RadioCentre
SHAPING COMMERCIAL RADIO'S FUTURE

Response to OFT Discussion Paper:

Review of Local and Regional Media Merger Regime

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

Introduction

3. Commercial Radio is an important part of the UK media landscape. It is popular with listeners and advertisers; delivering high levels of local content and attracting the vast majority of local radio audiences.

4. It is also a small industry facing significant and structural economic challenges: in 2008, the entire Commercial Radio industry earned £560m of revenue, a 20% fall in real terms since December 2003. As a result Commercial Radio and its role as a provider of local news and content are under threat.

5. However, the Commercial Radio industry has a clear vision and a significant digital opportunity, which it believes will help to secure its future and enable it to thrive in a digital age. Migrating to DAB Digital Radio will offer more choice for advertisers and consumers, as well as the flexibility and interactivity of other media.

6. Achieving this ambition rests on the ability of Commercial Radio to invest with certainty. Therefore RadioCentre welcomes the reviews commissioned as part of the Digital Britain project, which have the potential to strengthen the industry to invest in its digital future.

7. In this context, the work being undertaken by the OFT is of critical importance and this submission highlights the urgent need for reform of the local and regional media merger regime, to allow strong local multi-media companies to be created.

8. There is an urgent need to include radio within the scope of this review, due to this pressure to build a digital future at a time of severe economic conditions and competitive pressures across media. Greater freedom to restructure and consolidate businesses is necessary for local radio, as well as local newspaper groups.

9. For radio this will require the reform of two types of separate but related processes that affect

local media ownership.

- The arrangements governing local and regional media mergers, which are subject of this review by the OFT.
- The regulations on media ownership to be reviewed later this year by Ofcom.

10. The level of regulation that exists in radio is disproportionate. This should be the starting point of the OFT's considerations of reform and review of the existing regulation.

11. Both Commercial Radio and local press are suffering from the same downward pressures of falling revenues, falling audiences and impact of other media, including the internet. Therefore it is equally important to assess the radio market as local press.

12. In order to avoid an imbalance in the way different media are treated, any changes that are made as part of this review must feed through to Ofcom's review of media ownership rules being conducted later this year.

<u>Competitive assessment issues</u>

13. There is more and more evidence that advertisers and consumers are substituting across different media. This demonstrates that narrow definitions of media markets are no longer appropriate.

14. As well as cross-media substitution, the market for radio is constrained by the significant market intervention by the BBC.

15. The counterfactual failing firm criteria is becomingly increasingly important to consider given the current economic environment within which the Commercial Radio industry is operating. The consequences of not letting a merger proceed when the target in question is failing, leading to the inevitable result that the licence is handed back to Ofcom, must be considered in any merger situation.

16. Common ownership of local and regional radio stations will allow for superior economies of scale and the sharing of resources, thus safeguarding the ongoing investment in content which is valued by listeners and consequently by advertisers. This is essential at a time when Commercial Radio faces such enormous economic challenges.

17. The efficiencies that flow from greater consolidation also provide the prospect of increased investment in content to help drive audience figures and become more attractive to advertisers.

18. In addition there will be practical benefits for advertisers who will find it easier to buy advertising across several clearly differentiated stations with one point of contact.

19. The ongoing growth of the internet and DAB has considerably lowered the barriers to entry in both local radio and local press.

<u>Media public interest considerations</u>

20. Consumers rely less on radio as a source of information viewpoint than they did in the past[1], and radio is less likely to be a sole or primary source of local news. Therefore it is now more appropriate to consider a plurality of local viewpoints across media, while acknowledging that radio is also required to demonstrate impartiality.

21. This could be achieved through the special public interest test in the Enterprise Act 2002. Whilst we appreciate that this would require a radical overhaul of the media ownership rules governing radio, these regulations are due to be reviewed later this year by Ofcom. It is

[1] The Big Listen Phase 3, Base: 10,375 Commercial Radio Listeners, Source: You Gov, June 2007

important that the OFT and Ofcom take this into account in this review.

Public sector competition

22. In addition to some of the challenges shared with local press, Commercial Radio also faces direct competition for listeners due to the significant market intervention from the BBC in radio.

23. The increasing listening share of the BBC ultimately detracts from the ability of local and regional radio to generate advertising revenues, which further exacerbates the severe economic challenges faced by Commercial Radio.

Introduction

An opportunity to shape Commercial Radio's future

24. Commercial Radio is an important part of the UK media landscape. It is popular with listeners, securing a 42.2% share of all radio listening[2]. The industry is still youthful: it is not yet forty years old, but is has already earned a place in the hearts of the public and in the planning of many advertisers. From its inception in 1973, the industry has been predominantly local; with all but three of its 303 plus analogue stations licensed locally. As a result, Commercial Radio secures a 77% share of local radio listening[3].

25. Commercial Radio delivers high levels of local news and information across its local stations; its very existence makes an important contribution to plurality at a local level. 75% of local stations broadcast local news for more than 8 hours a day, with 65% broadcasting local bulletins for 12 or more hours[4]. Stations are already finding new and innovative ways of collating and producing news bulletins with 17% operating new hubs[5] regularly, and a further 24% doing so sometimes. On average, stations broadcast 22 news bulletins per day that last 3 minutes, a cumulative output of more than an hour per day, with 70% of these bulletins containing news from the stations' local community[6].

26. It is clear that Commercial Radio is an important local medium, valued highly by its local audiences. Perhaps as a result, the industry tends to attract a level of regulatory and parliamentary scrutiny disproportionate to its size and scale. Commercial Radio is actually a very small industry. It is smaller than individual press companies such as Trinity Mirror[7], with total revenues of less than 3% of BT's[8].

27. The sector is also facing significant and structural economic challenges: in 2008, the entire Commercial Radio industry earned £560m of revenue, a 20% fall in real terms since December 2003. In addition, during the final quarter of 2008 Commercial Radio secured its lowest quarterly revenue for ten years. Whereas in 2006, Ofcom estimated that 40% of stations were loss-making, today that figure is above 50% and two-thirds of stations are either loss making or delivering profitability of less than £100,000 per annum[9].

28. The 185%[10] growth of the number of analogue stations in the industry has not been matched by revenue and audience growth which have been 117%[11] and 57%[12] respectively. Given that

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[2] Rajar Q4, 2008
[3] Rajar Q4, 2008
[4] RadioCentre, Profitability and localness survey of local Commercial Radio, March 2009
[5] 'News hubs' are shared operations that allow a group of local radio stations to distribute news material, which is of interest to the separate audiences of each station, from the centre.
[6] RadioCentre, 'Action Stations! The output and impact of Commercial Radio', July 2008
[7] Trinity Mirror Annual Report 2008: Showed annual revenue of £871.7m, compared to £560m for Commercial Radio
[8] BT Annual Report 2008: Showed annual revenue of £20,704m compared to £560m for Commercial Radio
[9] RadioCentre, Profitability and localness survey of local Commercial Radio, March 2009
[10] Ofcom: from 106 stations in 1990 to 303 in 2008
[11] RAB: revenues (at 2008 prices) were £233m in 1990 and £506m in 2008
[12] JICRIT/RAJAR: 14bn listening hours per annum in 1990 to 22bn in 2008

three of the stations added since 1990 are national services Classic FM, TalkSport and Absolute, the quantum of local revenues being delivered has risen even more slowly.

29. Competition in local markets for both consumers' time and advertisers' revenues has never been tougher. Commercial Radio is also faced with the significant market intervention of the BBC, which is more sizable in radio than in any other sector. In radio the BBC represents 55.7% of the market, but is not above 25% in any other area, as demonstrated below.

BBC	Radio	TV[13]	On-Line[14]	Press	Cinema	Outdoor
% share	55.7	<25%	<5%	0	0	0

30. Local Commercial Radio is clearly under significant threat, a threat that thereby extends to its role as a provider of valued local news and content. If the industry was facing a purely analogue outlook for radio, this picture might be irreparably bleak. However, Commercial Radio stands at the foothills of a significant digital opportunity; an opportunity it is determined to grasp firmly.

31. Radio must have a digital future if it is to survive in a digital age. Quite simply advertisers and consumers will demand the choice, flexibility and interactivity they have come to expect from other media. Migrating to DAB Digital Radio, the technology used in the UK and now being adopted internationally, would have several key benefits:

- It would end the dual transmission bill which Commercial Radio has been shouldering since the 1990s, at a total additional cost of approaching £200m.
- It would redress the balance of national spectrum between Commercial Radio and the BBC, enabling Commercial Radio to compete for a greater share of total listening.
- It would modernise Commercial Radio's offering in line with that of other media, making it more attractive to consumers and advertisers.

32. In responding to Digital Britain we have articulated our vision for Commercial Radio in a digital age as:

- To deliver the majority share of radio listening in Digital Britain
- With three strong tiers of listener choice:
  i. Strong national brands, on DAB, to compete with BBC
  ii. Large local and regional services, on DAB, to deliver news, information and entertainment to reflect the tastes of their area
  iii. Small local and community services, on FM, 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.

33. But achieving our ambition rests on our ability to invest with certainty in the exciting possibilities presented by a digital future. We have identified a number of current impediments, however they can all be addressed either by the industry itself taking action, or by the reviews commissioned by the Digital Britain project.

- We need Government and Ofcom support in re-planning and extending DAB networks. *We have given details of this in our response to Digital Britain.*

[13] BARB, 23 Feb – 01 March
[14] Hitwise, week ending 07/03/09

- We need certainty around a date for digital switchover. *We have asked Government to ensure that the new Digital Radio Delivery Group agrees this*.

- We need to work more closely with our colleagues at the BBC to deliver the organizational structure to advance digital migration. *We are already undertaking this work.*

- We need a new model for delivering the local content that listeners value. The historical proxies to secure local content in an analogue world (e.g. studio location, tightly regulated formats) no longer sustain a profitable small business in a local community in the digital age. *We look forward to reading the review commissioned by Digital Britain from John Myers*.

- We need to ensure that Commercial Radio companies are strong enough to invest in our digital future. ***This means allowing more consolidation within radio, and allowing strong local multi-media companies to be created****.*

34. The work currently being undertaken by the OFT is therefore of critical importance to Commercial Radio.

The review and its scope

35. As part of the Digital Britain Interim Report[15] the Government invited the OFT to examine whether any change is needed to the local and regional media merger regime. Digital Britain outlined the purpose of this current review and acknowledged the concern amongst local media groups of all kinds that the current regime is preventing and deterring vital consolidation.

36. A greater freedom to restructure and consolidate businesses in this way is necessary if both Commercial Radio and newspaper groups are to compete effectively in a digital age. In order to achieve this it will be necessary to reform two types of separate but related processes that affect local media ownership.
    - The arrangements governing local and regional media mergers, which are subject of this review by the OFT.
    - The regulations on media ownership[16] to be reviewed later this year by Ofcom.

37. RadioCentre Chief Executive Andrew Harrison wrote to the OFT on 26th February 2009 welcoming the review, but emphasising the importance of including Commercial Radio within its scope, when considering the current framework. In that letter he highlighted that any review of local and regional media should address the structural constraints on local Commercial Radio, as well as in other media such as local press.

38. The subsequent focus of OFT's inquiry on the way in which the merger regime applies to local and regional print media is therefore unfortunate. RadioCentre believes that it is a matter of urgency also to address the way in which ownership restrictions are impacting on radio and it is insufficient to simply acknowledge that "there may well be read across to other media (particularly radio and magazines)".[17]

39. Both Commercial Radio and local press are suffering from the same downward pressures of falling revenues, falling audiences and impact of other media, in particular the growth of the internet. Therefore it is as equally important to assess the radio market as local press. Unless radio is explicitly included within this review, there exists the real possibility of an asymmetrical outcome and inconsistency across local media markets, leading to the inevitable closure of many local radio stations round the UK and the industry being unable to move successfully into the digital age.

[15] BERR/ DCMS, Digital Britain: The Interim Report, January 2009
[16] As set out in the Ownership (Local Radio and Appointed News Provider) Order 2003
[17] OFT Review of the local and regional media merger regime – Discussion paper, March 2009

Regulation of Commercial Radio ownership

40. Commercial Radio is subject to many 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 both the provision of news and the advertising market (with radio representing only around 6% of display advertising[18]).

41. The different types of media ownership restrictions 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);
- The carrying out of a public interest investigation at the Secretary of State's discretion (Enterprise Act 2002); and
- Restrictions on ownership by religious (and certain other) bodies (Part 4, Schedule 14, 2003 Communications Act).

42. 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 such mono-media regulation are simply not apparent.

43. Regulation should have a clearly defined purpose and value or it should be removed. In this case it exists principally to safeguard competition and plurality of ownership. However undue concentrations of ownership that may be against the public interest can be addressed simply and effectively through the protection provided by the special public interest test in section 42 of the Enterprise Act 2002.

44. These powers are highlighted in the OFT's discussion document[19] and provide all the means necessary to deal with issues that may arise with local media mergers, thus calling into question the purpose of such extensive and sector specific regulation for radio.

45. It would seem much more appropriate to rely upon the special public interest test in the Enterprise Act to achieve the safeguards that are necessary in a digital world, rather than sustaining a raft of measures that impose significant restrictions without any longer providing a separate and identifiable benefit.

Impact of a continued imbalance in regulation

46. The need for sensible reform of the existing regulations is even more apparent in a world where the changing habits of consumers, citizens and advertisers mean that they readily substitute *across* media (an issue covered in more detailed below).

47. This makes it all the more crucial for the OFT review to focus on *all* local media. Without this wider focus its subsequent proposals are in danger of creating asymmetry in the local and regional media market, rather than addressing common challenges that face Commercial Radio, local press and other media.

48. Even if the OFT does recommend greater flexibility for radio it is essential that any reforms on

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[18] Radio Advertising Bureau, 2008

[19] OFT Review of the local and regional media merger regime – Discussion paper, March 2009, p.8, para 2.8.

local and regional media mergers and competition issues are also carried over consistently within the rules on media ownership, when Ofcom conducts its separate review later this year.

49. In a fast changing multi-media environment it is especially difficult to justify the conditions that prevent media mergers for local radio on the basis of 'two owners plus the BBC' [20] as the right level of local competition, measured against the burdens on industry that enforced separate ownership brings.

50. Therefore both the OFT (and later Ofcom) must be mindful of the need to bring regulations up to date across different media, so that both Commercial Radio and local press are afforded greater ability to consolidate and compete more efficiently. Otherwise there could be an imbalance in local media, where local radio will find it difficult to compete with large newspaper groups due to the inefficient and illogical separation of at least two small commercial radio stations, plus one BBC local radio station.

51. Moreover, it is likely that even within the next few months an inability to consolidate within a specific locality will contribute to the closure of stations, thus leading to an inevitable decline in competition within the local radio market with the inherent loss of plurality as well as consumer and advertiser choice.

Competitive Assessment Issues

52. There are several competitive assessment issues in the discussion document that are of merit and consideration in relation to the Commercial Radio industry. These include:

- Market definition - evidence on the extent of substitution
- Counterfactual – failing firms
- Improved efficiency
- Customer benefits

Market definition – evidence on substitution and radio's place in the wider market

53. As the OFT acknowledges in the discussion document, there is a considerable and growing body of opinion which asserts that narrow sector definitions of media markets are no longer appropriate, given the increasing opportunity for consumers to substitute one media platform for another.

54. In fact we believe that changes in the market mean that there is no clear rationale for retaining mono-sector market definition when assessing any local or regional media merger. To address the first question posed by the discussion document directly, a local or regional "radio-only" regime is critically undermined by the extent of cross-media substitutability.

55. In 2006 Ofcom undertook research to develop its understanding of the radio advertising industry and the competitive constraints faced by suppliers of radio advertising airtime. The report, 'Radio Advertising Market Research – Assessment of the constraints on the price of direct and indirect radio advertising' was particularly focussed on understanding the extent to which pricing in radio advertising markets appeared to be affected by other media.

56. The quantitative evidence derived from the SSNIP (small but significant non-transitory increase in price) test indicated that "the pricing of direct radio advertising appears to be constrained by press advertising. As a result a hypothetical monopoly supplier of direct radio advertising would not find it profitable to raise prices by 5-10% for a sustained period of time. This result appears to be robust to a range of sensitivity analyses." This suggested that in general it can be expected that the scope of the relevant product market for direct radio advertising may include

[20] As required by the Ownership (Local Radio and Appointed News Provider) Order 2003

at least press advertising.

Net profitability of a SSNIP to the hypothetical monopolist from switching to press

		Percentage of direct radio advertising budget transferred to press by partial switchers		
	SSNIP test**	0%	500%	100%
Net profitability of SSNIP test*	5%	-6%	-6%	-7%
	10%	-9%	-12%	-14%

* expressed as a % of pre-SSNIP total direct radio advertising revenue
**based on a sample size of 182 direct radio advertisers

Source: Ofcom

57. Ofcom combined the results of the SSNIP test with the analysis of its qualitative survey findings. The qualitative survey evidence indicated that 57% of direct radio advertisers agree or strongly agree with the statement that "if radio costs increased, the direct radio advertiser would spend more of its budget on press advertising". Ofcom concluded that "this may provide some support to the proposition that direct radio advertisers view press and radio advertising as "perceptual substitutes" given a budget constraint on advertising expenditure".

58. In addition, 55% of direct radio advertisers agreed with the statement that "they see press and radio advertising as interchangeable". Ofcom deduced that though the additional survey findings did not prove conclusively that the price of direct radio advertising was or was not constrained by the price of local press advertising it did "show that attitudes held by direct radio advertisers about radio advertising are not inconsistent with responses given to the hypothetical SSNIP test questions."[21]

59. This evidence suggests that radio is part of a wider media market and that, by and large, local radio and local press appear to be substitutes. On balance this evidence would seem to contradict the position that radio is a separate market from other media and worthy of separate and specific regulation.

60. Furthermore, the evidence we understand is being supplied by the Local Media Alliance finds that the market definition should be widened so as to include all local media, including press, radio, outdoor, cinema and the internet.

61. The inexorable growth of broadband across the UK has further blurred the distinction between media as local and regional press develop their digital strategies, radio stations refine their websites and streaming proposition so that now the once traditional media are competing against bespoke local websites for advertising and consumers' time. In addition, there are no real barriers to entry in the digital environment as can be seen by the rapid growth of digital local radio stations, with the number of services available only on digital growing to 228, from a standing start less than ten years ago.

62. The BBC also has an important role to play in radio, having a huge impact on the prospective audiences for Commercial Radio and the subsequent prices and levels of advertising, which are essential to support the industry. This issue is explored further detail below.

<u>Counterfactual</u>

63. The Commercial Radio industry is experiencing a time of economic turmoil. The final quarter of 2008 generated the lowest revenue for the industry for over ten years, with some estimates

[21] All quotes from Ofcom, 'Radio Advertising Market Research – Assessment of the constraints on the price of direct and indirect advertising', October 2006

predicting a further decline of 15% during 2009[22]. This is despite the fact that there are currently 303 analogue commercial stations, compared to 106 in 1990.

64. It is very likely that the sector will experience the mass closure of small local radio stations. 80% of stations under 700,000 MCA (measured coverage area) are now loss-making or only generating profit of less than £100,000 per annum[23]. This represents around 246 Commercial Radio stations.

65. A local loss-making radio station is not likely to be an attractive investment opportunity for a radio company that does not to some extent serve that area, as it could not leverage cost savings or offer bundles of differentiated stations to advertisers. A relaxation of the media merger regime and the ownership rules would enable local radio companies to consolidate and prevent the closure of many such local radio stations round the UK.

<u>Efficiencies</u>

66. If Commercial Radio stations are to operate efficiently and compete effectively in the changing media environment they are going to need greater flexibility in how they use their resources, which can flow from common ownership. This will allow superior economies of scale and the sharing of resources, thus safeguarding their ongoing investment in the content which is valued by listeners and consequently by advertisers.

67. Greater consolidation will inevitably take out some of the existing costs faced by these stations, particularly in relation to some of the high fixed costs such as accommodation. In addition common ownership provides opportunities to share some content or newsgathering resources, whilst maintaining and even improving quality of output.

68. The urgency to achieve these efficiencies has grown significantly as the economic conditions facing Commercial Radio have deteriorated and competitive pressures grow across media.

<u>Customer benefits</u>

69. There are several key *listener* benefits which can flow from consolidation of ownership:

- It is generally accepted that a reduction in the number of owners of overlapping stations results in an increase in the diversity of the output of those stations, resulting in increased choice for listeners. Good examples of this are springing up across the UK including West-Central Scotland, London, Liverpool, Manchester and Oxford.
- Common ownership of stations in similar areas results in operational efficiencies, enabling greater investment in quality content.
- The strength afforded to more consolidated companies allows innovation and risk taking.

70. 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.

71. In addition, high profile figures such as politicians are more likely to provide a station with an interview if s/he knows that they may be heard across a number of stations serving a whole region. This is much easier to achieve if those stations are under common ownership.

72. For *advertisers* the prospect of greater flexibility around local media mergers in radio also provides the potential for an improved advertising proposition.

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[22] Enders Analysis, UK Commercial Radio Update, 13 March 2009
[23] RadioCentre, Commercial Radio profitability data, March 2009

73. 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 across several stations through a single sales point. As there would be an incentive for the stations to offer more discrete output to listeners, then advertisers would benefit in turn from more differentiated products. In addition to traditional spot advertising, common ownership can help stations to provide better access to marketing opportunities, and sponsorship and promotions offerings.

74. The efficiencies that flow from greater consolidation also provide the prospect of increased investment in content to help drive audience figures and become more attractive to advertisers.

Media Public Interest Considerations

Current arrangements

75. The discussion document also seeks views on the suitability of the current public interest arrangements and the degree of flexibility over plurality. In response to this RadioCentre would highlight evidence that shows consumers now rely less on a single medium like radio as their sole source of information and local viewpoint.

- RadioCentre's own independently administered research[24] found that half or more of the population are able to access local news and information from TV (50%), newspapers (53%) or the internet (58%), as well as radio (79%).
- It also found that 88% thought there were more different places they could get their local news and information than there were 5 years ago.
- Less than half of those surveyed (43%) said that radio provided content which they could not get elsewhere whereas almost three quarters (74%) attributed that characteristic to the internet.

76. Ofcom's own research has also found that the number of people citing radio as the primary source of local news declined from 14% in 2001 to 10% in 2005[25].

77. These trends can only have been accelerated by the growth in internet and broadband penetration since this research was conducted and provide further evidence to support the removal of all radio-specific concentration of ownership rules.

78. That is not to say that radio does not play an important role in local democracy and accountability. The high quality and volume of its local news provision are an essential part of its output. It is important also to underline that the editorial independence of stations is secured by legislatively-enforced impartiality requirements affecting radio[26].

Media ownership rules

79. We would also like to make an important correction with regards to the current media ownership (MO) rules, which are reviewed by Ofcom every three years.

80. The discussion document states that in 2006 "Ofcom recommended that no changes should be made to the MO rules at that time".[27] In fact Ofcom concluded that the existing rules were broadly appropriate, except to say that "options … exist for a more radical overhaul of the radio rules"[28].

81. However, no such radical overhaul of the radio rules occurred at that time, or following Ofcom's

[24] The Big Listen Phase 3, Base: 10,375 Commercial Radio Listeners, Source: You Gov, June 2007
[25] Ofcom, 'Review of Media Ownership Rules', November 2006, pg 13, figure 6
[26] Section 320, Communications Act 2003
[27] OFT Review of the local and regional media merger regime – Discussion paper, March 2009, p.34, para 5.19.
[28] Ofcom, 'Review of Media Ownership Rules', November 2006, pg 33

consultation on 'The Future of Radio' in 2007. It is crucial that the OFT understand and appreciate this context in any subsequent discussions with Ofcom and Government that follow on from this review.

Public Sector Competition

82. The OFT is right to question the interaction and impact of public sector competition. This is a particularly pertinent issue for Commercial Radio, due to the scale of market intervention by the BBC and its impact on radio listening.

83. Radio does not consist exclusively of commercial stations that are subject to the controls preventing mergers. So even if there was extensive consolidation of radio ownership this would not eliminate competition for consumers as it may do in other media. Regardless of how many commercial stations there are, the BBC's presence ensures that there is always another source of local radio content for consumers in any market.

84. The increasing listening share of the BBC ultimately detracts from the ability of local and regional radio to generate advertising revenues, which in turn further exacerbates the challenges outlined earlier in the document.

85. The public interest is best served by healthy competition and a level playing field between the likes of the BBC and commercial operators, leading to a general raising of standards across the board. At present the BBC's combined share of listening is 55.7%[29] compared to commercial sector's 42.2% share. This 13% point share gap provides a real challenge and a uniquely large share of any media sector.

86. The combination of this significant market intervention and the increasing lack of audience distinctiveness of BBC stations (particularly stations with a national reach such as Radio 1 and Radio 2) combines to restrict the overall viability of Commercial Radio and reduces its ability to invest in local programming and public service content of its own.

87. A report on 'The economic impact of the BBC on the UK creative and broadcasting sector' published by the BBC Trust in July 2008 found that the risk of damage to overall public purpose plurality would increase as the gap between the BBC and Commercial Radio's respective funding power widened:

    "If commercial radio is experiencing a market downturn (whether structural or cyclical), then a negative impact of the BBC may occur. The BBC's stable and non-cyclical spending, while advantageous to much of the creative economy, particularly upstream, may become a disadvantage to competitors experiencing a decline in revenues as it becomes increasingly difficult to compete with the BBC which has an increasing (in relative terms) revenue advantage."[30]

Conclusion

88. RadioCentre believes that these factors demonstrate the need to include Commercial Radio within the scope of the OFT's review. The disproportionate level of regulation faced by this small but important sector is preventing consolidation, which is essential if local radio stations are to continue to invest in content and thrive in a digital age.

89. Falling revenues and difficult trading conditions in Commercial Radio provide powerful reasons to develop a new approach sooner rather than later. In addition, there is growing evidence that consumers and advertisers are now able to substitute one media platform for another.

90. This switching across media undermines the case for defining and regulating a single sector

[29] Rajar Q4, 2008
[30] BBC Trust, 'The economic impact of the BBC on the UK creative and broadcasting sector', July 2008, p. 16.

such as radio so heavily. It also changes the way in which we should consider competition issues, as it is now cross media competition that constrains prices (including prices for advertising) rather than the level of competition or consolidation between radio stations in the same area.

91. In future undue concentrations of ownership that may be against the public interest can continue to be addressed simply and effectively, through the protection provided under the special public interest test in the Enterprise Act 2002. Local viewpoint neutrality will be ensured by editorial independence and special impartiality requirements affecting radio.

92. The raft of other regulation that restricts consolidation in radio – including that which is the responsibility of Ofcom as well as the OFT – should be removed, in the interests of consumers, listeners and advertisers.

RadioCentre, March 2009

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