ISBA RESPONSE TO OFCOM REVIEWS OF LOCAL MEDIA OWNERSHIP AND LOCAL RADIO RULES

ISBA is the representative voice of British Advertisers. We are already well-known to many at Ofcom, but further information about us is available at www.isba.org.uk if required. This represents our brief response to these two recent consultations.

We understand that the windows for responses to each closed a few days ago, but we have only just been able to turn our limited resources to generating these responses having completed our responses to Ofcom's Review of the Broadcasting Codes and The Competition Commission's consultation on the ITV Contract Rights Renewal Undertakings and Notice of Possible Variations to them.

We therefore trust that Ofcom will be able to accommodate and consider this brief but important response from the body which represents the advertisers who fund much of the UK's commercial media.

OFCOM REVIEW OF LOCAL MEDIA OWNERSHIP

The Office of Fair Trading issued a discussion paper on its review into local and regional media, on which we consulted our membership and responded in March if this year.

Our response reviewed the issues and our historically-held positions on them, narrowed its focus to the issues at local and regional levels and drew some conclusions and recommendations.

A copy of the full response is attached. The key points were:

- At a national level, each medium (eg TV, Radio, national newspapers, regional/local newspapers, etc.) comprises its own market. We are pleased that the competition authorities have long recognised, and continue to recognise, this.

  However, at a local level where it is not economic or practical to maintain such levels of diversity of ownership, cross-media ownership becomes a much more important issue, both from the advertising and content perspectives.

- We recognised that our well-argued and long-held position that no less than four companies should be allowed to control any medium (giving a median market share <25%) and that no less than seven should be allowed to control all media channels (median market share <17%) may not be extendable down to the local level.

- However, we argued strongly that all citizens should still always have a choice of news and information provision, and that **all advertisers should always have some degree of competition for their budgets.**

- This means that **there should be no less than two viable alternative media owners serving any local catchment, however small (median market share <50%).**

- **We believe that neither of any two such owners hold market shares of greater than two-thirds or less than one-third of the market, these being shares of advertisement revenue.**

- **It is important that these limits are not exceeded, as many advertisers ascribe greater value to freely-distributed media than they do to freely-distributed media, particularly in print.** (For example, a media owner with a 66% share, but comprising only paid-for media, might be seen by advertisers to have a greater *effective* market share and thus dominance when contrasted with a 33% competitor whose inventory comprised free-distribution titles).

- **Like our rules at national and regional level, we considered these suggestions practical, appropriate and eminently deliverable.**

Having consulted our members and made that response so recently, nothing has changed from our perspective and we therefore submit it in response to this Ofcom review.

OFCOM REVIEW OF LOCAL RADIO RULES

Again, we have responded to previous Ofcom consultations on UK Radio broadcasting. In those responses, we have consistently set out the following points :

- We cautioned against excessive regulatory interventions in, and micromanagement of, commercial radio station and programme formatting and content. We believe that listeners are not stupid and should be trusted to make their own listening choices, not have formats imposed upon them. If the imposition of formats is considered necessary - for example to fill gaps caused by market failure – we believe it should be the role of the nation's publicly-funded public service broadcasting corporation, the BBC, to deliver them.

- We challenged the wisdom of holding stations to flagging licensed formats until they fail and have to be reborn phoenix-like from their own ashes - since they have had to fail, often under unnecessary new ownership.

- We also argued consistently for the need for the same set of rules to apply to BBC, which according to RAJAR, accounts for well over half of all UK radio listening according, as to commercial radio.

  We have cited the much less strict regime which the BBC faced under its Governors, and now faces under the disappointingly-similar Trust, wherein it has been able to reformat many of its radio stations and notably Radios 1 & 2 without hesitation or recourse. If only commercial radio had faced such light regulation, more stations might have done rather better and fewer might have failed. And the many stations which comprise UK commercial radio might not have been forced to settle with less than half of all UK radio listening.

In iterative discussions with our members, we have clarified that each of these points continues to represent their view. We therefore take this opportunity to reiterate those previously-submitted views and concerns at this time.

We would, as ever, be happy to provide further comment and information as required.

Yours sincerely

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The Voice of British Advertisers ISBA

Office of Fair Trading discussion paper on review into local and regional media

The Advertisers' Response

March 2009

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1 ABOUT ISBA

ISBA is the representative body of British Advertisers, and in this role has contributed to many OFT inquiries in recent years. For further information, see www.isba.org.uk.

Our principal interest in matters of merger, acquisition and ownership is to ensure that sufficient diversity of supply exists for our advertiser members, and that dominant concentrations of ownership, or monopolies, are allowed to arise.

We have a secondary interest in ensuring continued plurality and amenity for the consumers of the commercial media, as that will ensure the achievement of audiences of the kind our members seek to reach.

2 INTRODUCTORY COMMENTS

As a representative organisation embodying several hundred different member companies which advertise – but not placing any advertising directly ourselves – our response focuses on what our members see as the relevant issues. In this response, we answer many, if not all, of the questions in the OFT's discussion document, though not necessarily in the same order as presented. We then go further and make some recommendations which we will be happy to develop with the OFT at an appropriate time.

3 ISBA'S ESTABLISHED POSITION ON MEDIA OWNERSHIP

With the above in mind, in response to various merger and competition enquiries and regulatory requests for a position, ISBA arrived at what has become known as its '4 and 7 rule' in 2000. (The only notable change since has been the rise of the online and interactive media which we predicted then). Please see two relevant extracts from that time appended.

Our position remains that there should be no less than four owners in each medium, and no less than seven owners of media overall on a national basis. We apply this test to all mergers and acquisitions in prospect, and believe it should also apply to the sub-national levels, through nations to ITV regions, major conurbations and all catchments with populations greater than 75,000.

Much work has been done to determine market definitions in the media by both the OFT and the Competition Commission – and to some extent, Ofcom - over several years. For the purposes of this review, we broadly support their conclusions and do not believe that further work on market definitions is required at this time.

4 BACKGROUND COMMENTS

Over time, we have come to view calls for reconsideration of media ownership rules leading to relaxations with great caution. This is because the proponents have invariably focussed on the efficiency dividends which might arise from ensuing mergers, acquisitions and consolidations. They are quick to point to the beguiling benefits for viewers / readers / listeners of the media in question which might arise if such dividends were recycled to fund improvements in content and access.

However, we cannot recall a single consolidation in the media space which has led to such improvements – consider ITV plc, GCap and now Global Radio, for example. The unfortunate reality is that as soon as they gain the necessary regulatory clearances, the merged entities rush to deliver value to their shareholders, not their consumers.

As it is the increased number of viewers generated by such promised improvements to both content and access that advertisers seek to reach and influence, hopefully in an improved content environment, this is a great disappointment for our members.

There is no doubt that many media companies are not particularly conventional businesses, but our view with the advantage hindsight is too many media consolidations have been permitted with too little regard for the concerns of the consumers of the media, or the advertisers which fund most of the commercial media in whole or large part.

We appreciate that structural and cyclical forces are acting in combination at this time, but do not regard this combination, however, circumstantially adverse, to justify yet further relaxations in media ownership rules. We therefore question why any such changes should be contemplated.

5 MEDIA OWNERSHIP AT THE MORE LOCAL LEVEL

Our tests for media ownership at national and regional level are straightforward, robust and relevant, but we also recognise that a different response is required at greater levels of regional and local granularity. For clarity, we consider 'local' to mean an area whose population is less than 75,000.

Local advertisers serve local catchments of customers. These audiences are captured by a variety of media, but many of these are national in canvass and therefore have prohibitive entry costs and entail high wastage. The local media, on the other hand, are vital routes to market for such businesses. Cross-media ownership can therefore be a very important issue at the local level.

We believe that two factors are particularly important when considering advertising market shares and potential dominance at this level :

1 Availability of relevant communications channels

Online iterations of local or regional media are now available to anybody on the planet with a high-speed internet connection. But they will appeal overwhelmingly to those located in, or at least with roots in or a keen interest in an aspect of, the locality or region in question.

2 Nature of advertisers

For the purpose of this discussion, we believe that local and regional advertiser businesses are characterised by two relevant dimensions : whether they are in the physical and/or online space, and whether they are of generalist or specialist appeal.

Those in the online space are likely to market themselves geographically more widely, probably using search as a key channel. Those in the physical space remain heavily dependent on regional & local media channels – press, radio and their online extensions and, to a more patchy extent concentrated on towns, outdoor/billboards.

Many specialist businesses can operate from almost any location (so they can keep space and labour costs low) and have long had specialist media channels – originally periodicals, but latterly specialist web sites – at their disposal.

Generalists can be locally or regionally-based, but they can also comprise individual branches of major national companies – eg supermarkets, automotive dealerships, opticians etc..

6 CURRENT CONSIDERATIONS

Although the majority of ISBA's membership consists of national advertiser companies, a number of these have significant interests in local and regional advertising, and it is with these, as well and the larger number of smaller local and regional businesses, in mind that we respond.

The challenge facing any review such as this is to find a framework / solution that preserves and stimulates effective competition, both for advertising and for plurality of news and information provision for readers / viewers / listeners.

We ask whether this review is stimulated by the need to refresh a principle, or whether it is a pragmatic in response to both structural (ie changes in markets and revenues) and cyclical (ie current economic downturn)?

The Newspaper Society, representing regional newspaper publishers, advises us that almost all of its members and most of their titles are now online, so structure has already changed substantially. But the fact is that whilst online has conquered *transactional* (ie direct response) advertising, it is still in its infancy when it comes to *branded* (ie intermediated sale of goods) advertising.

For advertisers, the issue of media ownership rules is not one which is confined to the press media as certain aspects of this review have suggested. Not only are many online, but regional media groups' ownership of radio stations should also be factored in. Outdoor/billboard ownership has consolidated into the hands of different and competitive groups and is therefore not such a pressing issue for us at this time.

We would reiterate our view that, at a national level, each medium (eg TV, Radio, national newspapers, regional/local newspapers, etc.) comprises its own market. We are pleased that the competition authorities have long recognised, and continue to recognise, this.

However, at a local level where it is not economic or practical to maintain such levels of diversity of ownership, cross-media ownership becomes a much more important issue, both from the advertising and content perspectives.

7 CONCLUSIONS & RECOMMENDATIONS

We do not approach this from a purely economic perspective, rather one of common sense and practicality informed by extensive relevant industry experience. Indeed, we urge particular caution against taking too narrow or 'scientific' a view.

We recognise that our well-argued and long-held position that no less than four companies should be allowed to control any medium and that no less than seven should be allowed to control all media channels is not sustainable at a local level.

However, we argue strongly that all citizens should still always have a choice of news and information provision, and that **all advertisers should always have some degree of competition for their budgets.**

This means that **there should be no less than two viable alternative media owners serving any local catchment, however small.**

We believe that neither of any two such owners hold market shares of greater than two-thirds or less than one-third of the market, these being shares of advertisement revenue.

It is important that these limits are not exceeded, as many advertisers ascribe greater value to paid-for printed media than they do to free-distribution titles. (For example, a media owner with a 66% share, but comprising only paid-for media, might be seen by advertisers to have a greater *effective* market share and thus dominance when contrasted with a 33% competitor whose inventory comprised free-distribution titles).

Like our rules a national and regional level, these are practical, appropriate and eminently deliverable.

8 CONTACTS FOR FURTHER INFORMATION

We would be happy to provide further comment and information as requested, and also to help facilitate further inquiry of individual advertiser views. Please contact :

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ANNEX 1 - EXTRACT FROM ISBA'S JUNE 2000 RESPONSE TO THE DCMS/DTI INVITATION TO COMMENT ON THE COMMUNICATIONS REFORM WHITE PAPER

REGULATING CROSS-MEDIA OWNERSHIP

Notwithstanding the outcome of the Competition Commission's current inquiry into mergers within ITV, current UK media ownership rules limit companies to a maximum of 25% by medium, and in some cases such as Radio and Newspapers, 15% or less. However, share in some media is defined by advertisement sales revenue, in others by share of viewing or listening, and in yet others by size and source of copy circulation.

Custom and practice sees advertisers living with this, though given the chance, many would seek greater levels of competition than such limits foster.

Advertisers, who effectively fund the majority of the commercial media sector, would find it very hard to support a future regulatory framework in which current levels of competition were further compromised.

However, it is the nature of media owners to leverage their assets in whatever way they can. Advertisers would be alarmed to be confronted with companies which were permitted to own 25% of the assets within several or all media - TV, national press, regional press, magazines, radio, outdoor and cinema and online. Yet the major media groups in the UK are all developing cross-media portfolios at a pace.

Since cross-media ownership embraces media beyond those covered by the rest of this paper, ISBA believes that this is an issue for Government, and not a unified communications regulator. Nor can we believe that Government would be comfortable with the emergence of **a few highly-dominant cross-media groupings, with the subsequent implications for loss of plurality and neutrality.**

ISBA believes that the limit for cross-media ownership should fall well within the upper limit of 25% which can be amassed in any one medium. As a starting point for further discussion, we would suggest taking the 1996 Broadcasting Act's 15% limit of television audience as the benchmark.

By way of example, under such a rule, a diversified media company could own up to 25% of the assets within any single medium, but not more than, say, 15% of the total assets in all media.

To make such rules practicable, their basis would need to be harmonised across all media. To this effect, we would recommend that :

- they are therefore based on advertisement sales revenue
- all non-commercial media are excluded from such calculations
- all new media forms, such as interactive and online media are included if they are commercial.

ANNEX 2 - ISBA MEDIA POLICY GROUP MEETING, MONDAY, DECEMBER 4TH, 2000

POSITION ON CROSS MEDIA OWNERSHIP IN ANTICIPATION OF THE IMMINENT COMMUNICATIONS REFORM WHITE PAPER

INTRO/BACKGROUND

The Government's Communications Reform White Paper is expected to be published on or around December 12th, 2000 and to contain proposals for the regulation of cross-media ownership.

ISBA represents British advertisers whose advertising expenditures comprise the largest single source of funding for British broadcasting. We believe that Government should have a consistent and harmonising perspective on the issue, as excessive media - and more importantly advertising sales - concentration is likely to deliver anti-competitive situations and thus lead to unwarranted media cost inflation for advertiser-customers.

A number of strategic leaks have already indicated that Government is likely to propose limits on (cross-) media ownership based on some kind of audience-based share of voice criteria.

Rules governing national and regional newspapers and radio are historically somewhat stricter than advertisers would tend to seek, whereas recent relaxations in television ownership mean that concentrations of 30% or more are already possible. ISBA recognises that its position should at least acknowledge these latter realities.

BASIS OF SHARE

ISBA believes that a system based on share of audience is neither practical nor deliverable. Whilst relevant audience data is available for many TV and radio channels and major publications, it is not available for all. Nor can the outdoor industry's audience data yet be analysed by site and therefore by site owner. Furthermore, in each of these media, even when audience measurement systems exist their data is incompatible without subjective interpretation.

ISBA therefore strongly recommends a system based on share of advertising revenue, which data is already collected and available, and which provides a uniform common currency – 'money at risk'.

MARKET DEFINITIONS, INCLUSIONS AND EXCLUSIONS

ISBA proposes that legislation recognises currently-defined and accepted media markets, defined as : Television; Radio; National Press, Regional Press; Magazines & Periodicals; Outdoor; Cinema.

Moreover, whilst we believe that digital interactive TV and the Internet will both be significant media in due course, neither is yet drawing substantial revenues, nor are their audiences yet measured effectively and, crucially, consistently. The Internet carries the additional complication of its constituent publishers' being domicilable almost anywhere in the world, arguably putting its economic regulation beyond the UK Government's means.

We recommend that these latter media are therefore not included in the canvass on a Broadcasting/Communications Act regarding media ownership at this stage, but are kept under periodic review at a frequency to be decided but substantially greater than that of legislation itself.

SETTING LIMITS

ISBA comes from the perspective that its advertiser members seek true and effective competition for their advertising budgets, and that this will not be possible in a media environment whose ownership has become overly concentrated.

Advertisers had learned to live with the OFT's 25% limits on airtime sales concentration, which limits were broadly reflected or bettered in the regulation of other media.

They regret recent developments in the UK television marketplace have already led to two players – Granada and Carlton – each controlling over 30% of airtime sales, and certainly oppose further such relaxations.

The logical conclusion of a 25% limit in a market is that it can 'shake down' to a minimum of four companies. ISBA proposes that this rule be maintained for each medium, meaning that no fewer than four companies can control any single media category as defined above.

Any company which already operates above these limits should be prevented from further acquisitive growth, though we recognise that organic growth cannot be prevented.

For cross media purposes, advertisers believe that the minimum number of companies that it would be acceptable to 'shake down' to would be seven. A 15% limit on cross-media companies would achieve this goal.

CONCLUSION

Notwithstanding companies which have already been allowed to grow beyond these limits, and which ISBA understands legislation could not retrospectively stunt in any event, ISBA proposes that future media ownership controls should :

- be based on money at risk
- until measurable, exclude online and interactive television
- limit companies to 25% a maximum ownership of any single medium
- limit cross-media companies to a maximum ownership of 15% of a combination of media
- prevent companies which already breach either limit from further acquisitive growth

We believe that these simple rules offer ample flexibility for any existing or emerging cross-media owner to structure their portfolios to play from their strengths and core skills, whilst ensuring sufficient plurality for their consumers and sufficient competition for advertising budgets.