



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

**Government Response to the Report of the
House of Lords Select Committee
on Communications on the
Ownership of the News
(HL 122-I) Session 2007-08**

*Presented to Parliament by the
Secretary of State for Culture, Media and Sport
by Command of Her Majesty
October 2008*



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ISBN: 978 0101 7486 29

Government Response to the Report of the House of Lords Select Committee on Communications on the Ownership of the News (HL 122-I) Session 2007-08

Introduction

The Government welcomes the Committee's Report on ownership of the news and is pleased to be able to present its response.

The Government is grateful to the Committee for producing such a comprehensive examination of the issues surrounding media ownership, the Public Interest Test and the future of public service media content in the UK. We welcome the detailed consideration the Committee has given to this subject and value its identification of key issues facing us in a rapidly changing media environment. The substantial amounts of written and oral evidence from stakeholders across a wide range of interests that the Committee has gathered and analysed, and the well-evidenced recommendations it has put forward, will be taken fully into account in the future development of Government policy.

Conclusions and Recommendations

The Government's response to the key recommendations in Chapter 9 and section 29 (which was not included in the summary of recommendation) of the Lords' report is set out below.

374. The relationship between policy makers and the media is a legitimate area of public interest. We therefore propose that politicians in all parties are open and candid about their meetings with media owners and editors. [para 197]

We note the Committee's recommendation, which is directed to all policy makers, albeit most pertinent in relation to Ministers. For its part, the Government will continue to aim for transparency about meetings, their participants and content, subject to those exemptions under the Freedom of Information Act which are necessary to protect the public interest in effective administration; and Ministers will continue to abide by the ministerial code in their dealings with those outside Government, including media owners.

375. We do not accept that the increase of news sources invalidates the case for special treatment of the media through ownership regulation. There is still a danger that if media ownership becomes too concentrated the diversity of voices available could be diminished. [para 210]

376. An internal company structure cannot be an adequate substitute for competition law and statutory regulation in ensuring that no single voice becomes too powerful. Regulation to ensure a plurality of media ownership is still relevant and necessary. [para 220]

We are considering the future of ownership regulation, and how it will be challenged by the changes in communications technologies, services, platforms and consumption that come with convergence. In the context of this rapid change in the communications markets, there is a risk that the ownership regulations in the Communications Act 2003 will become less fit for purpose.

Ofcom will also review the Media Ownership Rules for the second time since the Communications Act came into force – this work is due to commence shortly.

377. The public interest considerations for newspaper mergers and broadcasting and cross-media mergers should be amended to refer specifically to a need to establish whether a merger will impact adversely on news gathering. [para 243]

The Government recognises the significant role high quality journalism plays in ensuring effective public debate of issues and current affairs. However, we consider the current media public interest consideration, including the considerations relating to accurate presentation of news, free expression of opinion and sufficient plurality of views in newspapers, provides a sufficient basis for dealing with this issue to the extent that it may give rise to public interest concerns.

378. The considerations set out in the Public Interest Test for newspaper mergers should be reviewed by Ofcom. This exercise should consider the rigour of the criteria and how they can be assessed. Conducting such a review will give Ofcom the opportunity to start building an expertise in advance of actually having to look at a newspaper merger. [para 249]

It is the Secretary of State for Business Enterprise and Regulatory Reform who must decide whether or not to intervene in a newspaper merger on the basis of one or more of the public interest considerations relating to newspapers specified in Sections 58(2A) and 58(2B) of the Enterprise Act (relating to accurate presentation of news, free expression of opinion and sufficient plurality of views).

In the event of a public interest intervention in a newspaper merger, Ofcom would be responsible for providing an initial report examining whether the merger may give rise to concerns relevant to the public interest consideration specified in the intervention notice. Taking account of Ofcom's report and any other information he receives on the matter, the Secretary of State must then decide whether or not to refer the merger to the Competition Commission for a full investigation of the public interest issues identified.

The Government is satisfied that the current wording of the newspaper public interest considerations adequately describes the public interest concerns that may potentially arise in media mergers and are appropriate. The considerations appear to provide an adequate basis for an examination of the relevant concerns, suitable reports to be provided and final decisions taken about whether or not such a merger might be detrimental to the public interest. We are therefore content with the current text.

We are satisfied that Ofcom is capable of undertaking an adequate initial investigation into newspaper mergers and providing a report that would help the Secretary of State reach a properly informed decision on whether or not to make a reference to the Competition Commission.

379. The Government should be more flexible and adopt a case-by-case approach when considering which media mergers the Public Interest Test should apply to. We believe that it would be essential to apply the test if a major international internet company bought a stake in a UK news provider. [para 253]

The Communications Act 2003 provides that the Secretary of State for Business Enterprise and Regulatory Reform may make a public interest intervention in any media merger he considers raises issues relevant to a specified media public interest consideration. The published guidance serves to provide an indication of the circumstances when such interventions may be likely to be considered. This states that intervention will generally only be considered in respect of mergers that would not have been feasible save for the fact that the Communications Act 2003 removed certain media ownership rules. The purpose of this was to provide assurance that the power to intervene in media mergers on public interest grounds would not result in interventions being made in a wide range of media mergers. But the guidance does not supplant the law and should not be taken to mean the Secretary of State is in any way precluded from intervening in any case he considers may raise legitimate public interest issues. It provides explicitly that intervention may be made in cases where exceptional circumstances apply. This might be considered to include cases such as those identified by the Committee which may involve novel circumstances that may not previously have been subject to media ownership rules. Decisions about whether to intervene in any particular media merger must be taken on the basis of the specific circumstances of the case.

380. Ofcom should be given the power to initiate the Public Interest Test. This would sit more comfortably with Ofcom's duty to promote the interests of the citizen. The power to trigger a Public Interest Test should not be taken away from Ministers. Along with Ofcom, Ministers should retain the power in the event that they consider there is a risk to the public interest that Ofcom has not fully recognised. Therefore, the power to issue an Intervention Notice should be held by both Ofcom and the Secretary of State. [para 261]

The Government considers that the power to intervene in a media merger on public interest grounds should remain solely with the Secretary of State. It is right that judgements about the public interest should fall to be made by Ministers. The Committee appears to accept that the Secretary of State should remain the final decision maker in public interest cases. There seem strong reasons to avoid a situation where the person responsible for issuing the intervention notice is not the same person who would be responsible for taking final decisions. This could introduce unwelcome uncertainty over for the relative responsibilities of different authorities, particularly in the context of a possible legal challenge to decisions.

The Committee appears concerned that the Secretary of State might be disinclined to use the power to intervene in media mergers in order to avoid possible conflicts with media enterprises. The decision as to whether a public interest intervention may be appropriate in any particular case necessarily requires a judgement to be made. There is no bright line test as to when such intervention should or should not be made. Accordingly, the Act affords the Secretary of State a degree of latitude to reach conclusions based on his assessment of the available evidence. But clearly, if a media merger arises that appears to engage the media public interest considerations, the Secretary of State has a duty to give proper consideration to the case for making an intervention and would be open to legal challenge if his decision appeared to be unreasonable.

There is nothing to preclude Ofcom from submitting views to the Secretary of State about the prospective use of his powers to intervene in a media merger. Indeed, it is likely that the views of Ofcom would be sought in circumstances where a merger appeared to give rise to public interest concerns such that serious consideration of the case for making an intervention was required.

381. We recommend that legislation should be amended so that Ofcom investigates media mergers only on the basis of the public interest criteria, and the Competition Commission considers only the competition aspects of a merger. They should make their recommendations separately to the Secretary of State on whether the merger should be blocked or go ahead (with or without remedies). The Secretary of State would then have the final responsibility for accepting or rejecting Ofcom's recommendations and remedies, as they relate to the public interest criteria. As is the case now, the Secretary of State would continue to be bound by the Competition Commission's findings on the competition issues. [para 271]

The Government considers that the Competition Commission is well placed to consider the competition and public interest issues arising in all mergers, including those involving enterprises that operate within sectors that are subject to sector specific regulation. We do not believe a clear case exists for amending the current procedures in the way the Committee suggests.

When a merger is referred to the Competition Commission, they will appoint individual members of an investigation team. They will seek to ensure the team has the appropriate balance of skills, experience and expertise effectively to examine the relevant facts of that merger, to rigorously test the arguments put forward by interested parties and reach soundly based conclusions about the impact of the merger. These capabilities are equally applicable to public interest issues as to competition issues and to whichever sector of the economy may be affected by a merger. During the course of an investigation, the Competition Commission may, of course, seek evidence from appropriate sectoral regulators as necessary.

Even if it was practicable to give Ofcom the powers equivalent to those of the Competition Commission such that it could conduct an investigation into public interest issues raised in media mergers, there would seem strong reasons not to have two separate bodies conducting parallel investigations into the same merger. It seems likely that there would be considerable overlap in the information the bodies would require in order to undertake their separate assessments. This would result in duplication of effort and additional burdens on parties providing evidence. There is also likely to be a benefit in one body conducting both aspects of the investigation since an assessment of the impact of the merger on the specified public interest consideration may be significantly informed by a consideration of the competition issues it raises.

The Committee appears concerned at the prospect of the current process requiring two separate investigations into the public interest issues raised by a media merger. The Committee also expresses concern that conclusions reached by Ofcom in its report to the Secretary of State may not necessarily be reflected in a final report produced by the Competition Commission. But this is simply a necessary and appropriate aspect of the two stage process for considering mergers.

The initial Phase I assessment of a merger is relatively quick. Its purpose is to decide whether or not the merger can be cleared to proceed. If the conclusion is that it cannot be cleared at this first phase, it must be referred to the Competition Commission to conduct a more in depth second phase investigation. In media merger public interest cases OFCOM provides a report on public interest matters which is considered alongside the Competition Commission investigation.

In public interest cases, the Secretary of State must decide whether he has sufficient reason to make a reference to the Competition Commission on public interest grounds. He may make such a reference if he “believes that it is or may be the case that” the public interest consideration specified in the intervention notice is relevant to a consideration of the merger and that the merger may be expected to operate against the public interest. To assist him in reaching that decision, Ofcom provides an initial report considering the public interest issues that may be raised by the merger. The OFT provides a report on the competition issues raised by the case.

If a reference is made, the purpose of that second phase investigation and report by the Competition Commission is to enable the Secretary of State to decide whether to make an adverse public interest finding. Such a finding is made if he decides substantively that it is indeed the case that the public interest consideration specified in the intervention notice is relevant to a consideration of the merger and that the merger may be expected to operate against the public interest.

It is entirely reasonable that the Competition Commission may subsequently, following in-depth scrutiny, reach the conclusion that a merger referred to them on public interest grounds does not, in fact raise concerns relating to the specified public interest consideration.

382. When Ofcom considers the public interest considerations of a media merger it should be required to put the needs of the citizen ahead of the needs of the consumer. [para 275]

The Government does not propose to give Ofcom a role in conducting Phase II merger investigations. In public interest media merger cases, final decisions about whether a merger operates against the public interest fall to the Secretary of State who will take into account all relevant factors.

383. We are concerned that Ofcom is inadequately implementing Section 13(3) of the Communications Act and believe that it should review whether the Content Board has a significant influence on Management Board decisions in respect of Ofcom’s duty to promote the purposes of public service television as laid down by Section 3(4)(a) of the Communications Act. Ofcom should publish the findings of this review so that they can be acted on by Parliament if necessary. [para 279]

This is a matter for Ofcom who are responding separately to the Committee.

384. The analogue and digital local radio ownership rules should be amalgamated. [para 283]

As noted by the Committee, the Government accepts that there is a case for changing the local radio ownership rules in the light of changing media provision, including the growth of digital radio. However, the nature of the future media landscape remains uncertain and any amalgamation of media ownership rules needs to reflect a realistic assessment of the direction and pace of change. Last year the Government established an independent working group to consider the future of digital radio. We believe that before a decision can be made on possible amalgamation we need to understand better how the digital radio sector will change, in particular how the balance of listening between analogue and digital platforms may change and over what period. The Working Group is expected to report back at the end of this year and we intend to revisit this issue in the light of their findings and recommendations.

385. The local cross-media ownership restrictions relating to local radio and local newspaper companies should be lifted. Ofcom must carefully monitor any local cross-media mergers and apply the Public Interest Test if any are likely to raise public interest considerations. [para 289]

The Government will examine the question of local cross-media ownership restrictions as part of its wider consideration of the ownership regime referred to above.

386. The current inequitable situation facing UK companies is preventing their legitimate expansion into new markets. The Government must continue its efforts to achieve reciprocal rights for UK companies. Without further information it is difficult to measure progress on this matter. We recommend that the Department for Culture, Media and Sport publish an annual report on progress towards securing reciprocal ownership rights. This should detail the extent of ongoing negotiations with countries where the Government is seeking to achieve reciprocal rights, and explain the reasons why ownership limits remain in place. [para 295]

As discussed during the passage of the Communications Act 2003, the Government is committed to encouraging others to adopt reciprocal rights for UK companies. We will continue to raise this issue where appropriate; we recognise that any changes are primarily a matter for individual governments. We are not convinced of the merits of publishing an annual report detailing why ownership limits remain in place.

387. The strength of BBC news is its reporters and those that support them. Between them they provide a depth and range of news which is among the best in the world. We believe that nothing should be allowed to reduce the BBC's ability to sustain this high quality news operation. [para 301]

The Government agrees with the Committee's assessment of the strength and importance of the BBC's news services, which are specified as one of the elements of the BBC's core Public Purposes. The allocation of the BBC's resources to its services, including to news provision, is a matter for the BBC.

388. The BBC's spending on the salaries of its presenters and personalities represents a considerable proportion of the BBC's licence-fee funded budget. The BBC Trust should monitor closely spending growth in this area to ensure that the Corporation can adequately fulfil and fund all its public purposes and particularly news and current affairs. [para 306]

The level of salaries paid to presenters is a matter for the BBC and was the subject of a recent independent report commissioned by the BBC Trust. The report concluded that there was no evidence of the BBC paying more than the "market price" for leading TV talent or systematically pushing up prices in the talent market. The allocation of the BBC's resources, within the general

framework of the Charter and Agreement, is a matter for the BBC and there is no provision for Government to intervene. The BBC Trust is responsible for holding the Executive Board to account for its performance in delivering financial efficiency and value for money.

389. We emphatically believe that Public Service Broadcasting cannot be left to the BBC alone. We are very struck by Ofcom's prediction that by 2012/13 the BBC will receive 91% of all PSB funding. A continuing plurality of public service broadcasters should be an aim of public policy. This is particularly crucial for news and current affairs. Ofcom's research shows that the public values this plurality, especially in news. It also serves the valuable purpose of providing competition for the BBC. We urge Ofcom to make news provision a priority on the PSBs when it comes to negotiating future service obligations. [para 318]

390. Any residual funds left over from the BBC's targeted help scheme should be used to support the commercial PSBs in the medium term. [para 321]

392. We are sceptical of the various proposals that have been put forward for top slicing the BBC licence fee. [para 323]

We note the Committee's views and that these issues are being considered in detail by Ofcom as part of its PSB Review. Their analysis and recommendations are being considered as part of the Government's own consideration of the future funding arrangements for public service broadcasting in the United Kingdom.

391. ITV's proposal for the abolition of the Contracts Rights Renewal system merits further consideration. [para 322]

The Office of Fair Trading and Ofcom are currently conducting a review of the Contract Rights Renewal undertakings. The review will run for a year and is expected to report back early in 2009.

393. We believe there is scope in the idea of sharing BBC facilities with other public service broadcasters and that this proposal should be further examined. The Government should take forward this work. [para 324]

We note that the BBC records, in its submission to the Ofcom PSB Review, its commitment to working in partnership with other broadcasters and that the BBC Chairman has asked the Director-General to explore new ways of helping bring the benefits of the BBC's scale and public investment to the whole sector. We look forward to the outcome of that work and do not at present see a need for Government intervention on this specific aspect of the BBC's proposals.

394. We remain to be convinced that the new BBC corporate governance arrangements are more effective than those they replaced. [para 325]

The Charter review process involved extensive debate on alternative governance options for the BBC and the Government remains of the view that the approach embodied in the new Charter is the right one. The previous arrangements made it difficult for the BBC's Board of Governors to represent both the public interest and the BBC executive at the same time. There was a need for reform to establish a clearer separation of functions.

395. We are concerned about ITV's proposals to scale back its regional news structure. Ofcom should carefully examine whether ITV's policy will have an impact on local newsrooms and their ability to quickly and accurately cover stories of national importance. Ofcom should also consider the implications that a cut in ITV regional news commitments will have on the news gathering capabilities of ITN and in turn the overall quality of ITV and Channel 4 news. Plurality of regional television news is important and if ITV reduce their commitments in this area the BBC will have very little effective competition. [para 332]

396. Ofcom should work to define more systematically “high-quality” news and to agree a number of indicators for assessing it. Ofcom should produce an annual report monitoring the quality and quantity of PSB news and Ofcom should also develop a mechanism for holding companies responsible if their news falls short of quality thresholds. [para 337]

397. 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. Ofcom should also 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 (this could be published as part of the annual report on quality recommended in para 337). [para 341]

398. Ofcom should start monitoring the resourcing, quality and quantity of news on the commercial PSB channels as soon as possible and should also start publishing an annual report as set out above. However, in the future we believe there should be a statutory duty on Ofcom to undertake these new duties. [para 342]

The future institutional arrangement for Public Service Broadcasting/Content provision, including the role of Ofcom, is something that the Government is considering alongside Ofcom’s PSB review. The Committee’s analysis of the issues and specific suggestions are a valuable contribution to that process.

399. The impartiality requirements of PSBs are an important safeguard of the plurality of voices heard on broadcast news. They will continue to be necessary post-digital switchover. [para 349]

400. Any weakening of the impartiality requirements as they apply to UK broadcasters would have a negative impact in the quality and trustworthiness of the country’s news. Such a move would not benefit the public or journalists and could run the risk of undermining the most important medium for news. [para 353]

401. When considering how to apply the impartiality requirements to non-UK based news broadcasters licensed in the UK, Ofcom should take into account the size of their UK audience. It should monitor the UK audience share of these channels and set a viewing threshold that would guide its regulatory approach. [para 358]

The Government fully endorses the Committee’s view of the importance of the impartiality requirements especially on PSBs, and considers them an essential part of the regulatory framework safeguarding the informational needs of citizens. They will remain part of the regulatory framework for television content.

However, the increasing blurring of distinctions between different media platforms will provide a challenge for content regulation in future and we will continue to examine the implications of this for regulation and policy.

402. The public interest would be better served by placing the BBC on a statutory footing by an Act of Parliament. Parliament should have a greater involvement in the setting of the licence fee. [para 363]

The Government remains of the view that the public interest is best served by establishing the BBC with a Royal Charter. If the BBC were to be put on a statutory basis, it could well be more, not less, vulnerable to detailed political intervention and this would be contrary to the key principle of the BBC’s independence under the Charter arrangements. The Government concluded from the Charter Review that a ten-year Charter would best provide the certainty and independence that the BBC needs during a period of rapid change in broadcasting.

The Government considers that the present arrangements for setting the licence fee and the level of Parliamentary involvement remain appropriate. The decision on the licence fee settlement is a matter for Government. However, each change in the licence fee level is implemented by way of regulations subject to the negative resolution procedure.

403. The procedure for compelling the attendance of witnesses before Committees of the House of Lords is palpably not fit for purpose at the beginning of the 21st century, and should now be reviewed. If parliamentary inquiries are to serve a useful function in guarding the public interest then a less cumbersome procedure is necessary. We invite the Procedure Committee to consider the options for streamlining the procedure whereby select committees may compel the attendance of witnesses. [para 373]

This is a matter for the Procedure Committee.

Section 29. News aggregator sites benefit from news gathering done by other organisations but they do not invest in original content themselves. This is of justifiable concern and we recommend that the Department for Culture, Media and Sport should examine the effects of news aggregators and consider how their impact on news gathering might enhance their investment in news.

There is a wide range of commercial relationships between news aggregators and news gatherers and it is difficult to generalise about the impact across the whole industry. However, we believe in general that these relationships are as much to the benefit of the gatherers as the aggregator. In some cases news gatherers benefit from new revenues, such as direct payments for syndicated content provided, while others use the relationship with news aggregators to build their online brands and grow audience on their own news sites. In either case the content gatherer is under no obligation to provide its content.



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ISBN 978-0-10-174862-9



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