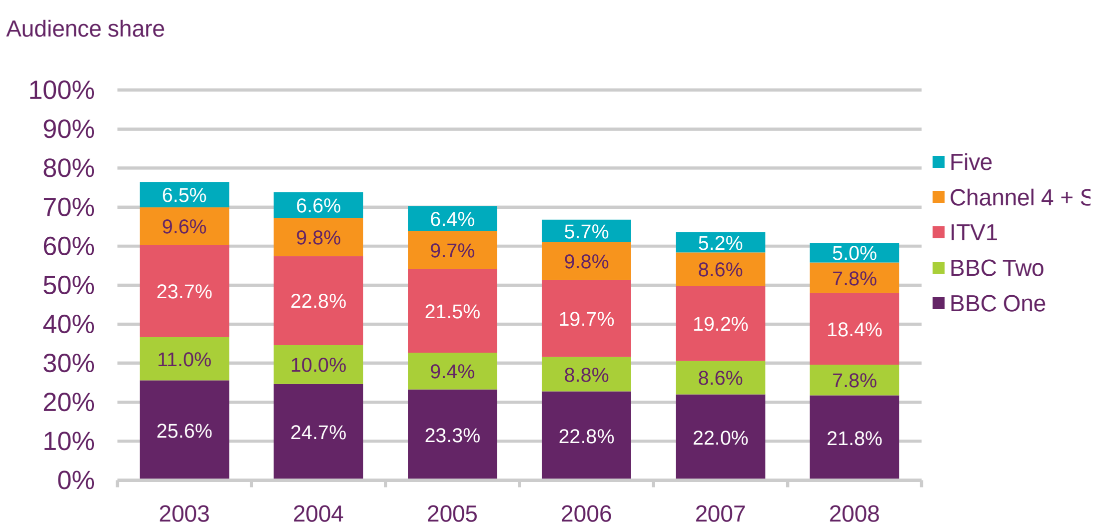


Source: GfK research
Note: Analogue terrestrial homes were estimated at 10.4% (2.7m homes) by Q1 2009.
*Smaller platform figures may fluctuate due to the smaller sample size. Annual and quarterly changes in the chart relate to percentage points i.e. the net change in total take-up rather than the growth rate

7.35 In the future audiences may fragment further if consumers use other platforms to receive television content, for example if there is greater use of the iPlayer, ITV Player or other online television catch up services over broadband.

7.36 Despite this fragmentation the traditional broadcasters retain a large proportion of the audience, and so potential influence, even in the multichannel homes.

Figure 29: Channel audience shares (all homes, all day)



Source: BARB

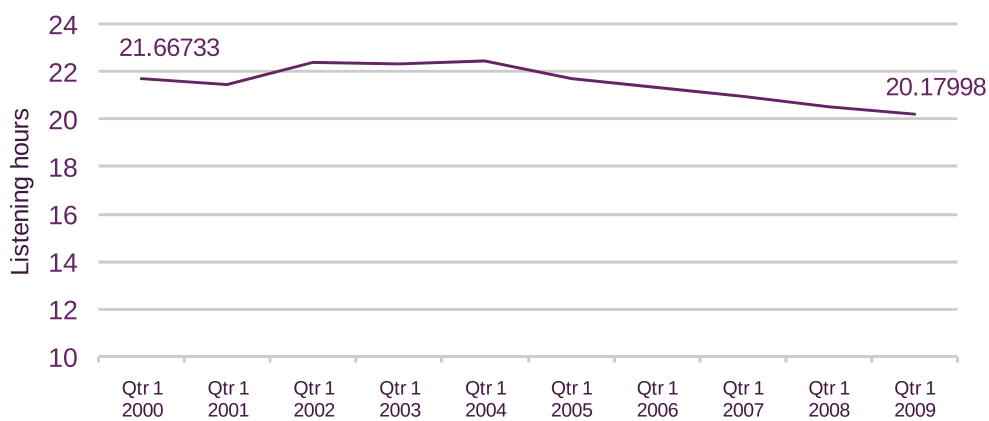
7.37 Figure 29 shows that there has been a steady decline in the audience share of the traditional television channels – BBC One and Two, ITV1, Channel 4 & S4C and Five. However they still retain significant audience shares. In 2008 ITV1's share of 17.2% within multi-channel homes makes it the channel with the second largest audience share and ITV's audience share rises to 18.4% when all homes, including analogue, are considered. As set out in figure 25, the public service broadcasters and their portfolio channels have a majority of viewing.

7.38 In contrast digital only channels that represent the rest of viewing tend to be smaller. The majority of digital channels have an audience share of under 1%[59], and the larger digital channels are often, but not always, associated with the existing traditional broadcasters, for example E4, ITV 2 or Five USA.

7.39 Despite the rapid growth in multichannel homes enabling a greater percentage of the UK population to view more channels, ITV1 and Five remain influential channels with large audience shares. This is relevant for news provision as television continues to be the main source of news for most (74%) consumers in the UK (see figure 4). We therefore believe that Parliament's restrictions are still relevant as ITV and Five's news provision remains influential and so there is still a risk of undue influence.

7.40 Whilst radio is listed as a main source of UK news for a relatively small proportion of consumers (7%) (see figure 3) radio still retains influence as it is the second most regularly used media with 67% of consumers using it at least three out of five weekdays (see figure 3). As a result although radio listening has fallen slightly per head of population since our last review, as shown in figure 30, the average person continues to listen to over 20 hours of radio per week.

Figure 30: Year on year changes in average listening hours by head of population

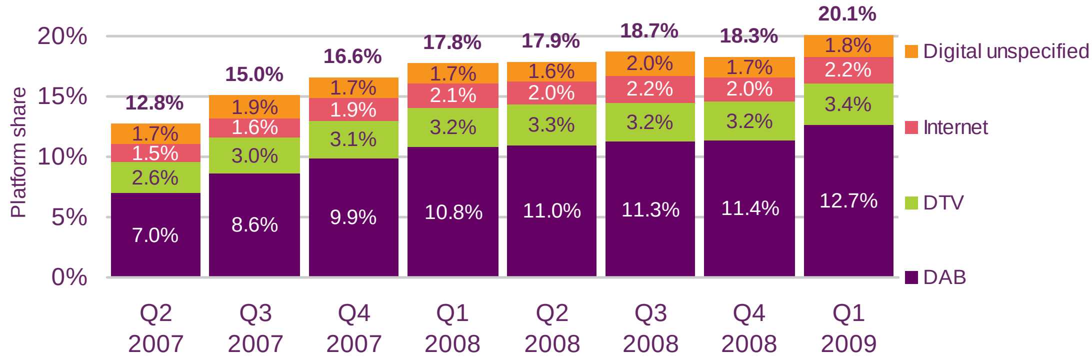


Source: Rajar/Ipsos/MORI/RSMB (average weekly hours per head)

7.41 Growth of radio listening through other platforms remains relatively low compared to the multi-platform fragmentation seen in television. Analogue listening accounted for 79.9% of listening in Q1 2009.

[59] BARB audience data, Multichannel summary found at http://www.barb.co.uk/report/weeklyViewingSummary

Figure 31: Digital listening by platform



Source: Ofcom/RAJAR

7.42 Analogue radio therefore retains a significant element of the total radio audience hours. Yet analogue radio spectrum is limited which restricts the number of radio stations within any given area. Relaxing the ownership rules therefore carries a risk that undue influence might be exerted without the possibility of alternative viewpoints being able to be broadcast, for example if only one political party was licensed to broadcast within a specific area due to spectrum availability.

7.43 Given that radio is still a popular media with regular use, and that analogue radio still retains significant influence, we conclude that the assumptions limiting radio ownership are still valid. We will look again at channel share of Channels 3 and 5 in multichannel homes, radio listening figures, and at what consumers use as their main source of UK news in our next review of the media ownership rules in three years time at the latest, in order to assess whether this might have changed.

Looking in more detail at specific restrictions, we have not found any evidence to suggest that the restrictions should be relaxed

(i) Undue influence

7.44 As stated above, the restrictions prohibiting political bodies and advertising agencies from holding broadcast licences, and restricting the licences which religious bodies and local authorities can hold, are in place to prevent groups which Parliament believed might have undue influence from holding broadcast licences.

7.45 If conditions had changed to the extent that radio and television were no longer influential, then there may be a case to change these restrictions. However, looking at the evidence in figures 30 and 31 above, television and radio remain influential. Therefore, we do not believe that conditions have changed enough to require altering the restrictions which prohibit these bodies from holding a broadcast licence.

(ii) Plurality

7.46 The rationale for prohibiting BBC subsidiaries and Channel 4 and S4C from holding the licences for Channel 3 and Channel 5, as well as national, local and restricted radio services, was to maintain plurality.

7.47 As shown in figure 9 above, the five main terrestrial television channels continue to have significant influence in UK homes. Also, radio consumption remains significant, with the average person listening to approximately 20 hours of radio per week.

7.48 It is relevant to consider whether recent changes in ability of the public service broadcasters to deliver plurality have any bearing on whether this restriction should remain in the future.

7.49 In our final statement of our second public service broadcasting review, published in January 2009,[60] we identified two reasons why the free to air advertising model, which funds the delivery of public service content by the commercial public service broadcasters, is under increasing pressure.[61] The first was the structural pressures brought about by the migration to a fully digital market and the other was the cyclical effect of the current economic downturn.

7.50 In our review, we advised that a strong second institution with clear public purpose goals and a sustainable economic model would help to ensure wide availability of public service content.[62] However, while Channel 4 has played this role and is valued by audiences, its current funding model is unlikely to be sustainable in the future.

7.51 Government has examined possible partnership options for Channel 4 as part of its Digital Britain Final Report to help sustain its delivery of public service content. Options include: a strategic joint venture between Channel 4 and BBC Worldwide; a merger between Channel 4 and a private sector partner with majority public ownership; or a stand-alone Channel 4 with a new and more online focused remit.

7.52 On balance, Government's conclusion, which has been strongly supported by the Board of Channel 4, is that a minority privatisation could not be assured of delivering the desired public policy objectives over the long term. Therefore the media ownership rules do not need to be changed to accommodate a potential merger between Channel 4 and Channel 3 or Channel 5.

7.53 Government has indicated continued support for option one and welcomes the ongoing work between Chanel 4 and BBC Worldwide on a series of partnerships around digital channels, advertising and DVD sales and believes that such ventures have the potential to deliver significant value to both parties.

We are now consulting on whether we should recommend the rules be retained in their current form

7.54 We have considered three options for the broadcasting restrictions to assess what our recommendation should be to the Secretary of State.

7.55 The first option we have identified would be to retain the rules in their current form. The second would be to relax some – but not all – of the rules on who is able to hold a broadcast licence. The third option would be to remove all the restrictions (general and qualified) on who can hold a broadcast licence.

Option 1 – Retain the rules in their current form

[60] PSB Review Statement: Putting Viewers First, http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement/psb2statement.pdf
[61] PSB Review Statement: Putting Viewers First, p. 34.
[62] As above, p. 63.

7.56 One option would be for Ofcom to recommend that the Secretary of State retain these rules in their current form.

7.57 As set out above, evidence suggests that television and radio continue to be influential media.

7.58 At the same time, despite a significant rise in the number of multichannel homes in the UK, Channel 3 and Channel 5 continue to attract significant audience share and remain influential.

7.59 For this reason, we do not believe that conditions have changed so as to recommend that the Secretary of State relax the general and qualified restrictions on who can hold a broadcast licence.

Option 2 – Remove some of the restrictions on who is able to hold a broadcast licence

7.60 As set out above, we do not believe that conditions have changed so as to affect the effectiveness of the rules in fulfilling their rationale of protecting undue influence in television and radio.

7.61 We believe that the restriction continues to deliver its objective of ensuring that there is a plurality of voices available in television broadcasting. For this reason, this is not our proposed recommendation to the Secretary of State. However, there may be a case in future to remove this restriction.

Option 3 – Remove all the restrictions (general and qualified) on who can hold a broadcast licence

7.62 Another option might be to recommend that the Secretary of State remove all of the broadcast licence restrictions.

7.63 As stated above, we do not believe that conditions have changed so as to impact the effectiveness in the rules in fulfilling their rationale of protecting undue influence and plurality in television and radio.

7.64 One argument which might be made in favour of removing all of the restrictions would be that the growth in online content, which does not have these restrictions on it, might reduce the influence of television and radio, as a greater number of sources of news and information are now available.

7.65 However, although we agree that these are important considerations which might affect the rationale for the media ownership rules in the future, evidence shows that at present, services delivered on broadcast licences continue to be influential.

7.66 We therefore do not believe that it is appropriate to recommend that the Secretary of State remove the general and qualified restrictions on who can hold a broadcast licence.

We seek views and supporting evidence on our recommendation to retain the restrictions on broadcast licenses

Section 8

Appointed news provider rule

Introduction

8.1 In this section, we review the appointed news provider rule and assess whether the operation of the rule, or any changes in consumer behaviour or market developments might lead to a potential need for the rule to be revised.

8.2 We have considered three possible options for change and assessed whether the rule should be removed entirely; whether it should be maintained in its current form; or whether its scope should be extended to include Channel 4.

The key points covered in this section are:

- The rule provides that the Channel 3 licence holder needs to source its news from a single news provider that is suitably well-funded and independent of the BBC.
- Its rationale is that Channel 3, as the largest commercial television channel, has a significant role to play in ensuring plurality of news provision.
- We did not recommend changing the rule in our last review in 2006.
- Evidence shows that Channel 3 remains the biggest commercial television provider in terms of audience share.
- We propose recommending that the appointed news provider rule is retained in its current form.

The rule provides that Channel 3 source its news from a provider that is suitably well funded and independent of the BBC

8.3 The appointed news provider rule is a specific arrangement for the provision of national and international news to regional and national Channel 3 licence holders to ensure that it is independent of the BBC and adequately well funded.[63]

8.4 The same restrictions apply with regard to the appointed news provider for Channel 3 as for holders of Channel 3 licences,[64] and there are also restrictions on the accumulation of interests in newspapers and appointment as the news provider for Channel 3.

8.5 A further disqualification was introduced by the Media Ownership (Local Radio and appointed News Provider) Order in 2003 which prevents the appointment as Channel 3 news provider of a person subject to a disqualification order under Section 145 of the Broadcasting Act 1996.

[63] Section 280 of the Communications Act.
[64] Schedule 14 of the Communications Act.

8.6 The Secretary of State is able to extend the appointed news provider rule to Channel 5[65] as well, if it appears to him that it is appropriate to do so, and only if Channel 5's audience share becomes broadly equivalent to that of Channel 3.

The rationale for the rule is that Channel 3, as the largest commercial television channel, has a significant role to play in ensuring plurality of news provision

8.7 The Channel 3 licence holder, as the largest commercial television channel, has an especially important role to play in ensuring plurality in news provision.

8.8 The appointed news provider rule was introduced as a way of ensuring that there is a high quality and independent Channel 3 news service that can provide an alternative to BBC news and other commercial news providers.

We did not recommend changing the rule in our last review in 2006

8.9 In our 2006 review of the media ownership rules, we found that despite a slight reduction in ITV1's audience share since 2003, there did not seem to be a justification for removing the appointed news provider provisions as ITV1's audience share remained high, at 21.5%.

8.10 This was well above that of Channel 4, at 9.7%, and of Channel 5, which had a 6.4% audience share. For this reason, we did not recommend introducing a similar appointed news service provider provision for Channel 5, given that its audience share had remained largely static since 2003.

Evidence shows that Channel 3 remains the biggest commercial television provider in terms of audience share

8.11 In undertaking this review, we have looked again at the audience share of ITV1 and the main public service broadcasters to assess whether the underlying rationale for the rule remains relevant.

8.12 As shown in figure 29 in section 7, ITV1's audience share has declined since the time of our last review, from 19.7% audience share in all homes in 2006, to 18.4% audience share in all homes in 2008 (17.2% in all multichannel homes). Nevertheless, it continues to be well above that of Channel 4 (6.8%) and Channel Five (4.7%).

8.13 With regards to news provision, as set out in figure 26, Channel 3 remains the news provider with the second largest number of hours viewed outside the BBC, with 23 hours of news viewing watched annually by all individuals. This compares to 56 hours watched annually for all individuals on BBC1, 4 hours of news on Channel 4 and S4C, and 5 hours on Sky News.

8.14 It is therefore clear that Channel 3 remains the most significant alternative to the BBC, both in terms of general audience share and with regards to news provision specifically.

8.15 Channel 5's audience share has also fallen slightly since our last review to c 5% in 2008. Given that Channel 5's audience share is not equivalent to that of Channel 3, there does not seem to be any justification to extend the appointed news provider rule to cover Channel 5 at this time.

[65] Section 283, Communications Act.

There have been other reviews of the appointed news provider rule since our last review of the media ownership rules in 2006

8.16 In addition to considering changes to audience share, we note that since our last review of the media ownership rules there have been two developments which are relevant to our analysis of the operation of these rules.

(i) Ofcom review of Appointed News Provider, May 2007

8.17 Under Section 280 of the Communications Act, Ofcom has the power to conduct a review to ensure that the appointed news provider for Channel 3 is suitably well funded.

8.18 We conducted such a review in May 2007 when ITV renewed its contract with ITN. In this review we found that ITN's finances were adequate and that it would be capable of meeting ITV1's news obligations for the duration of its contract to 2012.

(ii) House of Lords Select Committee Review, June 2008

8.19 In June 2008, the House of Lords Select Committee looked at this rule as part of their Communications Report on the Ownership of the News as outlined in the section 2 of this consultation.[66]

8.20 With regard to the appointed news provider rule, this report recommended that Ofcom should be given powers to check the resourcing of all the commercial PSB news providers, rather than just Channel 3's appointed news provider.

8.21 It also recommended that Ofcom should develop a series of indicators against which to measure the resourcing of a news organisation and should publish an annual report on the resourcing of all the PSB news services.

8.22 Ofcom responded that any extension of our duty to review resources for commercial PSB news providers beyond Channel 3 was a matter for Parliament. However, we stressed that this approach would be considerably more interventionist than the direction which had generally been taken in the past.

8.23 In our response, we also highlighted that whilst it is relatively straightforward to express "resourcing" in terms of available budgets, an assessment of other "indicators" (such as staffing levels; number of overseas bureaux; camera crews etc.) would involve making a much more subjective judgement on how broadcasters should spend those budgets. Our preferred option is that the appointed news provider rule is retained in its current form.

8.24 As stated above, the rationale for the appointed news provider rule is to ensure that the Channel 3 licence holder sources its news from a single provider that is suitably well funded and independent of the BBC.

We are now consulting on whether we should recommend the rules be retained in their current form

8.25 We have considered three possible options for recommendations to the Secretary of State regarding the appointed news provider rule: to remove it entirely; to maintain it in its current form; or to extend the scope of the rules to give Ofcom powers to check

[66] House of Lords Communications Committee Report, 'The Ownership of the News', 11 June 2008. Available at: http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcomuni/122/12202.htm

the resourcing of all the commercial PSB news providers, rather than just Channel 3's appointed news provider.

Option 1 – remove the rule entirely

8.26 One option would be to remove the appointed news provider rule.

8.27 One argument in favour of this option is that growth in the number of multichannel homes means that there are an increasing number of alternative channels to the BBC which viewers can choose to access for news provision.

8.28 For example, these include the news services on Channel 4 and Channel 5 and the dedicated services provided by Sky News, Al Jazeera and CNN. In addition, there are an increasing number of news providers available online.

8.29 However, despite this growth, it is clear from our analysis of audience figures that television remains the most important source of news and that Channel 3 is the most significant news provider in terms of audience share, after the BBC.

8.30 As a result, we believe that, on balance, the rationale set by Parliament remains unchanged and the argument for retaining the rule outweighs the arguments in favour of removing it.

8.31 Therefore, we believe it is important that the appointed news provider rule remains in place to ensure that news provision on this channel is independent of the BBC and suitably well funded.

Option 2 - maintain the rule in its current form

8.32 The second option we have identified is to retain the rule in its current form.

8.33 As stated above, Parliament's rationale in introducing the appointed news provider rule was to ensure that there was a strong alternative to the BBC to ensure plurality of news.

8.34 At the time, the assumption was that Channel 3 was the commercial channel with the largest audience share, and therefore it was best placed to provide an alternative to the BBC in terms of news provision.

8.35 Our evidence suggests that Channel 3 continues to remain the largest commercial channel in terms of audience figures, generally and in terms of news, which suggests that the rationale for this rule remains.

8.36 Therefore, given that Channel 3 continues to play an important role in ensuring plurality of news by acting as an alternative to the BBC, our preferred recommendation is to maintain the appointed news provider rule in its current form.

8.37 Under the Communications Act, it is possible to extend the scope of the appointed news provider rule to cover Channel 5 as well as Channel 3.[67] However, we do not believe that the evidence indicates there is justification to extend the appointed news provider rule to Channel 5 at present as its audience share is smaller than that of Channel 3, as shown in the data above.

[67] Section 283 of the Communications Act.

Option 3 - extend the scope of the rules to give Ofcom powers to check the resourcing of Channel 4

8.38 The third option would be to extend the scope of the existing rule so that Ofcom checks the resourcing of Channel 4 news, rather than just the appointed news provider for Channel 3.

8.39 Extension of the existing rule to all the commercial public service broadcasters was recommended in the House of Lords Select Committee Report on 'The Ownership of the News' in June 2008. This recommended that Ofcom should be given powers to check the resourcing of all the commercial public service broadcasting news providers, using a series of indicators and publishing the findings in an annual report.

8.40 The reason for this recommendation was that, given the "declining number of specialist correspondents and the increasing reliance on news agencies and press releases, it would be sensible for Ofcom to be able to monitor the resources available to all the companies which provide news for the commercial PSBs."

8.41 However, in our response to the House of Lords report, we stated that extending the rules to this extent would be more of an interventionist measure that the existing rules, and that it might involve making more subjective judgements on how broadcasters spend their budgets.

8.42 Government's Digital Britain Final Report states that "that C4 Corporation (C4C) has a key role to play in providing a balancing mix of public service content alongside the BBC,"[68] and that "it would now be right to update C4C's remit in keeping with the…objectives of recasting C4C for a Digital Britain."[69] If this happened, and Channel 4 played a role as the main alternative public service news provider to the BBC, then there may possibly be a case for extending the appointed news provider rule to Channel 4. Channel 4's relative audience share should also be considered as a factor if this comes above.

8.43 However, based on Channel 4's current audience share and on the current roles of the commercial public service broadcasters, we do not believe there is a case for change at present.

We seek views and supporting evidence on our recommendation to retain the appointed news provider rule

[68] Paragraph 41 of the Government's Final Digital Britain Report, June 2009.
[69] Paragraph 43, Ibid.

Section 9

The media public interest test

Introduction

9.1 In this section we consider whether it would be appropriate to make a recommendation to change the media public interest test as it applies to media mergers in the light of our initial conclusions on the consumer and market trends set out in section 4.

9.2 We discuss the two possible options: removing the media public interest test or retaining it in its current form. We outline the key reasons why retaining the test in its current form is our preferred recommendation.

The key points covered in this section are:

- The purpose of the media public interest test is to safeguard media ownership.
- There are separate media public interest tests for newspaper mergers and broadcasting or cross media mergers.
- The media public interest test is a multi-stage process, triggered by the Secretary of State and involving Ofcom and the Competition Commission.
- The rationale for the media public interest test has not changed since our last review.

The purpose of the media public interest test is to safeguard media ownership

9.3 The media public interest test was introduced by the Communications Act in 2003,[70] replacing specific media merger rules which were designed to protect plurality in media ownership. The test gives the Secretary of State for Business, Innovation and Skills the discretion to intervene in media mergers where he considers there may be ‘public interest’ considerations.

9.4 The Secretary of State might consider intervening for a number of public interest considerations including: to protect the availability of a wide range of high quality broadcasting and news provision and to ensure that those with control of media enterprises have a genuine commitment in relation to broadcasting to the standards set out in the Communications Act.

9.5 Hence, the media public interest tests are intended to provide a safeguard to prevent undue concentration of ownership in broadcasting and newspaper enterprises, and in the case of newspaper mergers, to prevent a merger going ahead which may raise concerns about editorial interference in the accurate presentation of news. It allows the Secretary of State to take into account factors other than competition issues which may be relevant to the merger, such as impartiality and free expression of opinion, which may act against the public interest.

[70] The Communications Act amended the Enterprise Act 2002, adding sections 58(2A) to 58(2C) which contain the media public interest provisions.

There are separate media public interest tests for newspaper mergers and broadcasting or cross media mergers

9.6 There are two categories of media public interest test:

a) a newspaper test for mergers involving newspaper enterprises; and

b) a broadcasting and cross media test for mergers involving broadcasting enterprises or mergers between broadcasting enterprises and newspaper enterprises.

9.7 Both tests provide a safeguard which allows the Secretary of State to prevent mergers which may act against the public interest, even where the merger would not be considered to substantially lessen competition.

(a) The Newspaper Test

9.8 The newspaper public interest test assesses whether a merger might affect any of the following:

- The need for accurate presentation of the news in newspapers.
- The need for free expression of opinion in the newspapers involved in the merger.
- The need for, to the extent that is reasonable and practicable, a sufficient plurality of views expressed in newspapers as a whole in each market for newspapers in the UK or part of the UK.

(b) The Broadcasting and cross media Test

9.9 The broadcasting and cross media test assesses whether any of the following are relevant to a consideration of the merger:

- The need for there to be a sufficient plurality of persons with control of the media enterprises serving that audience in relation to every different audience in the UK or a particular area / locality of the UK.
- The need for the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests.
- The need for persons carrying on media enterprises and for those with control of such enterprises to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in Section 319 of the Communications Act 2003 (e.g. due impartiality of news).

The media public interest test is a multi-stage process, triggered by the Secretary of State and involving Ofcom and the Competition Commission

9.10 In this section we provide a brief outline of the operation of the media public interest test and how it fits into the broader merger regime. A more detailed overview is provided by the Department of Business, Innovation and Skills (BIS)[71] and in Ofcom's guidance on the public interest test for media mergers.[72]

9.11 For mergers which meet the standard merger jurisdictional thresholds relating to share of supply and turnover, the Secretary of State may issue an "intervention notice" if he considers that a proposed transaction may give rise to public interest considerations. The intervention notice would instruct the OFT to investigate and report on whether the merger is likely to raise competition issues and in relation to media mergers, instruct Ofcom to investigate and report on whether the merger is likely to act against the public interest.

9.12 Following this, Ofcom must provide a report with advice and recommendations on the specified media public interest considerations within a deadline specified by the Secretary of State.

9.13 The Secretary of State has discretion to accept or reject Ofcom's advice about the likelihood that the merger will give rise to public interest concerns and whether the case should be referred to the Competition Commission (CC) for a full investigation on that basis.

9.14 The OFT is also obliged to provide a report on any competition issues[73] arising from the transaction. The Secretary of State is bound by the OFT's findings on these issues.

9.15 If a merger is referred to the CC on public interest grounds (with or without competition grounds), the Secretary of State has discretion to accept or reject the CC's conclusions on the implications of the merger for public interest considerations. Moreover he can accept or reject any remedy proposed by the CC to address identified public interest concerns.[74] At this stage Ofcom may also give advice to the Secretary of State as it considers appropriate in relation to either the CC's report or the Secretary of State's proposed remedies to identified public interest concerns. The Secretary of state is, however, bound by the CC's conclusions on competition issues arising from the merger.

9.16 Interested parties can appeal the Secretary of State's final decision to the Competition Appeal Tribunal.

9.17 The Secretary of State is also able to intervene in special public interest cases where the standard merger jurisdictional thresholds are not satisfied, by issuing a "special intervention notice". In such cases there is no competition assessment. The Secretary of State can also intervene on public interest grounds in cases which fall to the European Commission under the provisions of the EC Merger Regulation by issuing a "European intervention notice".

9.18 The Secretary of State can issue an intervention notice at any time until the OFT makes a reference decision, and can issue a special intervention notice at any point up to four months after completion of the merger. However, in order to prevent undue uncertainty, the Secretary of State aims to take an initial decision on whether

[71] DTI Guidance Document, Enterprise Act 2002, Public Interest Intervention in Media Mergers, Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers, May 2004, http://www.berr.gov.uk/files/file14331.pdf.
[72] http://www.ofcom.org.uk/tv/ifi/guidance/pi_test/pi_test.pdf.
[73] The UK competition authorities use the 'significant lessening of competition' test to assess whether competition concerns arise from a merger. Details of how the OFT and CC approach this analysis can be found in their draft joint merger assessment guidelines at http://www.oft.gov.uk/shared_oft/consultations/OFT1078con.pdf.
[74] The Secretary of State can propose his own remedy to address the identified concerns.

to intervene within 10 working days of the later of: the transaction being notified to the OFT, or being brought to the attention of the Secretary of State.[75]

The rationale for the media public interest test has not changed since our last review

9.19 In our last review of media ownership rules we noted that no public interest intervention notice in relation to media mergers had been issued to date so we had no evidence about whether use of the media public interest mechanism raised any problems. We concluded that the rationale for the tests continued to be relevant and the option, at the Secretary of State's discretion, of a media public interest intervention remained valid.

9.20 Ofcom believes that the rationale for the media public interest tests, outlined in section 2, has not changed. The evidence outlined in section 4 demonstrates that the way people consume news has not changed significantly since our last review of the media ownership rules. Television remains the main source of UK news for the overwhelming majority of people. The media public interest test also applies to media mergers involving radio and our research shows that the importance of radio has not reduced significantly in the years since our last review.

9.21 As outlined above, a media public interest investigation by Ofcom (for newspaper mergers and broadcasting or cross media mergers) would only be conducted in response to a formal request from the Secretary of State.

9.22 Since our last review there has been one occasion when Ofcom has been requested to report to the Secretary of State on the public interest raised by a media merger: the case examining the effect of British Sky Broadcasting Group plc's ('Sky') acquisition of a 17.9% shareholding in ITV plc ('ITV'). During this process we were requested to provide advice to the Secretary of State on whether Sky's acquisition of a stake in ITV raised media public interest concerns with respect to plurality of ownership.

9.23 This case is subject to legal appeal and is still ongoing. A chronology of events to date is set out below.

[75] DTI Guidance Document, Enterprise Act 2002, Public Interest Intervention in Media Mergers, Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers, May 2004.

Chronology of Sky's acquisition of a 17.9% stake in ITV

On 17 November 2006 Sky announced that it had bought 696 million shares in ITV, amounting to 17.9 per cent of ITV's issued share capital. Sky paid 135p per share, a total of £940 million, for its stake.

On 26 February 2007 the SoS issued an intervention notice, requesting Ofcom to conduct an initial investigation into whether the transaction raised media public interest issues. Ofcom issued its report on 27 April 2007, concluding that the transaction would give rise to plurality concerns and hence would operate against the public interest.

The SoS subsequently referred the matter to the CC for a full investigation and on 14 December 2007 the CC issued a report, concluding that there would be no adverse impact on plurality, although there were likely to be competition concerns. On 29 January 2008 the SoS published his final decision, finding that the transaction would result in a substantial lessening of competition within the UK market for all television but that it did not have an adverse effect on the public interest consideration relating to plurality of persons with control of media enterprises.

In addition the SoS decided to impose the remedies proposed by the CC to address the reduction in competition, namely divestment of Sky's shares in ITV plc to a level below 7.5% and to request undertakings from Sky that it would not dispose of the shares to an associated person and that it would not take a seat on the Board of ITV plc or reacquire shares in ITV plc.

Both Sky and Virgin appealed the SoS's decision to the Competition Appeal Tribunal (CAT). On 29 September 2008, the CAT found that the CC were correct in relation to the substantial lessening of competition but that the CC had misdirected itself in law on the plurality issue. The CAT dismissed Sky's challenge to the remedies. On the plurality point, even though the CAT had found that the CC had misdirected itself on the plurality test, it concluded that it would serve no useful purpose to remit the plurality issue back to the CC as it believed that there was no realistic prospect of a different outcome in terms of the remedy imposed by the SoS.

On 17 March 2009, the Court of Appeal gave both Sky and Virgin permission to appeal the CAT's judgment. The appeal is listed to be heard at the Court of Appeal in October 2009.

9.24 When the legal appeals process is concluded, Ofcom will consider if it is appropriate to revisit our guidelines to see if they can be usefully updated in light of our increased understanding of the operation of the process.

9.25 In its recent Review of Local and Regional Merger Regime,[76] the OFT considered whether any change to the merger regime, with respect to the local and regional media sector, is desirable or necessary. During the review the OFT invited comments from stakeholders about the appropriateness of the public interest regime.

9.26 The OFT received a number of submissions proposing that the newspaper public interest considerations should either be removed or amended. The OFT noted that it received no specific evidence to suggest that the existence of the public interest considerations has deterred potential consolidation amongst local and regional newspaper publishers, although one respondent suggested they had deterred potential transactions in the past. In addition a respondent suggested that there could be situations where newspaper consolidation may be justified on plurality grounds even if it would give rise to competition concerns. Other stakeholders commented that public interest considerations should be expanded to reflect the impact of a potential merger on the quality of journalism.

9.27 The OFT concluded that plurality may be important in some regions. In addition it suggested that the assessment of competition and plurality issues may be complementary, and the framework is relatively flexible in terms of how it can be applied in smaller local areas. The OFT recommended that the Department for Business, Innovation and Skills should assess the case for legislative changes to the media public interest considerations in light of Ofcom's review of the media ownership rules and that its guidelines on public interest intervention policy should be reviewed.

[76] Review of the local and regional media merger regime, OFT, June 2009: http://www.oft.gov.uk/shared_oft/mergers_ea02/oft1091.pdf

9.28 Government's Digital Britain Final Report concluded that the existing merger framework, including the assessment of the impact of potential mergers on competition and public interest issues, is sufficient for addressing the concerns raised in response to the OFT's review. In particular it noted that the OFT or CC would be unlikely to block a potential merger on competition grounds if the transaction were necessary to ensure the survival of the last remaining title or titles in an area.

We have considered two possible options for recommendations about the media public interest test

9.29 We have considered two possible options for recommendations that we might make to the Secretary of State with respect to the media public interest test. Firstly, we have examined whether it is appropriate to recommend removal of the public interest test. Secondly we have looked at whether we should recommend no change to the current rules.

Option 1: remove the media public interest test

9.30 If the existence of the media public interest test currently acts as a deterrent to potential media mergers, then there may be a benefit to removing the test. In addition, the limited use of the test to date could indicate that the test is not necessary. Further, in response to the OFT's review of the merger regime, one respondent suggested that a public interest test is unnecessary since competition in media markets should automatically deliver plurality and diversity.

9.31 However, we note that the conditions for Parliament's decision to include a public interest test for media mergers have not changed, and therefore the rationale for the test remains.

9.32 Each of these duties is consistent with the public interests that are protected by the cross media and broadcasting public interest test.

9.33 In addition, the OFT found no evidence that the existence of the test has deterred potential consolidation in the media sector. Moreover and significantly, we believe that the media public interest test provides a backstop for the Secretary of State to intervene to prevent media mergers on public interest grounds, including safeguarding plurality, which is likely to be important if, as we propose, other media ownership rules are relaxed.

9.34 This rationale is consistent with our general duties under the Communications Act 2003, which require us to secure, in summary:

- the maintenance of sufficient plurality of providers of different television and radio services;
- the availability of a wide range of television and radio services; and
- the application of standards to television and radio services to protect members of the public.

9.35 As a result, this is not an option that Ofcom believes is appropriate to recommend to the Secretary of State.

Option 2: recommend no change to the current public interest test

9.36 The most significant reason for this is the important role that the media public interest test plays as a final safeguard that can be invoked by the Secretary of State should he feel the need arises, for example, in order to protect plurality. Further reasons for this finding are that:

- We have no reason to believe that the rationale for the current test has changed.
- If other media ownership rules are relaxed, which we are proposing in this review, the role of the test in acting as a safeguard of the public interest, for example in plurality, could become more important.

9.37 We note that this is consistent with the statement in the OFT and Government's Digital Britain Final Report that there is likely to be an ongoing need to retain a public interest test.

9.38 As a result, we propose recommending retention of the public interest test in its current form.

We seek views and supporting evidence on our recommendation to retain the media public interest test

Section 10

Factors to consider in the longer term

Introduction

10.1 This section examines the relevance and importance of the existing media ownership rules in three theoretical future scenarios.

The key points covered in this section are:

- The media ownership rules are underpinned by some underlying principles.
- Future developments in the media sector could impact on the relevance of the media ownership rules.
- How the sector will develop is difficult to predict so we need to consider a range of scenarios.
- It is important that, as legislation requires, Ofcom continues to review the media ownership rules.

10.2 In conducting our regular review of the media ownership rules we have looked at developments in the media sector since the rules were last changed by parliament in 2003 and considered major consumer trends.

10.3 The goal of this section is to help determine how the relevance and effectiveness of the media ownership rules could develop in the longer term. This has contributed to our understanding of the trends that need to be considered for this review and will help us ascertain the trends that might need to be considered in future reviews of the media ownership rules.

10.4 The section does not examine individual rules in detail but looks at the principles underpinning them and how these principles could be affected by changes in consumption and audience behaviour. We consider three hypothetical scenarios. Each scenario explores a possible future in 2015. For each scenario we:

- examine the key trends that affect the delivery and consumption of news and information;
- consider how these could evolve;
- examine how consumer behaviour might change in each scenario; and
- evaluate the impact this would have on the operation of the media ownership rules.

The media ownership rules are underpinned by some underlying principles

10.5 As set out in section 2, the media ownership rules are based on some core assumptions:

i) Television, radio and the press are important sources of news and viewpoints and have a significant influence over the population.

ii) If television, radio and the press are controlled by a limited group of people or certain types of people they might exercise undue influence.

iii) The greatest scope for influence in the news value chain is at the point of consumer interface (therefore it is ownership of the distribution point that is important).

iv) There is a risk of lack of diversity in television and radio particularly because these media rely on transmission by spectrum, which has historically been a scarce resource.

v) The state of the media is such that the rules strike the correct balance between the citizen goal of diversity and the consumer goal of company freedom to develop sustainable businesses.

10.6 As discussed in section 4 these assumptions could be affected by a number of factors including technological advances and consumer behaviour.

10.7 By examining three hypothetical future scenarios we investigate a number of ways in which the sector could develop (driven by these key factors) and assess whether these developments could challenge the assumptions the rules are built upon and therefore the relevance of the rules themselves.

Developments in the media sector could impact on the relevance of the media ownership rules

10.8 In examining whether these assumptions remain true – and therefore to assess the continuing relevance of the media ownership rules – it is useful to consider a number of variables. These are:

- advances in technology and take-up;
- the level of consolidation or diversification of news suppliers;
- the way in which citizens consume news; and
- the trust and satisfaction that people have in the sources of news available to them.

10.9 As the sector has evolved debates for and against relaxing or removing the media ownership rules have centred on these factors set out above. Arguments made for relaxation have included:

- the development of digital technologies is breaking down the barriers between the traditionally distinct media sectors;
- diversity of news is provided by a wide range of outlets, therefore scarcity of resource is no longer a justifiable rationale for using media ownership to preserve diversity; and
- the media ownership rules are an impediment to growth and the UK needs major international media companies to compete in an increasingly international arena.

10.10 However, arguments made against relaxation of the rules also focus on these factors contending that:

- newspapers, radio and television remain dominant;
- it is important to maintain impartiality in broadcasting by avoiding control by editorially partisan newspapers; and
- deregulation would allow major companies to increase their influence.

How the sector will develop is difficult to predict so we need to consider a range of scenarios

10.11 The evidence points to a media sector that is facing significant change. Therefore, to consider the continued relevance of the media ownership rules, we believe that it is important to examine whether potential changes in the sector could undermine the basic assumptions that the media ownership rules are predicated on.

10.12 For this purpose we set out three distinct hypothetical scenarios. These are:

- Scenario 1: Digital revolution
- Scenario 2: Stagnation
- Scenario 3: Sector evolution

10.13 In each of these hypothetical scenarios we consider how the media environment would have to develop in order for the above statements to be true.

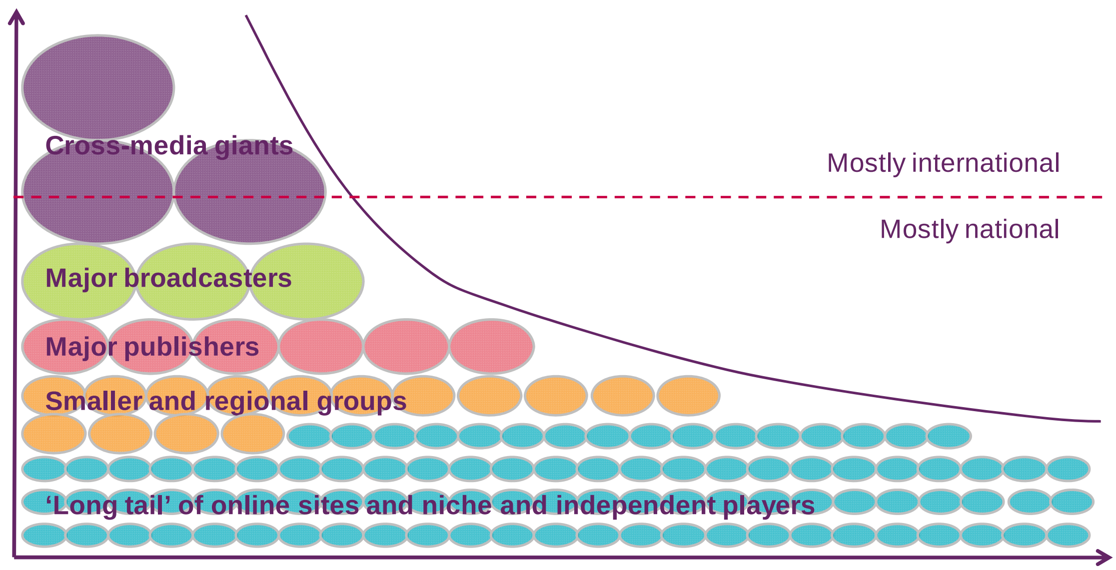
Scenario 1: Digital revolution

Scenario 1 – Key characteristics
Everyone has access to a wide range of news and information delivered across platforms and accessed via different devices
Convergence means that it is increasingly irrelevant to discuss news provision in terms of ‘platforms’
People are media literate and able to select the news that they trust and that is of most interest to them
New communities of interest have evolved
People are active consumers and producers of news and opinion
There are more opportunities (and ways) to participate in the democratic process

Sector overview

10.14 In this scenario broadband take-up will continue to rise exponentially. Barriers to entry will fall and new sources of news will develop to complement existing sources. News providers will become truly cross platform entities. Online providers will not just repackage news but will also invest in news gathering. Although the share of the main broadcasters will reduce slightly their business models will remain viable. Similarly newspaper circulation will continue to decline slightly. However, newspapers, broadcasters and other players will continue to diversify online and will develop business models that allow them to recoup revenue that they are losing in print and broadcast.

Figure 32: Market Structure



Source: Ofcom, illustrative only

The consumer perspective

10.15 In this scenario everyone will have access to a wide range of sources providing news and information. Rapid convergence and new and affordable technologies mean that people will be able to choose where and how they access news – whether it is scheduled television, VOD or online content watched at home or on the move on devices such as the e-reader. The medium the content was initially produced for will become less and less important to consumers. People from all demographics will be able to navigate through different media with ease and will be less likely to differentiate between different platforms as they become increasingly media literate.

10.16 Consumers will become less reliant on the newspapers, television and radio as their main sources of news as they will access news from old and new providers on a variety of platforms including the fixed and mobile internet. The type of news that people consume may well change. Instant news delivered in bite size chunks may become more prevalent. Print newspapers may shift their focus to analysis rather than breaking news.

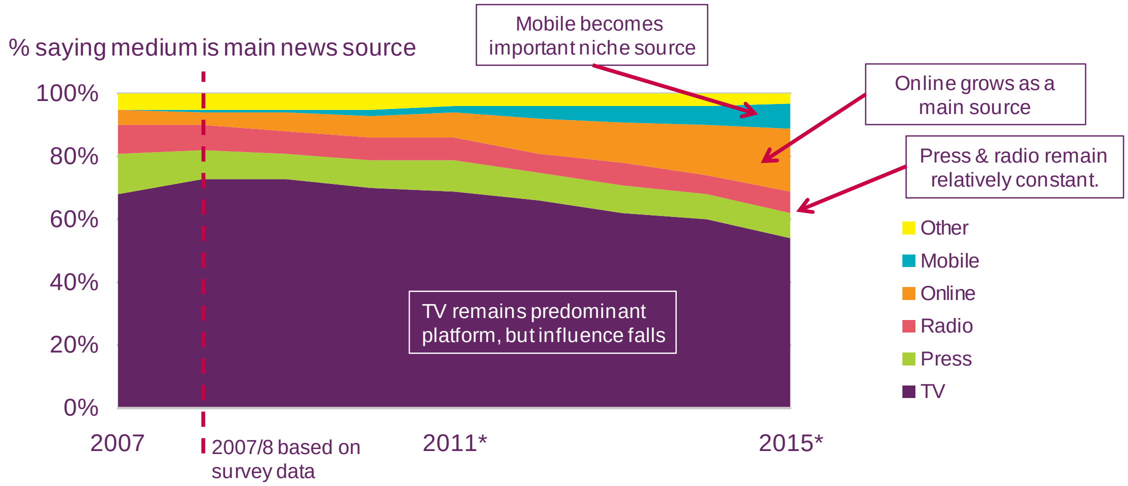
10.17 People will not just be passive consumers they will interact with and even create news content. They will also embrace new ways of engaging with their community and with the democratic process, for example, by registering to vote via text. Many of these trends are already evident.

Impact on the assumptions underpinning the media ownership rules

10.18 The influence of newspapers, radio and television news will decline. The reach and share of the main television channels and radio stations will fall, as will the readership of national newspapers.

10.19 At the same time new and alternative sources of news will increase their reach and share and potential influence. Online providers will increase their investment in news gathering and investigative journalism.

Figure 33: Main source of UK news, 2007-2015



Source: Ofcom media tracker (2007-2008) and analysis
Note: This chart is illustrative only. *illustrative estimate.

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10.20 People will be satisfied with the amount of news that they receive. News from a range of different platforms will be considered high quality and trustworthy.

The media ownership rules will become less relevant

10.21 In this scenario intervention at an ownership level is unlikely to be required to achieve plurality. The rise in digital media means that there will be no scarcity of outlet. There will be a plethora of news sources and as a result a wide range of voices and opinions. Traditionally dominant news sources (such as the public service broadcasters, national newspapers and radio stations) face new competition and as the number of providers increases the risk of undue influence decreases. Consumers are media literate and adept at seeking out news and using new means to engage with their community and the democratic process.

10.22 The public interest test could remain useful as a backstop power in the event that a small number of providers do become dominant. However, as people become increasingly media literate, it may also become less relevant.

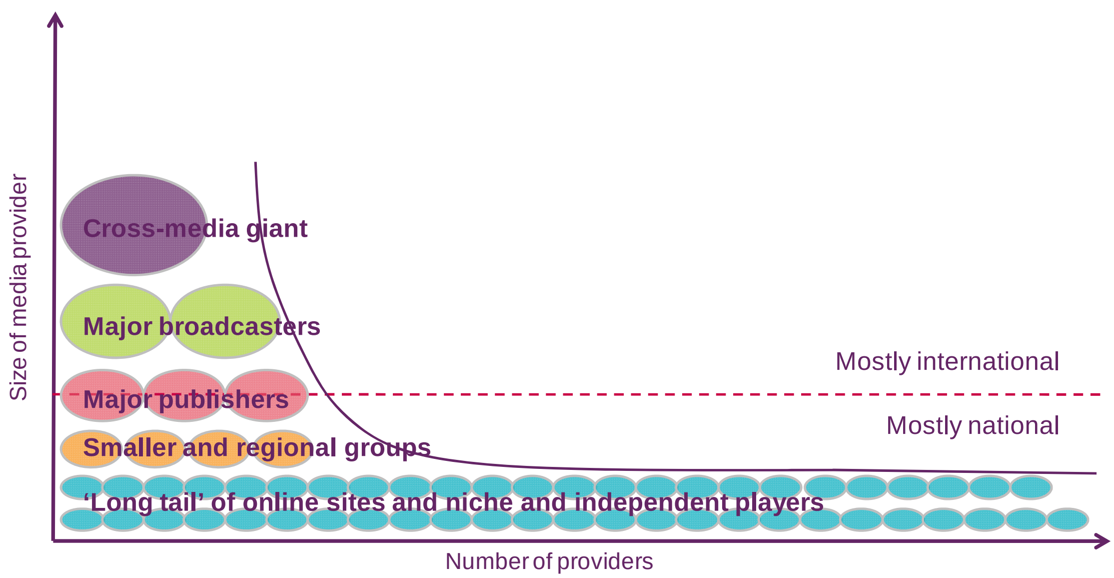
Scenario 2: Stagnation

Scenario 2 – Key characteristics
Traditional business models are under increasing pressure as advertising migrates to the internet
The number of newspapers, TV and radio news providers decreases
People can access news via a range of platforms but the majority of news is gathered by a small number of players
People are reliant on a small number of suppliers for original news content

Sector Overview

10.23 In this scenario traditional print and broadcast business models will face increasing economic pressure as advertising continues to migrate to the internet. As the pressure increases several existing players will be forced out of the market. This will lead to a reduction in the number of long-established sources of news. News delivered by new providers will not be a direct substitute for news historically provided by newspapers, television and radio as it will be less well resourced. Online providers will primarily remain news aggregators and distributors rather than news gatherers, but there will be a wide number of small entities providing opinion and comment. In the face of economic pressures, there is likely to be an incentive for further consolidation in the news sector at one or more of the following points: news gathering, news aggregation and news provision.

Figure 34: Market structure



Source: Ofcom, illustrative only

The consumer perspective

10.24 Despite increases in broadband availability a significant proportion of the population will remain reliant on newspapers, radio and television for news and information. New media will act as a complement to, rather than substitute for conventional news provision.

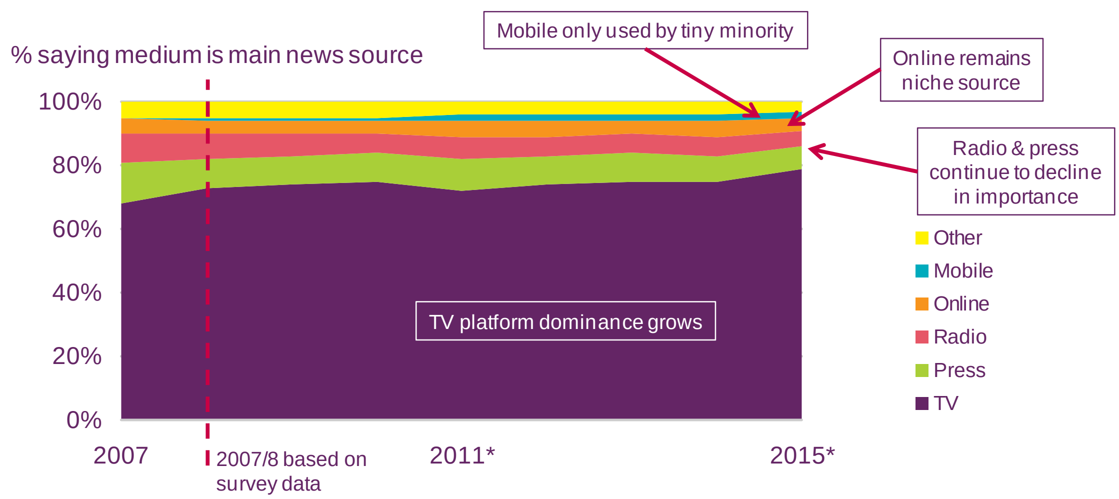
10.25 Although people will remain reliant on television, newspapers and radio for much of their news the actual choice available to them will decrease. Some newspapers, radio stations and television news providers will exit the market. Financial pressures will impact first on resource heavy news such as investigative journalism, local and international news. People will have fewer choices for sourcing these types of news and analysis.

Impact on the assumptions underpinning the media ownership rules

10.26 New providers will not be able to develop sustainable business models and, as a result, the potential influence of the remaining news gatherers and suppliers increases. Newspapers, television and radio services will face increasing economic pressure and as some players exit the market others will increase in size and influence.

10.27 Providers who do not rely on commercial success (such as the BBC) will also potentially be able to able to increase their market share.

Figure 35: Main source of UK news, 2007-2015



Source: Ofcom media tracker (2007-2008) and analysis
Note: This chart is illustrative only. *illustrative estimate.

10.28 Some existing news outlets will retain or increase their influence, but as they face financial pressure, they will rely increasingly on sourcing content from news agencies which could result in news gatherers also increasing their scope for influence. As choice declines, consumers could become less satisfied with the news and information available and potentially less engaged in the democratic process. Consumer trust and satisfaction levels will fall. Change is likely to occur at a different pace in various parts of the news environment. Many of the trends described in this scenario are already evident at a regional level.

Plural supply could be at risk but the media ownership rules might become counter productive

10.29 In this scenario plurality is likely to decrease. As the existing news providers face increasing financial pressure and as some are forced out, there could be a smaller number of large players with more potential influence than today. As a result, the media ownership rules could become more relevant. At the same time the news organisations that do remain may push for greater consolidation, meaning that the media ownership rules could become an impediment to their growth and their economic viability. This could mean that the existing balance maintained by the media ownership rules is placed at risk.

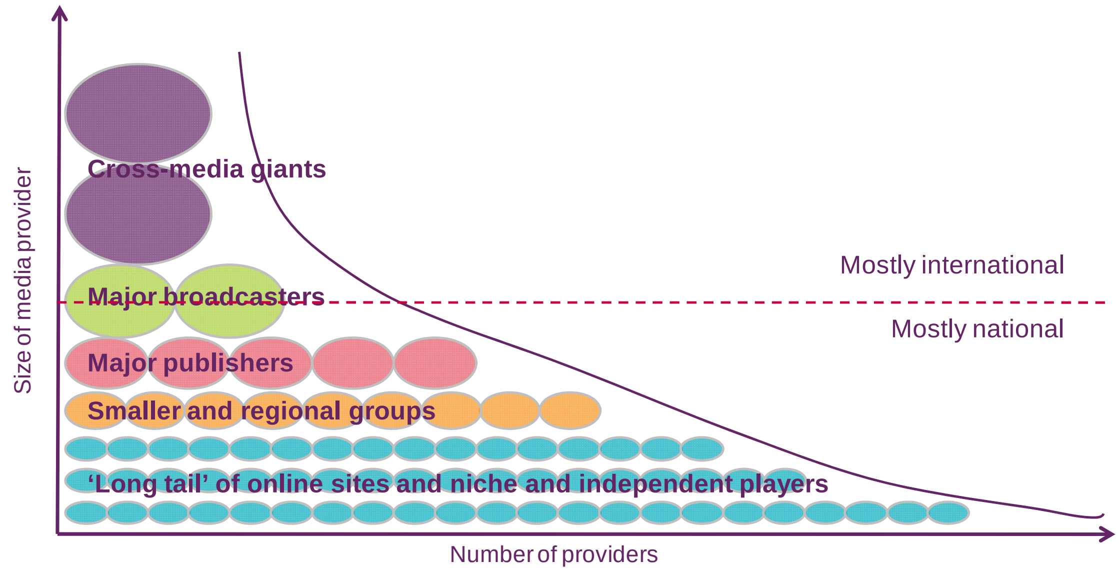
Scenario 3: Sector evolution

Scenario 3 – Key characteristics
New platforms continue to challenge the traditional providers' business models
There is gradual adoption of new platforms by consumers
Take up of new platforms is not universal and demographic groups consume news in different ways
The traditional providers remain the primary source for some demographics and for some types of news (e.g. investigative journalism)

Sector overview

10.30 Despite digital switchover and increased penetration of broadband, usage of digital television, broadband and DAB radio will hit a plateau. Newspaper circulation and the share of the main television channels will continue to decline. The conventional news providers will deliver news across platforms but will not develop business models that allow them to recoup losses elsewhere. As a result they will face pressure to reduce investment in news gathering and some players may exit the sector. This investment will not be substituted by new providers. There will be some consolidation in news supply as a number of established players exit the market and their place is not taken by new providers. This means that there will be multiple ways to access the same news but little or no investment in news gathering by new providers and potentially reduced investment in news gathering by the long-established providers.

Figure 36: Market Structure



Source: Ofcom, illustrative only

The consumer perspective

10.31 People will be able to access news on a range of platforms and some demographics will act as trail blazers, becoming avid consumers of news on a variety of platforms. However, although they have an increased choice in where and how they access news there will be a decrease in the actual range of news available. There will also be a risk of a digital divide as, despite the increased availability of broadband, some sections of the population will remain less confident about navigating on new platforms. A significant proportion of the population, particularly older people, will continue to rely on the newspapers, radio and television, even as the range of these news providers delivering original news starts to decrease.

Impact on the assumptions underpinning the media ownership rules

10.32 Although news will be accessed via a number of platforms radio, newspapers and television will retain a disproportionately influential role as the only media to fund news gathering.

10.33 As discussed earlier in this document, the current media ownership rules focus on ownership of the media as it is seen as a proxy for influence. Under this assumption the point of influence in the supply chain lies at the 'consumer interface', i.e. at the point where media providers interact directly with consumers via newspapers, websites or broadcast transmissions. This is related to the traditional scarcity of supply at this point and reflects the influence that these media have over the news agenda. The chart below illustrates the existing news content supply chain.

Figure 37: Simplified news content supply chain (current)

Newsgathering	Aggregation	Distribution	consumer interface	Consumption
Television – BBC – ITN – Sky News – Others	**Television** – Content packaged into news bulletins and schedules	**Television** – BBC channels – ITV1 – C4 channels – Five – Sky – Others (inc. local TV)		**Television** – BBC channels 35%, ITV1 18%, C4 channels 8%, Five 5%, Sky News 0.4%
Radio – IRN/Sky – Sky Radio News – BBC – Local journalists – Other	**Radio** – Packaging of local and national content into bulletins	**Radio** – BBC stations (10 nat, 46 local) – 4 nat commercial stations – c.300 local stations Global, Bauer, TLRG, UTV, GMG, other – Local/national mux operators		**Radio** – BBC network 47%, nat. commercial 10% – Local commercial 31%, BBC local 9%
Press – Newspaper editorial teams – Agency content (AP, AFP, Reuters, PA) – Syndicated content & freelance	**Press** – Major press groups operate own presses. Few share. – Content and advertising package into printed copies	**Press** – Local/national papers delivered, handed out for free or sold at retail		**Press** – 20 regional groups control 97% circulation – Nat newspapers 10.8m circulation – Sun 3.1m, Mail 2.3m, Times 0.6m, Guardian 0.4m
Online – Agencies – Syndicated content – Individuals & blogs – Offline players (BBC, newspapers, Sky)	**Online** – Content packaged into websites – Online aggregation (Yahoo!, Google, RSS feeds etc)	**Online** – National and international websites – Personalised supply (RSS etc)		**Online**[18] – News & info sites active reach: – BBC 54%, Assoc. Newspapers 18%, News Corp. newspapers 16%, Yahoo! News 11%

Source: Ofcom/Oliver & Ohlbaum analysis

10.34 In this future scenario we are likely to see changes to the existing value chain that might affect the point of greatest potential influence.

10.35 People are likely to have increasing options of places where they can access news – on a range of platforms. As a result of this choice, the audience is likely to diversify and fragment causing the share of the existing news providers to decrease. If there are a greater number of players at the point of consumer interface then, individually, they will have less potential influence.

10.36 However, at the same time although new providers will offer alternative ways to access news they are unlikely to fund news gathering. So there will be no corresponding growth in the number of players at the news gathering point of the value chain. In fact, the number of players here could decrease as existing news providers (who operate in all parts of the value chain) are forced out of the market.

10.37 A reduction in the number of players at the newsgathering point of the value chain could mean that those who remain would have greater potential to influence the news delivered to consumers– and this influence could be greater than that wielded by the players at the point of consumer interface who are delivering news sourced from a smaller number of suppliers.

Media ownership will remain relevant but the point of influence in the value chain will shift to news gathering

10.38 In this scenario consumers will be able to access news via a variety of platforms but there will be less investment in news gathering and fewer providers of original news than today. As a result plurality of news and opinion will remain a concern. Significantly, the existing intervention media ownership rules may not be the most appropriate intervention to achieve plurality. As the number of news gatherers decreases those that remain will have the potential to wield greater influence. This means that although ownership will remain relevant the point of major influence in the value chain will move away from the point of consumption to the point of news gathering. Any effective intervention may have to take this shift into account.

It is important that, as legislation requires, Ofcom continues to review the media ownership rules

10.39 It is apparent that the way in which people consume news has evolved over the last few years and that it could continue to change. As change takes place the relationship of media ownership to influence is likely to alter. However, it is difficult to predict to what extent change is likely and how rapidly it will occur.

10.40 The analysis of three potential future scenarios demonstrates that the media ownership rules are finely balanced:

- In a world where the landscape is vibrant and features a wide range of players, plurality is inherent to the media sector which naturally provides lots of choice for consumers. This could potentially render the rules superfluous.

- If the sector faces increasing financial pressure there is likely to be a push for industry consolidation (both horizontally and vertically) thereby reducing choice for consumers. In these circumstances the rules could become an impediment to the economic survival of companies which could, in turn, lead to a reduction in provision and in choice for the consumer.

- In some future scenarios, the rules may be directed towards the wrong part of the industry. In the future, it is possible that influence could shift from the point of consumption due to an increase in the number of players or consolidation in different parts of the value chain.

10.41 The fine nature of this balance, and the unpredictability of future outcomes, indicate that the rules are only truly effective in a specific media environment. It is therefore important that, as legislation requires, Ofcom continues to review the media ownership rules regularly to test whether changes in the media landscape mean that the ownership rules should change too.

Annex 1

Responding to this consultation

How to respond

A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 17 September 2009**. We note that in this consultation we have decided on a shorter than average consultation period to give us sufficient time to take into consideration consultation responses before we provide our advice to the Secretary of State.

A1.2 Ofcom strongly prefers to receive responses using the online web form at http://www.ofcom.org.uk/consult/condocs/morr/howtorespond/form, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.

A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email morrconsultation@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.

A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Nicole Shinnick
Floor 6
Dept Strategy and Market Developments
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7783 4706

A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed at the end of the Executive Summary. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Nicole Shinnick on 0207 783 4706.

Confidentiality

A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.

A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at http://www.ofcom.org.uk/about/accoun/disclaimer/

Next steps

A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in November 2009.

A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.

A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.

A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Equality Impact Assessment

A2.9 Ofcom is required by statute to assess the impact of all of our projects and practices on race, disability and gender equality. We fulfil these obligations by carrying out an equality impact assessment (EIA), which examines the potential impacts a proposed policy or project is likely to have on people, depending on their background or identity.

A2.10 We conducted a full EIA for this project, in order to make sure that our proposed recommendations to the Secretary of State on the media ownerships rules will not have adverse impact on promoting equality.

A2.11 We have not identified any concerns in our analysis that our proposed recommendations could have a negative impact on race, disability and gender groups.

Annex 3

Consultation response cover sheet

A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.

A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.

A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.

A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the ‘Consultations’ section of our website at www.ofcom.org.uk/consult/.

A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don’t have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	☐	Name/contact details/job title	☐
Whole response	☐	Organisation	☐
Part of the response	☐	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here. ☐

Name   Signed (if hard copy)

Annex 4

Legal framework

A4.1 Under section 391 of the Communications Act 2003 ("the Act"), Ofcom is required to report to the Secretary of State on the functioning of the media ownership rules at least every three years. Those rules are set out in the following legislative provisions:

Schedule 2 to the Broadcasting Act 1990 (restrictions on the holding of broadcast licences);

Schedule 14 to the Act (restrictions of the holding of certain radio licences, cross media ownership and additional provisions relating to religious bodies);

Sections 280 and 281 of the Act (Channel 3 news provider);

Section 283 of the Act (Channel 5 news provider); and

Part 3 of the Enterprise Act 2002 (insofar as it relates to intervention by the Secretary of State in connection with newspaper or media mergers).

A4.2 As part of this review, Ofcom is to make recommendations to the Secretary of State as to the exercise of his powers in relation to media ownership. Those powers are powers to:

- amend or repeal the rules on the restrictions on holding broadcast licences[77];
- amend or repeal the rules on cross media ownership between Channel 3 and newspapers[78];
- amend or repeal the rules on the holding of radio multiplex licences[79;]
- impose restrictions on the holding of local radio licences[80;]
- amend or repeal the rules on the appointed news provider for Channel 3[81];
- appoint a news provider for Channel 5[82]; and
- make amendments to the rules on media mergers as to the definitions used, the jurisdictional criteria and the public interest considerations to be taken into account[83].

A4.3 This review is conducted within the context of that legislation. The matters covered in this report are therefore limited to those set out above. Any recommendations made concern only the exercise of the powers of the Secretary of State at paragraph A4.2 above.

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77 Section 348(5) of the Act and Paragraph 16, Schedule 14 to the Act.
78 Paragraph 6, Schedule 14 to the Act.
79 Paragraph 10, Schedule 14 to the Act.
80 Paragraphs 11, 12 and 13, Schedule 14 to the Act.
81 Section 282 of the Act.
82 Section 283 of the Act.
83 Sections 44(11), 58(3) and 56(6A) of the Enterprise Act 2002.

The Media Ownership Rules

A4.4 The principal rules on media ownership are contained in the amended Broadcasting Act 1990, the Act and the Media Ownership (Local Radio and Appointed News Provider) Order 2003 ("the Order"). Further provisions on the treatment of mergers between media companies are contained in the Enterprise Act 2002.

A4.5 Under the current framework, there are a number of general disqualifications on the holding of broadcast licences or interests in licence holders. In addition, certain bodies are subject to qualified restrictions on their ability to acquire licences. The rules also provide for restrictions on the ownership of multiple radio licences and limits on cross media ownership. Finally, specific rules may apply to media mergers in certain circumstances.

General disqualifications

A4.6 The general disqualifications on the holding of a "broadcast licence"[84] are set out in Schedule 2 of the Broadcasting Act 1990 which provides that the following persons are prohibited from holding a broadcast licence:

- local authorities[85];
- political organisations;
- the BBC[86] and the Welsh Authority;
- advertising agencies; and
- persons who, in the opinion of Ofcom, are subject to undue influence by a disqualified person such as to act against the public interest.

Qualified Restrictions

A4.7 The media ownership rules also contain a number of qualified restrictions which prevent certain organisations from holding some broadcast licences as follows:

- religious bodies may not hold licences for (a) Channel 3, (b) Channel 5, (c) national analogue radio services, (d) public teletext, (e) additional television services, (f) television multiplexes, and (g) radio multiplexes. In all other cases, licences may be awarded, subject to the approval of Ofcom.
- publicly funded bodies (i.e. receiving more than 50% of funding from the public purse) cannot hold radio services licences (except for restricted services);
- BBC subsidiaries may not hold licences for (a) regional or national Channel 3 services, (b) Channel 5 services, and (c) national, local or restricted radio services[87];

[84] a broadcast licence refers to licences granted under the Broadcasting Act 1990 or the Broadcasting Act 1996 for independent television services, independent radio services, digital terrestrial television broadcasting and digital terrestrial sound broadcasting. It is a criminal offence to provide broadcasting services without a licence (sections 13 and 97 Broadcasting Act 1990)
[85] subject to the provisions of s.142 of the Local Government Act 1972 which allows local authorities to broadcast information relating to their activities.
[86] the licence of the BBC is not granted under the relevant provisions of the Broadcasting Act 1990 or the Broadcasting Act 1996.

- Channel 4 and S4C subsidiaries may not hold Channel 3 or Channel 5 licences[88];
- national public telecommunications operators with annual turnover in excess of £2 billion[89] may not hold Channel 3 or Channel 5 licences or a national radio service licence; and
- persons subject to disqualification orders as a result of providing false information to Ofcom[90].

Restrictions on ownership of multiple radio licences

A4.8 The rules on the holding of multiple radio licences are contained in Schedule 14 of the Act and the Order. Different rules will apply depending upon whether the licence is an analogue or digital licence and, in the case of digital licences, whether it is a multiplex or a sound programme service licence.

A4.9 There are no longer any restrictions on the holding of national analogue radio licences. At local level, no person may acquire a further licence where he already holds more than two local licences which overlap and the addition of the acquired licence would give rise to that person holding 55% or more of the total points available in that area[91]. The assessment of whether licences overlap and the calculation of the applicable points to be taken into account involve a complex calculation whereby points are allocated to particular radio stations according to the level of coverage of potential audience achieved by those stations.

A4.10 In the case of digital multiplexes, at national level, the rules provide that no person may hold more than one national radio multiplex at the same time[92]. At local level no person may hold two licences for overlapping radio multiplex services. Services will be considered to overlap where the potential audience for one multiplex exceeds 50% of the potential audience of the other multiplexes.

A4.11 Further restrictions apply to the holding of licences for local digital sound programme services ("DSPS"). The basic rule states that no person may provide an additional DSPS where he holds hold more than four licences on a relevant multiplex or an overlapping multiplex and, as a result of the additional DSPS he would hold more than 55% of the total points in the relevant area. As with local analogue services, the calculation of the points total is complex.

A4.12 A more detailed description of the rules on the ownership of multiple radio licences and the calculation of the points system is set out at Annex 3.

Cross media ownership

A4.13 The rules on cross media ownership prevent parties from acquiring significant holdings across media platforms, including newspapers[93]. Those rules provide that no person may acquire a Channel 3 licence (whether directly or indirectly) if he runs one or more national newspapers having an aggregate market share of 20% or more. Similarly, the holder of a Channel 3 licence may not acquire an interest of 20% or

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[87] see footnote 110 above
[88] Section 5A, Schedule 2 of the Broadcasting Act 1990
[89] Article 16, Broadcasting (Restrictions on the holding of licences) Order 1991
[90] section 145 Broadcasting Act 1996
[91] Article 5 of the Order.
[92] paragraph 7, Schedule 14 of the Communications Act 2003
[93] paragraph 1, Schedule 14 to the Act.

more in a body corporate running one or more national newspapers with an aggregate market share of 20% or more.

A4.14 At local level, a person may not acquire a regional Channel 3 licence (directly or indirectly) if he runs one or more local newspapers having an aggregate market share of 20% or more in the area covered by the regional Channel 3 licence. Market share for these purposes is calculated by reference to circulation for the preceding 6 months.

A4.15 In respect of cross ownership of local analogue radio licences and newspapers or television services licences, the Order applies a points system which prevents persons holding one or more local newspapers with aggregate market share of 50% or more and holders of Channel 3 regional licences from holding local analogue radio licences[94]. A person may not acquire a local radio licence if he would thus acquire more than 45% of the total points available in relevant area. The means of calculating the relevant points is set out in Annex 5.

A4.16 The Order further provides that no single person may hold together:

- a local analogue radio licence;
- a regional Channel 3 licence whose potential audience includes 50% of the 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.

Mergers between media companies

A4.17 Mergers are subject to the competition law test contained in sections 22 and 33 of the Enterprise Act 2002 pursuant to which the Office of Fair Trading ("OFT") shall make a reference to the Competition Commission where a relevant merger situation has resulted or may be expected to result in a substantial lessening of competition in a relevant market.

A4.18 Following the Government's *Digital Britain Final Report* and the OFT's Review of the Local and Regional Merger Regime in June 2009[95], the OFT will now obtain a Local Media Assessment from Ofcom in media mergers involving newspapers which raise prima facie competition concerns to further inform the OFT's decision on whether to clear the merger, refer it to the Competition Commission, or seek undertakings. This will be done within the existing merger legislation. The decision on whether or not to refer or clear the merger remains with the OFT under section 22 of the Enterprise Act 2002.

A4.19 Additional provisions apply in relation to mergers between media companies which raise public interest considerations at the discretion of the Secretary of State. Under sections 42, 59 and 67 of the Enterprise Act 2002, the Secretary of State may issue an intervention notice (in the case of mergers which meet the jurisdictional criteria of section 23), a special intervention notice (for mergers which do not meet the jurisdictional test) or a European intervention notice (where the merger meets the jurisdictional thresholds of the EC Merger Regulation[96]) which allows the consideration of public interest factors other than the competition test in deciding

[94] at paragraph 6
[95] http://www.oft.gov.uk/news/press/2009/71-09
[96] Regulation 139/2004/EC on the control of concentrations between undertakings.

upon whether or not to refer a merger to the CC or to remedy any adverse effects of a merger.

A4.20 There are two different public interest tests in relation to media mergers: one for newspaper mergers and another for broadcasting and cross media mergers.

A4.21 For newspaper mergers, the public interest considerations which may be taken into account are:

- the need for the accurate presentation of news; and
- the need for free expression of opinion in newspapers[97];
- the need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom[98];

For broadcasting and cross media mergers, the public interest considerations which may be taken into account are:

- the need, in relation to every different audience in the United Kingdom or in a particular area of locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience[99];
- the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and
- the need for persons carrying on media enterprises, and those with control of such enterprises to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Act[100].

A4.22 Further information on the operation of the public interest merger provisions relating to newspaper and other media mergers is available in guidance published by the Department for Business and Skills at http://www.berr.gov.uk/files/file14331.pdf

[97] section 58(2A) of the Enterprise Act 2002.
[98] section 58(2B) of the Enterprise Act 2002.
[99] section 58(2C) of the Enterprise Act 2002.
[100]. The objectives of section 319 of the Communications Act 2003 are:

(a) that persons under the age of 18 are protected;
(b) that material likely to incite the commission of crime or to lead to disorder is not included in television and radio services;
(c) that news included in television and radio services is presented with due impartiality;
(d) that news included in television and radio services is reported accurately;
(e) that the proper degree of responsibility is exercised in respect of the content of religious programmes;
(f) that generally accepted standards are applied to the content of programmes to protect the public from offensive and harmful material;
(g) that the prohibition on political advertising by radio or television is upheld;
(h) that misleading or harmful radio or television advertising is prevented;
(i) that international obligations relating to radio and television advertising are complied with;
(j) that unsuitable sponsorship of radio or television programmes is prevented;
(k) that there is no discrimination between television and radio advertisers; and
(l) that subliminal techniques are not used in radio or television.

Appointed news provider

A4.23 In order to secure the provision of news programmes of a sufficiently high standard on Channel 3, section 280 of the Act requires arrangements to be put in place for the appointment of a single body as appointed news provider for all Channel 3 regional licence holders. Section 281 of the Act provides that the limitations and disqualifications which apply to the holding of Channel 3 licences apply equally to the Channel 3 appointed news provider[101]. A further disqualification was introduced by the Order which prevents the appointment as Channel 3 news provider of a person subject to a disqualification order under section 145 of the Broadcasting Act 1996[102]. In addition, restrictions are placed on the accumulation of interests in newspapers and appointment as news provider for Channel 3. In this regard, the same restrictions apply in respect of the Channel 3 appointed news provider as for holders of Channel 3 licences, as set out in Schedule 14 of the Communications Act 2003[103].

A4.24 Section 283 of the Communications Act 2003 provides that the Secretary of State may require news programmes for Channel 5 services to be provided by an appointed news provider. Where he does so, he may amend the provisions of section 280 and section 281 to impose the same restrictions on the appointed Channel 5 news provider as those which apply to the appointed Channel 3 news provider. However, the Secretary of State may only exercise such powers in circumstances where he is satisfied that the audience share of Channel 5 is broadly equivalent to that of Channel 3. These provisions have yet to be invoked.

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[101] see paragraphs A4.6 and A4.7 above.
[102] Article 13 of the Order.
[103] see paragraphs A4.6 and A4.7 above.

Annex 5

Radio ownership rules

A5.1 There is a set of ownership rules relating to each of:

- local analogue licences;
- national and local radio multiplex licences; and
- local digital sound programme service licences (the services that are carried on multiplexes).

A5.2 These rules are designed to ensure plurality of ownership (i.e. to ensure services are provided by a range of different commercial providers) rather than being specifically designed to protect competition.

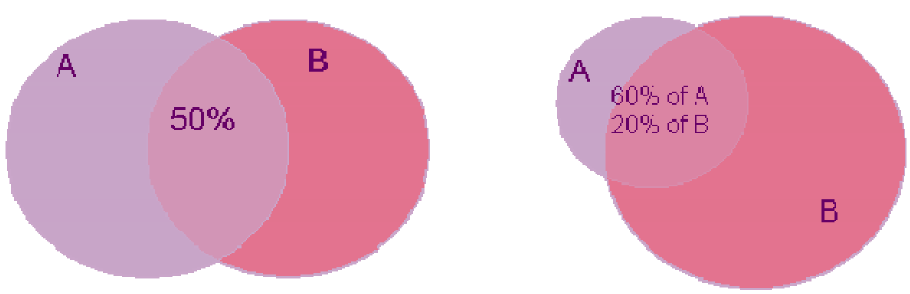
A5.3 All of the types of licence listed above are subject to rules designed to maintain plurality within commercial radio provision. Local analogue licences are also subject to cross media ownership restrictions.

A5.4 Applying the ownership rules in relation to a particular licence consists of factual and legal analysis.

Local analogue licence rules

A5.5 These rules are concerned with licences which overlap. Two licences are considered to overlap, for the purpose of the rules, if the population shared between them is more than 50% of the total population of either licence[104]. For example licence A could overlap licence B by 60%, but B may overlap A by only 20%, depending on the total sizes of A and B. As long as one of these figures is over 50%, the two licences overlap for the purpose of the rules. Two examples are in Figure 33.

Figure 1: Examples of licences which overlap for the purposes of identifying a cluster

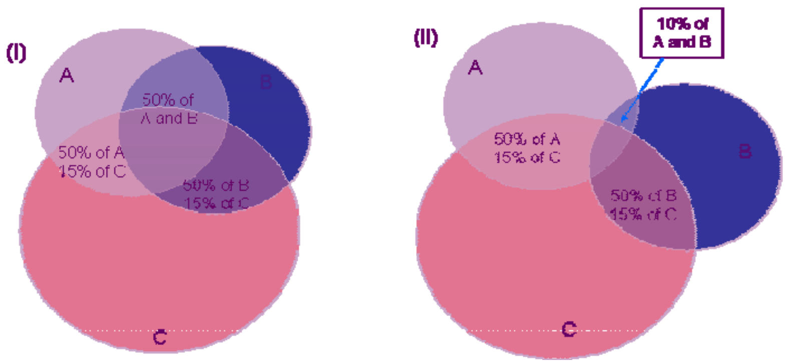


Source: Ofcom

[104] The population coverage of a local licence (and hence any related overlap population) is defined by reference to its Measured Coverage Area or MCA. The MCA is the area within which a service is capable of being received at a level satisfying the technical standards set out in Ofcom in its "Coverage: Planning Policy, Definitions and Assessment" document. This area is combined with data from the latest census to produce population coverage, and population overlap, figures.

A5.6 The analogue ownership rules apply only once an operator seeks to hold a third or subsequent licence such that the MCA for this further licence shares a 50% overlap with the two or more licences already owned. Holding this third or subsequent licence would form a “cluster” of three or more overlapping licences. The points test is applied to each licence in the cluster, in order to see whether the points limit would be breached immediately after the operator became the holder of the further licence.

Figure 2: Example of a cluster and example of licences which do not form a cluster



Source: Ofcom

A5.7 Figure 34 (i) is a cluster of licences under the rules. Figure 34(ii) is not, because there are not three overlaps of 50% or more.

A5.8 The points test is applied on a licence by licence basis. For each test, the licence in question is allocated four points; all other commercial licences which overlap with it by 5% or more are attributed points, as set out in Table 1. BBC local analogue stations are excluded from this calculation.

Table 1: Overlap and points attributable

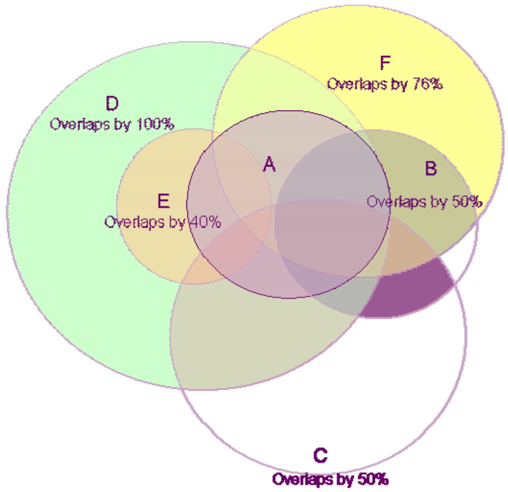
Overlap	Points attributable
up to 5%	0
5-25%	1
25-75%	2
75% or more	4

Source: Ofcom

A5.9 Once all overlapping licences have been considered then the points attributed to those licences plus the licence in question are summed. The points that are controlled by the operator in question are also added up. If the operator controls more than 55% of the total points then the points test is failed, and the operator may not hold the further licence in question.

A5.10 The points test is applied to every licence that has been identified as forming part of the "cluster" in question. Figure 35, Figure 36 and Figure 37 provide examples of the test being applied to each licence in the cluster from Figure 34 above, i.e. the operator in question already holds licences A and B, and is seeking to acquire licence C. These three licences form a cluster and so Ofcom applies the points test to each of the licences A, B and C.

Figure 3: Test for licence A



Source: Ofcom

A5.11 Licence A is analysed in Table 2.

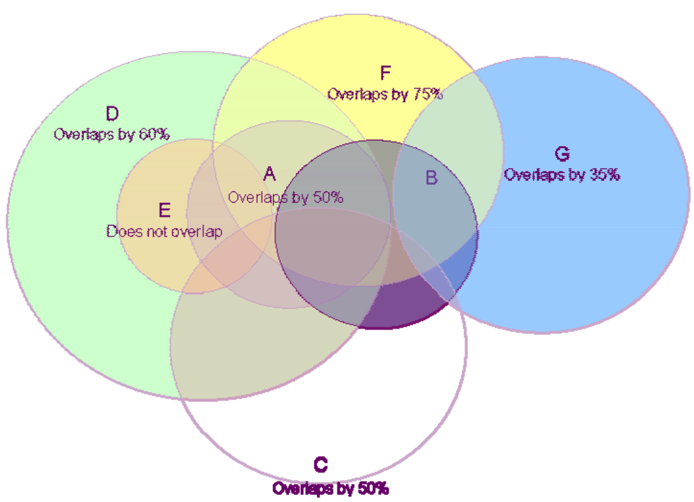
Table 2: Overlap and points for licence A

Licence	Overlap with A	Owned points	All points
A	licence being tested	4	4
B	50%	2	2
C	50%	2	2
D	100%		4
E	40%		2
F	76%		4
Total		**8**	**16**

Source: Ofcom

A5.12 The licensee would own eight points; the total of all points is 16 points. The "owned points" in A's area would be 50% of the total. This licence does not fail the test.

Figure 4: Test for licence B



Source: Ofcom

A5.13 Licence B is analysed in Table 3.

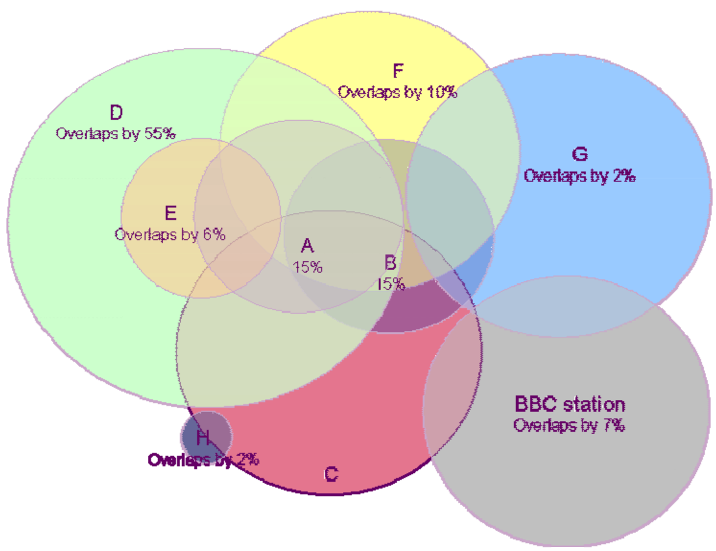
Table 3: Overlap and points for licence B

Licence	Overlap with B	Owned points	All points
A	50%	2	2
B	licence being tested	4	4
C	50%	2	2
D	60%		2
E	None		0
F	75%		4
G	35%		2
Total		**8**	**16**

Source: Ofcom

A5.14 The licensee would own eight points. The total of all points is 16 points. The "owned points" in B's area are 50% of the total. This licence does not fail the test.

Figure 5: Test for licence C



Source: Ofcom

A5.15 Licence C is analysed in Table 4.

Table 4: Overlap and points for licence C

Licence	Overlap with B	Owned points	All points
A	15%	1	1
B	15%	1	1
C	licence being tested	4	4
D	55%		2
E	6%		1
F	10%		1
G	2%		0
H	2%		0
I	7%		BBC – not counted
Total		**6**	**10**

Source: Ofcom

A5.16 The licensee would own six points. The total of all points is 10. The "owned points" in C's area are 60% of the total. The operator is not permitted to own this licence in combination with A and B.

Local analogue licence rules – cross media ownership

A5.17 In any area where there are three or more overlapping local licences, a person who is the dominant local newspaper provider, or the holder of the local Channel 3 television 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 total points available in the area. As for the radio-only points test described above, the test may be applied prospectively, that is before the person becomes the holder of the radio licence in question. The test is applied as if he has become the licence-holder, in order to see whether the points limit would be breached if he did so.

A5.18 Note that this cross media ownership rule applies wherever there are three or more overlapping licences, no matter who owns each of them, whereas the radio-only rule above takes effect only when the same person holds three or more overlapping licences.

A5.19 There is also a "backstop" rule that no person may hold a local radio licence and the local Channel 3 television licence and be the dominant local newspaper provider in the same area.

A5.20 "Dominant local newspaper provider" means someone who runs:

- a local newspaper with a local market share of 50% or more in the coverage area of the radio licence in question; or
- local newspapers which together have a local market share of 50% or more in that area.

Digital multiplex licence rules

A5.21 No person may hold more than one national radio multiplex licence at the same time[105]. There is currently only one national radio multiplex licence.

A5.22 The rule on local radio multiplex ownership states that no person may hold any two local radio multiplex licences that share a 50% or more population overlap[106].

Local digital sound programme service rules

A5.23 The rules on ownership of local digital sound programme services apply to commercial services carried on local radio multiplexes. They do not take any BBC digital services into account. The rules can be broken down into two stages: a "threshold" test, and a "points" test.

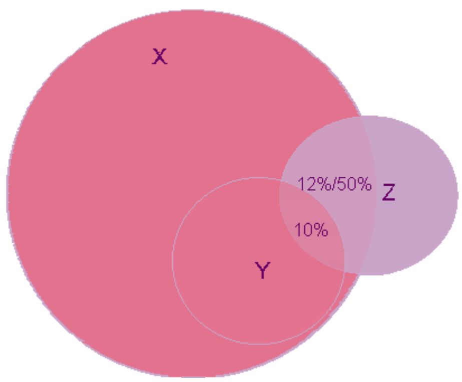
A5.24 As with the local analogue rules, the local digital sound programme tests are applied in order to see whether the rules would be breached immediately after the operator began providing the further service.

[105] Paragraph 7 of Schedule 14 to the Act 2003.
[106] Paragraph 8 of Schedule 14 to the Act 2003.

A5.25 The first stage of these ownership rules (the "threshold" test) involves looking at the number of services provided by a person on a single multiplex, or across overlapping multiplexes (if relevant). Overlapping in this context means that the potential audience of one multiplex service includes at least 50% of the potential audience of the other multiplex[107].

A5.26 Because of the way that the multiplex licence areas are constructed – with a mixture of larger local multiplex licences (so-called regional multiplex licences) overlaid on a network of smaller local multiplex licences – one multiplex service may overlap with two or more other multiplexes. Figure 38 illustrates this.

Figure 6: Example of a multiplex service (X) which overlaps with two other multiplexes



Source: Ofcom

A5.27 X and Y overlap, and X and Z overlap. Y and Z do not overlap each other.

A5.28 The "threshold" rule is that an operator may provide up to four digital sound programme (DSP) services across overlapping multiplexes. If an operator wishes to provide more than the threshold number of services, then the second stage ("points test") is triggered. This test works in a similar way to the analogue points test.

A5.29 If a multiplex does not share a 50% overlap with another, this means an operator may put up to four services on this multiplex before the threshold is reached. If a multiplex does share a 50% overlap with another multiplex, then an operator may spread four services across the two. He could have two DSP services on each multiplex, or three on one and one on the other, or four on one and none on the other.

A5.30 The points test is applied to the services provided on the multiplex on which the further service is to be added (the "relevant multiplex") together with services on multiplexes which overlap by at least 5% with the relevant multiplex (referred to in this annex as the "multiplex area"). A person may not provide services representing more than 55% of the total points available in respect of all local digital sound programme services provided in the multiplex area.

[107] Overlaps are calculated by reference to each multiplex's Primary Protected Area (PPA). This is area within which Ofcom, in its regulation of other multiplex operators, will seek to protect a given service from interference.

A5.31 One key difference between the analogue and digital service rules is that DSP services are classified into significant services, intermittent services, and services which are neither significant nor intermittent (referred to in this annex as "minor services"). The Media Ownership (Local Radio and Appointed News Provider) Order 2003 (SI 2003/3299) defines these services. Broadly speaking, “significant services” are those that transmit 24 hours a day, “intermittent services” broadcast for around 12 hours a day, and “minor services” broadcast only occasionally[108].

A5.32 The significance of categorising services in this way is that it affects how they are counted for the points test. While the points attributed to significant services count towards both the operator’s total and the total number of points in respect of all services provided in the multiplex area, intermittent services count only towards the operator’s total and are ignored for the purpose of calculating the total in respect of all services provided in the multiplex area. Minor services are not allocated any points, neither for the operator's total nor for the multiplex area total.

A5.33 A local digital sound programme service attracts points in a similar way to a local analogue licence. All services on the relevant multiplex attract four points. Services on overlapping multiplexes attract points according to the degree of overlap between multiplexes.

A5.34 The points attribution is set out in Table 5.

Table 5: Multiplex overlap and points attributable

Overlap between multiplexes	Points attributable to each service on the multiplex:		
	Classification of service	To the operator in question	To the multiplex area
up to 5%	Significant	0	0
	Intermittent	0	0
5-25%	Significant	1	1
	Intermittent	1	0
25-75%	Significant	2	2

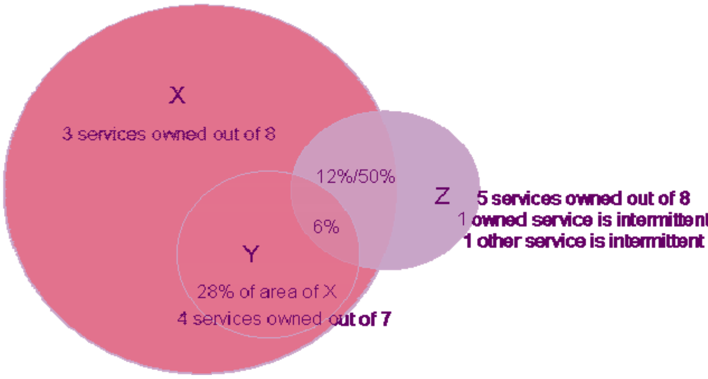
Source: Ofcom

A5.35 In Figure 39, if an operator provides a further service on X, and we are applying the points test to multiplex X, then as multiplex Y overlaps multiplex X by 28%, and multiplex Z overlaps multiplex X by 12%, we allocate:

- four points for every significant service, and every intermittent service provided by the operator, on X;
- two points for every significant service, and every intermittent service provided by the operator, on Y; and
- one point for every significant service, and every intermittent service provided by the operator, on Z.

[108] Significant services currently represent 97% of DSP services, with the remainder intermittent. There are no minor services as of October 2004.

Figure 7: DSPS points calculation



Source: Ofcom

A5.36 If the threshold test is applied to multiplex X, the number of services provided by the operator on multiplex X and on the overlapping multiplexes is 12. The points test is therefore applied. The results for area X are set out in Table 6.

Table 6: Overlap and points for area X

Multiplex	Overlap with X	Owned services	Owned points	All services	All points
X	licence being tested	3	12	8	32
Y	28%	4	8	7	14
Z	12%	5	5	6	6
Total			**25**		**52**
Percent owned			**48%**		

Source: Ofcom

A5.37 Note: on Z, all five owned services are counted in the operator's total, but in calculating the points universe only six out of eight are counted, because two services are intermittent.

A5.38 If the threshold test is applied to multiplex Y, the number of services provided by the operator on multiplex Y and on the overlapping multiplex (X) is seven. The points test is therefore applied. The results for multiplex Y are set out in Table 7.

Table 7: Overlap and points for area Y

Multiplex	Overlap with Y	Owned services	Owned points	All services	All points
X	100%	3	12	8	32
Y	licence being tested	4	16	7	28
Z	6%	5	5	6	6
Total			**33**		**66**
Percent owned			**50%**		

Source: Ofcom

A5.39 If the threshold test is applied to multiplex Z, the number of services provided by the operator on multiplex Z and on the overlapping multiplex (X) is eight. The points test is therefore applied. The results for multiplex Z are set out in Table 8.

Table 8: Overlap and points for area Z

Multiplex	Overlap with Z	Owned services	Owned points	Universe services	Universe points
X	50%	3	6	8	16
Y	6%	4	4	7	7
Z	licence being tested	5	20	6	24
Total			**30**		**47**
Percent owned			**64%**		

Source: Ofcom

A5.40 The rule is breached and the operator must reduce his owned points by 5 or more (by taking one service off Z and one off Y, for example).