

RadioCentre response to Ofcom Media Ownership Rules Review

Background

1. RadioCentre is the industry body for Commercial Radio. Formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), RadioCentre's membership comprises the overwhelming majority of UK Commercial Radio stations, who fund the organisation. RadioCentre is governed by a board of eight directors, representing a cross section of the industry and including all the major Commercial Radio groups.
2. The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry - in terms of both listening hours and revenues. RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

Summary

3. The proposed reform of media ownership rules is one of a number of vital changes, along with reform of localness regulation and the current Broadcasting Code Review, which will help to modernise the regulatory environment within which Commercial Radio operates. Taken together these measures will support the delivery of our vision for the future of our industry, with a 'drive to digital' at its heart.
4. We agree with Ofcom that ownership has always been an imperfect proxy for ensuring viewpoint plurality, with a limited impact on diversity in local media markets. Moreover, it is important to use this opportunity to address the disproportionate regulation that exists in the radio sector in particular.
5. Therefore we are encouraged by the recommendations and Ofcom's analysis, driven by the changing media landscape and different media consumption habits, which make the provision of local news and information difficult to sustain.
6. These trends have adversely affected the revenues of the Commercial Radio industry, creating a particularly difficult financial situation that could itself endanger the plurality of viewpoints that are the purpose of the media ownership regulations, due to the increasing number of stations that are becoming unviable and are being forced to close.
7. Therefore these changes (which are largely identified by Ofcom in the consultation document) along with the fact that consumers are less likely to depend solely on local Commercial Radio for their news and information, mean that sector specific rules on local radio ownership are unnecessary and potentially damaging. Consequently, **Ofcom's recommendation for the removal of the local radio ownership rules is welcome.**
8. **RadioCentre also supports the liberlisation of the local cross media ownership rules**, in order to encourage the successful development of more local multi-media companies that have interests beyond a single sector, such as radio. There may even be a case to remove these rules completely, but we will reserve our judgement on this matter until the next review of ownership rules in three years time.

9. **The recommendation to remove the current local multiplex ownership rules is also welcome**, as these restrictions are of limited value in terms of protecting plurality and their removal will help to avoid the possibility of this becoming a potential obstacle to ensuring investment in the necessary digital infrastructure.

Introduction

10. RadioCentre welcomes this latest consultation on media ownership rules, which provides an important opportunity to reduce the regulatory burden on the local media sector at an extremely challenging time.
11. It is widely accepted that Commercial Radio has been particularly badly affected by a combination of structural changes and falls in advertising revenue in recent years, compounded by the recession. Indeed Ofcom recently acknowledged that Commercial Radio is *"facing possibly its greatest ever challenges"*¹, with the possibility of revenues falling by as much as 20% in 2009 and competition with other platforms which has never been tougher.
12. We see this initiative as part of a package of measures under consideration by Ofcom, which have the potential to update the framework of rules and regulations that govern the operations of Commercial Radio.
13. A number of these measures emanate from the Digital Britain final report, including the proposed deregulation of the rules on providing locally-made programming and increased flexibility on programme sharing and co-location of stations that are part of the parallel consultation being conducted by Ofcom². In addition the Commercial Radio industry is seeking a comprehensive revision of Section 10 of the Broadcasting Code, in order to provide necessary commercial freedom while retaining integrity and transparency to protect consumers.
14. These important changes will help to modernise the environment in which Commercial Radio operates and will help to place the industry on a firmer footing as it faces up to the challenges of a fast changing world. It will also help to support our shared vision for a digital future which, for radio, has the potential to deliver much greater diversity of choice; effective competition at a national level with the BBC and more investment in content following an end to dual transmission costs. Our vision, which was presented to the Government as part of the Digital Britain process, encompasses the needs of listeners, advertisers and industry:
- To deliver the majority share of radio listening in Digital Britain
 - With three strong tiers of listener choice:
 - Strong national brands to compete with BBC
 - Large local and regional services, on DAB, to deliver news, information and entertainment to reflect the tastes of their area
 - Small local and community services in smaller towns
 - Via new content, innovative programming and interactivity
 - Which, as a consequence, re-engages advertisers' passion for radio and grows our revenues, fuelling further investment in content
15. Commercial Radio is committed to realising this vision and, with the support of Government and Ofcom, will be well placed to invest with certainty in new content and maximise the opportunities presented by new platforms. However, as we have

¹ Ofcom, 'Radio: the implications of Digital Britain for localness regulation', July 2009, p.2

² Ofcom, 'Radio: the implications of Digital Britain for localness regulation', July 2009

noted, we believe that this requires a number of regulatory and legislative changes, which are themselves informed by the dramatic transformation in the media landscape.

Media Ownership Rules and the Radio Sector

16. As Ofcom is aware, Commercial Radio is still subject to several different tiers and types of ownership regulation, in addition to competition law. The sum of this is a level of regulatory intervention out of all proportion with the industry's size and influence on the advertising market, with radio representing only around 6% of display advertising³.
17. The different types of media ownership restrictions on radio that are under consideration as part of this review are as follows:
 - Two sets of rules involving points systems limiting the acquisition of local analogue and digital radio licences within individual areas (Ownership (Local Radio and Appointed News Provider) Order 2003);
 - A set of rules also involving a points system restricting local cross-media ownership between local radio, Channel 3 and local newspapers (Ownership (Local Radio and Appointed News Provider) Order 2003);
 - Restrictions on the ownership of national and local multiplexes (Part 2, Schedule 14, 2003 Communications Act);
 - Restrictions on ownership by religious (and certain other) bodies (Part 4, Schedule 14, 2003 Communications Act).
18. Radio is also subject to OFT (and potentially Competition Commission) considerations, which deal with competition issues that arise from potential mergers, as well as public interest investigations at the Secretary of State's discretion (Enterprise Act 2002).
19. These current rules have a disproportionate impact on restricting the activities of local radio, in an even more severe manner than newspaper and TV industries. Yet the benefits and justification for this level of mono-media regulation are simply not apparent.
20. The original development of the media ownership rules as a means of ensuring plurality and diversity of news and editorial content was an understandable reaction by Parliament to concerns about these matters. However, the use of this method of ensuring a balance of different media viewpoints has always been problematic. Indeed during its previous review of these rules Ofcom recognised that ownership restrictions are an imperfect proxy for diverse viewpoints⁴, a view that it repeats in this consultation⁵.
21. This imperfection is a tension that has existed at the heart of the ownership rules since they were first developed as part of the Broadcasting Act 1990, but it has been exacerbated by the structural changes across media and the rapid changes in consumption by citizens and consumers in recent years.
22. Against this background of imperfect and numerous regulations, along with the speed and extent of market changes, we are pleased that Ofcom has committed to such a thorough review of the existing regime.

³ Radio Advertising Bureau, 2009

⁴ Ofcom 'The Future of Radio', April 2007, p.77

⁵ Ofcom 'Media Ownership Rules Review', July 2009, p.12

23. While the scope of the rules is currently a matter for Parliament under Schedule 14 of the 2003 Communications Act, the basis for the local radio ownership rules were largely born out of the Government's 2001 Consultation on Media Ownership Rules. Assuming that the changes being proposed are introduced in the next Parliament, it will be almost a decade since these debates were initiated.
24. As Ofcom recognises, there are a number of ways in which the radio market has changed dramatically in recent years, suggesting that it is not unreasonable to question the fundamental basis for the current approach to radio regulation.

Context and approach to this review

25. The sort of fundamental rethink on ownership rules under consideration has now become urgent due to the changes in the media landscape (covered in more detail below), which is leading to a crisis in local media provision. This has led to a welcome focus on the media ownership rules from legislators, policy makers and from Government. Ofcom outlines the most significant work in these areas in the consultation document⁶.
26. RadioCentre has contributed to each of these inquiry's and reports, providing written and oral evidence and holding meetings with these and other relevant bodies. In addition we have supported Parliamentary debates⁷ on related matters and engaged with the OFT's investigation of the local and regional merger regime. In response to all of these reviews and reports RadioCentre has consistently pressed for reform of the ownership rules as they affect local radio
- House of Lords Communications Committee Inquiry – RadioCentre's argument that radio-specific rules should be removed was noted in the report⁸ and helped to inform the recommendation for greater flexibility in both radio and cross media ownership rules.
 - Culture, Media and Sport Select Committee – RadioCentre noted the trends in local media provision and consumption, before seeking the Committee's support for changes in the local merger rules and liberalisation on media ownership regulations⁹.
 - Conservative Party initiatives – We have provided detailed comments to the Conservative Party review of the creative industries and in response to its recent policy paper on local media companies. We also welcomed the statements expressed by the party's leadership and frontbench regarding the need for changes to ownership rules¹⁰.
 - Digital Britain final report – Changes in ownership rules formed a key part of the Commercial Radio industry's proposals designed to secure a successful 'drive to digital'. This was balanced by an understanding that plurality would be protected by a combination of existing rules and greater regulation of outputs.
27. These various high profile reviews have all highlighted the need for reform of the current media ownership rules, and have demonstrated a surprising degree of consensus about the urgent need to implement changes in the economics and consumption of local media.
28. However it is the Government's intended approach outlined in the Digital Britain report that offers the real prospect of this consensus being translated into

⁶ Ofcom, 'Media Ownership Rules Review', July 2009, p.19-20

⁷ House of Lords Communications Committee, 'The Ownership of the News', June 2008, p.79

⁸ Hansard, Topical Debate on local and regional news, 19 March 2009

⁹ http://www.radiocentre.org/documents/RC_CMS_Local_Media_Response.pdf

¹⁰ The Guardian, 'Tories pledge to scrap local media ownership rules', 26 March 2009

meaningful change in the coming months, which has the potential to benefit media companies, citizens and consumers. It is also the report most relevant to this consultation and the proposed recommendations being considered by Ofcom, as it develops measures that should help to modernise the framework in which Commercial Radio operates.

29. In addition, while Digital Britain was clear that it would remain Ofcom's duty to consider the basis for any possible changes, it provided a fairly clear steer in terms of policy direction. In particular it stated 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"*; that Government *"looks to Ofcom ... to consider whether the current ownership points system ... is any longer desirable or sustainable"*; and that it *"stands ready to bring forward an Order"* to implement Ofcom's recommendations¹¹.

The changing media landscape

30. Therefore it appears that there is a clear consensus that changes are required to the current media ownership rules. This is due principally to the widespread understanding of the economic reality of providing local news and information, which has become extremely challenging in recent years, due to the structural and cyclical changes to advertiser funded media such as Commercial Radio. It is also driven by evidence that the consumption of news and information is beginning to change, with consumers accessing their news from a range of different sources rather than a single local medium such as radio.
31. Ofcom provides a range of compelling data on this matter and the changing media landscape in Section 4 of the consultation document, which illustrates this point. RadioCentre certainly recognises the pressure on traditional business models that is outlined, which has a potentially devastating impact on the media at a local and regional level. Indeed there is growing evidence that the current business model upon which local media is provided is becoming unviable and in danger of collapsing, with multiple local newspapers and local Commercial Radio stations are at imminent risk of closure.
32. A recent report commissioned by Ofcom indicated that the smallest stations are finding it most difficult in the current climate, with the majority already being loss-making and even more likely to become unprofitable with the expected decline in revenues¹². The report showed a cumulative Commercial Radio EBITDA margin of just 8% in 2008, with smaller stations generating an EBITDA of -6%. In the worst-case scenario, if industry revenues decline 20%, the vast majority of stations serving fewer than 750,000 people would become unviable.
33. Moreover, the industry as a whole is facing a difficult revenue situation. Total revenue for Commercial Radio in Q1 2009 was £128.6m; the lowest quarter for more than a decade. This downturn in revenues has translated into an extremely serious position at station-level. Research conducted by RadioCentre for the Myers Review, an independent report commissioned by Government to inform its Digital Britain report, found that:
- Currently, half of all Commercial Radio stations are loss making, with two thirds of all stations (66%) loss making or only generating profits of less than £100k per annum. Stations generating profits of less than £100,000 per annum are extremely vulnerable to relatively small downturns in revenue (less than £2k per week, equivalent to one major client);

¹¹ Digital Britain Final Report, p.155-156

¹² Radio: Impact of regulatory relaxations, produced for Ofcom by Value Partners, May 2009

- 80% of stations serving populations of <700,000 are loss making or generate profits of <£100,000 per annum;
 - 12% of stations are predicting to lose more than £250,000 in the current financial year (of whom more than 80% also lost >£250,000 last year and of those almost 70% also lost >£250,000k in the previous financial year)¹³.
34. Consequently, the Myers Review predicted that up to 50 local Commercial Radio stations are at risk of closure during the next 18 months. Seven stations have closed since the start of 2009 and more have gone into administration.
35. Separate analysis commissioned by RadioCentre, which was conducted by the consultants Value Partners¹⁴, has also shown very significant declines in Commercial Radio's overall profitability that the last five years. The data provided as part of the RadioCentre project shows that since 2004, advertising revenues have fallen by 21% in real terms. The industry's decline in profitability over the same period, from £110m to £48m, is largely due to radio's loss of share of total UK advertising spend (from 3.9% to 3.3%). Value Partners predict that, over the next two financial years, Commercial Radio revenues will fall by a further 13%, having already fallen by 13% in 2008/09.
36. Clearly economic problems are only relevant in as far as they are likely to lead to a reduction in plurality and choice. Therefore, when considering the impact of these current challenges on the media ownership rules we have always been careful to ensure that our arguments are framed to reflect the plurality considerations that are relevant under these rules. But it is clear from the evidence available that the current framework is making it difficult for viable Commercial Radio businesses to operate, particularly on a local level. Retaining the status quo risks more station closures and a further decline in competition and plurality in local media.
37. This financial situation alone is sufficiently compelling to require an overhaul of the current ownership regulations. However, it is compounded by evidence of the changes in behaviour and consumption of radio. While the current consultation stresses that *"the way people consume news has not yet changed significantly"*¹⁵, Ofcom has stated previously that changes in media consumption have meant that *"local radio is ... significantly diminished as a source of local news and information"*¹⁶.
38. We believe that the evidence does indeed suggest that consumers rely less on radio as a source of information viewpoint than they did in the past, and radio is less likely to be a sole or primary source of local news. This behavioural change is important when considering the need to require two or more local radio stations under separate ownership as a measure of plurality (below).
39. The data provided in this Ofcom review and in previous consultations suggests that the vast majority of consumers regularly concentrate their local listening on a single local Commercial Radio service – whilst also regularly reading one or more local newspapers and community newsletters, accessing a regional TV news service, as well as checking online community websites. This demonstrates that local Commercial Radio's role as a viewpoint provider is largely secondary, suggesting that current plurality regulation is disproportionate and radio-specific rules are an anachronism.

¹³ John Myers, 'An Independent Review of the Rules Governing Local Content on Commercial Radio', April 2009, p.34

¹⁴ Value Partners, 'Economic Modelling of Commercial Radio', August 2009

¹⁵ Ofcom 'Media Ownership Rules Review', July 2009, p.29

¹⁶ Ofcom 'The Future of Radio', April 2007, p.76

The local radio ownership rules

40. Given the context outlined in the previous section we clearly welcome the proposed removal of the local radio ownership rules.
41. It has long seemed fairly arbitrary to insist on rules enforcing separate ownership where there are more than two Commercial Radio services in addition to the BBC (the 'two-plus-one' rule), as a means of ensuring the right level of plurality and diversity of viewpoint in a local media market. To its credit Ofcom recognised the potential for reform in its last review of the arrangements that affect radio when it stated that *"options ... exist for a more radical overhaul of the radio rules"*¹⁷, although unfortunately no further details were provided or taken forward by Government at that time.
42. The market developments identified by Ofcom, which have occurred since its last review, mean that the case for continuing with such rules has become even more untenable. These recent developments specifically include the following.
- DAB penetration and the Government's digital radio upgrade, supported the case for a simplified single set of rules.
 - Financial pressures have grown even more acute, calling into question the viability of some smaller stations and the placing the current rules under even greater scrutiny.
 - Some consolidation has occurred, but there is potential to provide further synergies if stations were commonly owned in the same local market.
43. These are significant changes and we support Ofcom's analysis¹⁸ that leads it to consider that these changes (along with the fairly relaxed views of consumers on single ownership in radio) mean that it is appropriate to recommend the removal of local radio ownership rules.
44. RadioCentre would also identify a number of broad principles, which we believe supplement these reasons for implementing this change.
45. **Sector specific regulation for radio is unnecessary** - RadioCentre has always seen it as an anomaly to single out radio for mono-sector ownership rules when other media such as newspapers and television are not subject to equivalent restrictions. Ofcom seemed to accept this point some time ago, when it pointed out that Commercial Radio is subject to more restrictive ownership controls than other media such as newspapers and television¹⁹.
46. Greater consistency across these areas would seem to be a logical approach and would help to avoid the sort of asymmetry that will hinder the development of the radio industry compared to its competitors that specialise in other media.
47. **Other options exist for delivering plurality** - There are additional safeguards over and above the existence of radio-specific rules, which deliver public policy objectives of protecting viewpoint plurality. The most obvious is the power under the Enterprise Act 2002 enabling the Secretary of State to intervene in media mergers where plurality concerns arise. The threshold definitions are sufficiently flexible to potentially catch all significant mergers within local radio and the public interest considerations are suitably robust to address concerns related to plurality. Rather than applying an automatic blanket restriction on all local consolidation above a

¹⁷ Ofcom, 'Review of Media Ownership Rules', November 2006, p.33

¹⁸ Ofcom 'Media Ownership Rules Review', July 2009, p.47-48

¹⁹ Ofcom, 'Review of Media Ownership Rules', November 2006, p.33

certain level, this public interest test allows each case to be considered on its own merits. In addition, as is noted earlier in the document the OFT's scrutiny of local media mergers also has indirect implications for ensuring plurality.

48. **Future consolidation could create benefits for both listeners and the industry** - There are several key listener benefits, which can flow from consolidation of ownership. For example a reduction in the number of owners of overlapping stations will result in an increase in the diversity of the output of those stations, resulting in increased choice for listeners; common ownership of stations in similar areas results in operational efficiencies, enabling greater investment in quality content; and the strength afforded to more consolidated companies allows innovation and risk taking.
49. Another positive outcome of consolidation in radio is that it would allow stations to do more to share news operations and allow for a higher quality of news production and more formalised editorial structures. These operational changes and the fact that resources will be better deployed could help to support an even stronger local radio news provision.
50. For advertisers the prospect of greater flexibility around local media mergers in radio also provides the potential for an improved advertising proposition. In particular there will be practical benefits for advertisers, whose buying experience across local regions will be streamlined and simplified, as they will be able to book advertising for significant geographical regions through a single sales point. In addition to traditional spot advertising common ownership can help stations to provide better access to marketing opportunities, sponsorship and promotions with a broader regional base.
51. Therefore for these reasons we support the Ofcom recommendation to remove the current local radio ownership rules.

The local cross media ownership rules

52. RadioCentre supports the proposals to liberalise the local cross media ownership rules, only restricting ownership on all three of local newspapers (with 50% plus local market share); a local radio station; and regional Channel 3 licence.
53. As Ofcom is aware several RadioCentre members have cross media interests. These include companies with newspaper and radio operations (Guardian Media Group, Tindle, Kent Messenger), as well as regional television and radio interests (UTV).
54. The consultation document states that "*there is little commercial appetite to consolidate across media*"²⁰ at the current time, with the greatest potential for consolidation between press and radio, whether on a national or local basis. However the growth of these companies and the blurring of the distinction between different parts of a media groups operations does at least create the possibility of greater synergies on a cross media basis than ever before.
55. Indeed it could be argued that the debate about separate media functions is misconceived, as it ignores the evidence that digital transformation has already happened, with the barriers between separate television, newspaper or radio markets breaking down.
56. These developments, along with the relaxed attitude of most of the public to local cross media ownership of television, press and radio (as outlined in the consultation

²⁰ Ofcom 'Media Ownership Rules Review', July 2009, p.50

document)²¹ provide a persuasive case for recommending the liberalisation of these rules.

57. In its previous submissions to Ofcom on this matter RadioCentre had considered that there may be a case for local cross media ownership rules to be retained²². This was because of our view that it may be possible to protect plurality on a cross media basis, rather than within radio alone (which as we have noted is less relied upon as a single source of information viewpoint than in the past).
58. However, we now believe that a combination of the changes we are seeing amongst our own members and the trends across media businesses (as well as the behaviour of consumers) means that the current cross-media rules are unnecessarily restrictive, while doing little to ensure diversity of viewpoint in local markets.
59. If we are to encourage the continued development of more successful 'all-media' companies at a local level it is much better to liberalise the current framework. This is also consistent with the aspirations of both the Government and the Conservative opposition in wishing to enable any synergies that may be possible from convergence and support for local media.
60. Our only note of caution in respect of Ofcom's recommendation is whether it is necessary or appropriate to retain any restrictions on local cross media ownership at all in this new environment. That said we are content that the activities of our members and other potential entrants into the radio market would not be impeded by the rules that are being proposed. Therefore we support the proposal as it stands and the decision to review the changes again during the next review of media ownership rules.

National Radio Multiplex Rules

61. We agree with Ofcom's analysis of developments in the multiplex market and its recommendation to remove the national multiplex rules. Our reasons for this are two-fold and largely covered in the consultation document.
62. Firstly, restrictions on multiplex ownership are even less likely to secure plurality of viewpoint in radio than the outdated rules on the ownership of the actual stations themselves. Given the role and status of multiplex owners as a provider of essential technology, rather than as that of content provider, Ofcom is quite right to identify that ownership of multiplexes is "*once-removed*" as a proxy for voice²³. As far as we are aware there is no evidence that multiplex owners have sought, or would seek, to exert undue influence as gatekeepers to this technology. Moreover, the remaining plurality safeguards referred to above would seem far more appropriate to address any concerns that did arise in this respect.
63. Secondly, as Ofcom will be aware, RadioCentre welcomes the Government's stated intention to upgrade national and large local services to digital by the end of 2015. This is consistent with our vision for the future of the radio industry outlined in the introduction to this document. As part of the 'drive to digital' that will be required to upgrade of these services it will of course be vital to ensure that the necessary infrastructure and technology is in place, which includes the proposal to create a second national multiplex by merging and extending existing regional multiplexes. It is at least possible that the existing multiplex ownership rules could act as a disincentive to this process and the investment required.

²¹ Ofcom 'Media Ownership Rules Review', July 2009, p.51-52

²² RadioCentre 'Shaping Commercial Radio's Future', June 2007, p.44

²³ Ofcom 'Media Ownership Rules Review', July 2009, p.62-63

64. Therefore we support the proposals to remove the existing rules due to the fact that they provide few tangible benefits in terms of supporting plurality, while they could have a negative impact upon the important steps that need to be taken to deliver a digital radio upgrade.

Conclusion

65. We are pleased that Ofcom recognises the challenges faced by Commercial Radio and other advertiser funded media, due to the combination of cyclical and structural changes that are identified in the consultation document and reflected in our response.

66. Against this background we welcome the fact that Ofcom is recommending fundamental changes to the current media ownership rules, following its usual thorough and considered approach.

67. We hope that this recognition of the problems faced by our sector and the willingness to recommend significant changes will also be extended to the other key reforms, including the reform of localness regulation and Section 10 of the Broadcasting Code. These measures are essential in order to reshape the regulatory environment for Commercial Radio in the digital age.

68. We look forward to working together constructively on these and other proposals in order to find solutions that meet Ofcom's regulatory and legislative principles, while enabling the radio sector to modernise and deliver its vision of an exciting and thriving digital medium.

RadioCentre, September 2009

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