Title: Independent producers and local TV	**Impact Assessment (IA)**
IA No: DCMS043	**Date:** 20/12/2011 (*Updated Jan 2012*)
Lead department or agency: DCMS	**Stage:** Consultation
	Source of intervention: Domestic
Other departments or agencies: n/a	**Type of measure:** Secondary legislation
	Contact for enquiries: Dominic Lake 020 7211 6957 Media Team – DCMS

Summary: Intervention and Options

RPC Opinion: AMBER

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
Not quantifiable	Not quantifiable	Not quantifiable	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?

Success of a new Government initiative to facilitate local TV may be put at risk by two existing regulations:

a) Ownership ceiling: Independent producers cannot hold a stake of greater than 25% in any licensed local television broadcaster without losing their independent status. This could dissuade them from bidding either in partnership (with a collective share of more than 25%) or outright for a local TV licence.

b) Quota system: Existing regulation demands that all UK broadcasters, including licensed local TV broadcasters, must source at least 10% of their content from independent production companies. Keeping this rule means licensed local TV broadcasters would be subject to increased costs and sanction risks.

Government intends to consult on removing these regulations to meet dual policy objectives of low cost burdens on new licensed local TV services and encouraging the broadest range of licence bids.

What are the policy objectives and the intended effects?

Objectives: to enable a strong and sustainable local TV market, by removing:

- the regulatory barrier preventing independent producers from having more than a 25% commercial stake in the local TV broadcast services without losing their independent status; and
- the regulation that imposes a fixed 10% content quota on the newly licensed local TV broadcasters.

Intended effect: proceeding in this way would support the nascent local TV market, by:

- creating commercial incentives for independent producers to invest through increased commercial stake in local TV, and thus broadening the number of bidders/expertise; and
- shielding licensed local TV broadcasters from the cost burdens associated with meeting the 10% content quota (this quota removal would be consistent with the approach permitted by an EU directive for such quotas at the local level).

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do Nothing: the status quo is maintained. Independent producers could only hold up to 25% stake in any licensed local TV broadcaster without losing their independent status and new licensed local TV broadcasters would be required to source at least 10% of their content from independent producers.
Option 2 (preferred): Deregulate in both areas through one new statutory instrument: (a) remove the ceiling on the permitted ownership stake of a local TV broadcaster by an independent production company; and (b) remove the requirement for local TV broadcasters to comply with the 10% content quota.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 1 year.

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A		**Non-traded:** N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Ed Vaizey Date: 20 Dec 2011

Summary: Analysis & Evidence — Policy Option 1

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	**High:** n/a	**Best Estimate:** n/a

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not quantifiable		Not quantifiable	Not quantifiable
High	Not quantifiable		Not quantifiable	Not quantifiable
Best Estimate	Not quantifiable		Not quantifiable	Not quantifiable

Description and scale of key monetised costs by 'main affected groups'

n/a. Government is consulting on this Impact Assessment and welcomes views on quantifiable costs.

Other key non-monetised costs by 'main affected groups'

If the current **ownership ceiling** is maintained, independent producers would not be able to own a stake of more than 25% in a local TV station without losing their independent status. 'Independent' status currently benefits independent producers by providing them with a commissioning revenue stream from broadcasters who must commission at least 10% of their content from independent producers (though we are seeking to remove this quota as far as it would apply to licensed local TV broadcasters). The prospect of losing independent status could discourage independent producers from applying to operate a local TV broadcast service in their own right, which could reduce the potential number of applicants for local licences.
Imposing an obligation on local TV to acquire a **minimum content quota of 10%** of programming from independent producers may distort commercial decisions that might also result in higher costs. The local service would also face an administrative burden, as it would need to monitor compliance with the quota regulation. The cost burden this would place on licensed local TV operators might reduce the overall number of viable local TV content broadcasters. A cost would also be incurred by Ofcom who would have to monitor and enforce compliance of local TV with the 10% quota.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not quantifiable		Not quantifiable	Not quantifiable
High	Not quantifiable		Not quantifiable	Not quantifiable
Best Estimate	Not quantifiable		Not quantifiable	Not quantifiable

Description and scale of key monetised benefits by 'main affected groups'

n/a. Government is consulting on this Impact Assessment and welcomes views on quantifiable benefits.

Other key non-monetised benefits by 'main affected groups'

Independent producers do not currently benefit from a local TV revenue stream (because the local TV framework is only now being put in place for the first time). Thus, doing nothing means independent producers could stand to benefit from at least the **10% content quota**, and continue to have a guaranteed revenue stream from all national plus the new local TV services. It is unclear what the value of a local TV quota would be, but it is likely to be small, as the commercial value of programming broadcast to a relatively small local audience will be far less than content made available to a national audience.

Key assumptions/sensitivities/risks — **Discount rate (%)**: -

Assume no other changes to the legislation to change the requirements currently around independent producers.
There is a risk that retaining the current rules may mean there could be insufficient bidders for local TV broadcast licences (as outlined above) and any successful bidder would encounter the burden of complying with the 10% content quota. This risks the future commercial success of local TV in the UK.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: n/a	**Benefits:** n/a	**Net:** n/a	No	NA

Summary: Analysis & Evidence — Policy Option 2

Description: Deregulate in both areas by: (a) removing a regulatory barrier to permit independent producers full ownership of local TV services; and (b) dis-apply the obligation on licensed local TV broadcast services to commission at least 10% of content from independent producers.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	**High:** n/a	**Best Estimate:** n/a

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Not quantifiable		Not quantifiable	Not quantifiable
High	Not quantifiable		Not quantifiable	Not quantifiable
Best Estimate	Not quantifiable		Not quantifiable	Not quantifiable

Description and scale of key monetised costs by 'main affected groups'

n/a. Government is consulting on this Impact Assessment and welcomes views on quantifiable costs.

Other key non-monetised costs by 'main affected groups'

There are no direct costs imposed by the removal of these burdens. However, there may be an *opportunity cost* for independent producers, because dis-applying the **10% content quota** might mean the independent production sector does not automatically benefit from a guaranteed revenue stream from local TV services. This would not prevent independent producers from securing local TV commissions; it would simply remove the *certainty* that 10% of commissions would be ring-fenced for these producers (but conversely, retaining the quota represents a burden on the local TV providers).

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Not quantifiable		Not quantifiable	Not quantifiable
High	Not quantifiable		Not quantifiable	Not quantifiable
Best Estimate	Not quantifiable		Not quantifiable	Not quantifiable

Description and scale of key monetised benefits by 'main affected groups'

n/a. Government is consulting on this Impact Assessment and welcomes views on quantifiable benefits.

Other key non-monetised benefits by 'main affected groups'

Removal of the existing **ownership ceiling** would enable independent producers to bid for local TV licences in their own right. This would increase the opportunity for them to enter a new market. This may increase both the amount and quality of the competition for licences at the award stage. As experienced content producers, independent producers would bring proven TV production skills and the potential for innovative approaches.

Removal of the **10% content quota** would reduce the burden of regulation on small local TV broadcasters by allowing them to source content from anywhere. This has a potential benefit for the local TV broadcasters if, for example, making content in-house is cheaper than commissioning it from an independent producer. This does not prevent local TV broadcasters from sourcing content from independent producers should they wish to. Removal of the 10% content quota would open up competition to fill the gaps in the entire schedule, which would represent an incremental increase in the extent of competition between qualifying and non-qualifying producers in the provision of content. Removal of the 10% quota also reduces the administrative burden for local TV services of complying with the quota. Removing the regulatory burden of the quota would result in lower costs of regulation for Ofcom's monitoring and enforcement of compliance.

Key assumptions/sensitivities/risks — **Discount rate (%)**: -

Assume that the rules at a national level in relation to independent producers will not change. The changes outlined above will be applicable only to local TV services.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: n/a	**Benefits:** n/a	**Net:** 0	Yes	OUT

Evidence Base (for summary sheets)

Overview

The Government's initiative to set up a local TV market in the UK is taking place in a highly regulated broadcasting environment. Some of the existing legislation was never designed to apply to very localised services like local TV. There is a risk to the commercial success of a newly emerging local TV market which the Government is enabling through separate intervention if some existing regulations remain in place. The regulations were designed to apply to well-established, nationwide broadcasters; not local TV.

The regulations are:

- producers will lose their independent status (and hence the ability to bid for a share of the regulated independent production quota) if they own more than 25% of any broadcaster; and
- broadcasters must purchase at least 10% of their content from independent producers.

These requirements were originally introduced to comply with the requirements of the Audiovisual Media Services Directive (AVMS); to increase the variety of opinions, styles, genres and voices available on national TV; to encourage a viable independent production sector; and to minimise the dominant effect national TV broadcasters could have through a single powerful production company. The regulation has proved effective in these respects.

However, it is considered that in the case of local TV, the scale of operations and influence is likely to mean that even if a particular production company sought to dominate local TV broadcasters for its own reasons, the ill-effects are unlikely to be significant if considered in terms of variety, style, genre and voice. We would, though, be concerned if an independent production company's main business became the running of local TV services, rather than the generation of independent content for onward sale to broadcasters, because that could stand to blur the important distinction between "broadcaster" and "independent producer". For this reason, we plan to include a restriction whereby an independent producer can have full ownership of a local TV licence, but this cannot become its main business activity (i.e. cannot constitute more than 49% of its revenues).

Moreover, the 10% quota requirement may prevent local TV broadcasters from finding the lowest-cost solution to provide content. Hence, it is proposed that – in the case of local TV only – the two legislative barriers that apply to independent producers should be relaxed in the context of local TV. For this reason, the Government is proposing to consult on removing these specific regulations from applying to licensed local TV broadcasters.

Introduction

1. Government has taken recent steps to enable a new local TV market to emerge. Local TV does not exist in the UK on any meaningful scale and so the Government is in the process of implementing separate measures that address the barriers in place to encourage a new generation of local TV services. These services will potentially provide a range of local TV services such as news and current affairs for and about geographically specific areas of the UK.

2. The Government recently laid three pieces of secondary legislation in Parliament to secure sufficient amounts of local spectrum for local TV services, create a new local licensing regime and offer appropriate prominence on electronic programme guides (EPG). The local TV services will be in addition to the existing regional news services provided on BBC1 and ITV1 (stv in Scotland and UTV in Northern Ireland). The services will be more community-focused and provide content of relevance and interest to the local area.

3. The local TV services are likely to be small, locally-focused enterprises. In order to ensure the long-term sustainability of these new services – which are expected to contribute to local democratic debate and the Big Society – the Government has already begun the process of removing barriers and regulations which are inappropriately burdensome on these services, e.g. removal of the local cross media ownership rules.

4. The independent production sector which supplies a range of content to national broadcasters in the UK forms a well-established and successful part of the UK's media market. For the purposes of the statutory quota, a producer is not regarded as independent if it owns more than 25% of a broadcaster. This limits the scope for independent producers to invest in broadcasting services, including local TV.

5. In 2004, an Ofcom survey[1] suggested that the current size of the market for UK-originated TV production is £2.6bn. 56% of the market, representing £1.5bn, is accounted for by in-house production, while 44% or £1.1bn comprises external production. 63% of all originated production, or £1.6bn, is based in London and divided relatively equally between in-house and external production companies at 55% and 45% of the total respectively. Out of London, 58% of production is accounted for by in-house production companies.

6. The growth in the independent production sector over the past 20 years can in large part be attributed to a series of regulatory interventions, one of which is the independent production quota which has required licensed national television broadcasters to carry at least 10-25% of independently produced content as part of the scheduled output.

7. UK law separates independent producers from broadcasters: independent producers cannot become a television broadcaster without losing their independent status (hence benefitting from the national commissioning quota that applies). However, European law in the form of the Audiovisual Media Services (AVMS) Directive allows member states to define independent producers and dis-apply content quotas to local TV broadcast services. The Government is now considering, subject to further consultation and gathering of evidence, de-regulation in both areas as it applies to local TV.

8. The following analysis of the impact of the proposed changes is largely qualitative in nature. It is difficult to estimate the magnitude of any changes because the new local TV framework yet to be implemented and so there is no direct evidence base to draw on. Where possible data is provided to illustrate the current situation e.g. in terms of original *network* programming accounting for most of the spend on original programming compared to the *regional* programming but this should not be taken as being indicative of the expected position in respect of local TV which will be licensed at a sub-regional level.

9. The Government also assumes that any changes are specific to local TV services and so do not have any implications for existing national commissioning or independent production quotas that apply to national broadcasters. The consultation will provide the opportunity to gather more evidence of the potential economic impact of these policy proposals.

<u>Current rules on independent producers and production (1991 Order, Communications Act 2003)</u>

10. European legislation[2] places an obligation on Member States to ensure that, where practicable, broadcasters reserve at least 10% of their transmission time (excluding the time allotted to news, sports, events, games, advertising, teletext services and teleshopping) for European works created by producers who are independent of broadcasters. In the UK, this requirement was implemented by way of a notification from HMG to OFCOM which required OFCOM to include, in every television broadcasting licence, a condition that such licensees comply with the quota.

[1] Review of the television production sector, statement by Ofcom, London, October 2004
[2] Article 17 AVMS Directive http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF

11. However the European legislation goes on to specifically permit Member States to exempt local TV services which do not form part of a national network from this quota requirement[3].

12. In the UK, section 309 of the Communications Act 2003 places an obligation, again imposed through licence conditions, on every digital television programme service licensee to ensure that 10% of the total amount of time allocated to the broadcasting of qualifying programmes[4] is allocated to the broadcasting of a range and diversity of independent productions. This quota is separate from the European quota referred to above. (It should be noted that, in addition to the 10% domestic quota, section 277 of the Communications Act 2003 requires public service broadcasters to source at least 25% of their content from independent production companies.) These domestic quotas played into the broader existing industrial policy objective of fostering the independent production sector to promote diversity and encourage growth.

13. This domestic legislation, unlike the European legislation, does not provide for exceptions to be made from the 10% quota in respect of local TV services. Therefore, unless the quota in the domestic legislation is specifically removed in relation to local TV, it will apply to the new category of local digital television programme service licences.

14. The definition of an independent producer in the UK is set out in The Broadcasting (Independent Productions) Order 1991. An independent producer is defined through this order in the following way:

(4) In this article "independent producer" means a producer-

(a) who is not an employee (whether or not on temporary leave of absence) of a broadcaster;

(b) who, subject to paragraph (4A) below, does not have a shareholding greater than 25 per cent in a broadcaster; and

(c) which is not a body corporate in which any one UK broadcaster has a shareholding greater than 25 per cent or in which any two or more UK broadcasters together have an aggregate shareholding greater than 50 per cent.

(4A) A shareholding greater than 25 per cent which a producer has in a broadcaster shall not have the effect that the producer is not an independent producer if-

(a) the producer is incorporated under the laws of a state for the time being bound by the agreement on the European Economic Area signed at Oporto on 2 May 1992 or has his principal place of business in such a state; and

(b) the television services which the broadcaster provides are provided exclusively for reception in states which are not for the time being bound by that agreement and are not received directly or indirectly in any state which is for the time being bound by that agreement.

15. The 1991 Order defines independent producers by reference to having an ownership stake no greater than 25% in any broadcaster. This means that an independent producer can only become a broadcaster if it is prepared to forfeit its 'independent' status. However the Order does include an exemption to enable independent producers to hold a greater shareholding in a broadcaster if the TV service is to be received exclusively outside the EEA – but not if the service is to be received within the EEA, including the UK.

EU Audiovisual Media Services (AVMS) Directive

16. Article 17 of the AVMS Directive makes provision for independent producers and explains the relationship with TV broadcasters. It says: *"Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time… for European works created by producers who are independent of broadcasters."*

[3] Article 18 AVMS Directive - Both articles 17 and 18 were carried over from the previous Television Without Frontiers (TVWF) Directive 1989, which the AVMS Directive replaced.
[4] As defined by article 2 of the Broadcasting (Independent Productions) Order 1991.

17. Article 18 of the Directive says: *"This Chapter shall not apply to television broadcasts that are intended for local audiences and do not form part of a national network."*

18. Articles 17 and 18 of the AVMS Directive have been carried through from the previous Television Without Frontiers (TVWF) Directive, which the AVMS Directive replaced. When the TVWF Directive was transposed into UK legislation, the exemption for local TV was not included.

Local TV framework

19. The Government has developed a new local TV framework which it is currently implementing. This was developed in response to the historic market barriers which had worked against those interested in running local TV services, coupled with a legislative regime geared to national broadcasters.

20. The framework being put in place (secondary legislation was laid in December 2011) allows Ofcom to implement a local licensing regime for local TV. It will license individual standalone local services, each serving a different location – principally large conurbations in the first instance (e.g. Cardiff, Manchester, London, etc).

21. This is not replicating the existing regional TV structure, but rather a new market and a new service which will operate at a sub-regional level. Existing regional services (such as those offered by the BBC following the national news) will remain. The new local TV services will be at a new channel number, broadcasting on DTT with content relevant to the local population. This might include news, sport, current affairs, etc. The local stations will be able to source content through any method they wish and so could broadcast a mixture of content produced in-house and content procured from external producers.

22. Whilst the Government has had much interest from potential local providers, the market has not yet been fully tested. This is because the first phase of local TV licensing has not yet taken place (Ofcom will advertise licenses when they have consulted on the process; the first licenses are expected to be advertised during April/May 2012). Government is keen to ensure that the barriers to participation in bidding to operate local TV stations are reduced. It is now considering how independent producers could be involved in local TV in the most practical way.

Problem under consideration

23. The problems are two-fold: the first is that existing legislation currently caps the ownership stake an independent production company may have in a broadcaster to no more than 25% (otherwise it is no longer an independent producer). This cap applies to all broadcasters regardless of whether those services are national or local in nature. The second is the 10% content quota that applies to national broadcasters. The quota will apply to the new generation of local TV services because the UK has not dis-applied the quota to local TV services as explicitly permitted by the AVMS Directive.

24. The Government's current preference is to deregulate in both areas as they apply to local TV. However, there are alternative scenarios where just one of the deregulatory measures is implemented or the Government chooses to do neither.

25. There is logic in dealing with the two issues together (around independent producer ceiling and the independent production quota). The current independent production quota system functions by defining the concept of an independent producer by reference to (among other considerations) the size of the stake it can hold in any broadcaster. If this quota obligation is dis-applied in relation to local TV broadcasters, then there is an argument to also remove the ownership ceiling which prevents independent producers from owning a local TV service without losing their independent status. It seems right that there should be a balance between, on the one hand, saying that independent producers in the UK will not be able to take advantage of the potential revenues which a quota on local TV broadcasters would provide and, on the other, saying that independent producers may have a larger – or indeed, a

total – share in a local television broadcaster without losing their independent status. It would be disproportionate to dis-apply the quota yet continue to maintain a barrier preventing independent producers from holding a local TV broadcast service licence.

Rationale for intervention

Increasing the permitted ownership ceiling

26. It is important to maximise the number of possible bids at a local level. Plurality in content provision (enabled by the independent producer legislation provisions) does not constitute the same degree of importance at a local level as it does in the national market where leading market share is held by large television broadcasters who have the potential of reaching millions of people through their scheduling.

27. Many national media can counter the lack of plurality at a local level because national media is available locally but local media is available less at a national level. This plan is related to local TV, where the impact is not on national markets.

28. However, Government would be concerned if an independent production company's main business became the running of local TV services. This is because it is important to retain a clear distinction between what constitutes a "broadcaster" and what constitutes an "independent producer". If we do not retain this distinction with sufficient clarity, we risk losing our ability to comfortably comply with the European obligation to ensure that broadcasters source 10% of their content from "producers who are independent of broadcasters". For this reason, we plan to include a restriction whereby an independent producer can have full ownership of a local TV licence (or a number of local licences), but this cannot become its main business activity (i.e. cannot constitute more than 49% of its revenues).

29. Deregulation and enabling commercial opportunity for local TV provision is consistent with broader Government policy in the media market. In April 2011, Government removed the local cross-media ownership rules which placed restrictions on the circumstances in which local media entities (such as local newspapers) could simultaneously own other media entities (e.g. local radio licences, regional Channel 3 licences) at the local level. Allowing the independent sector to have a greater role in the provision of local TV through production and increased ownership will offer new opportunities to both sides of the market.

Removing potential burdens on local TV

30. The majority of original commissioning in the UK is at the national 'network' level, i.e. programming that is for broadcast as part of a national network service rather than for specific regional services. This is reflected in commissioning spend. In 2010 the five public service broadcasters[5] spent £2.5 billion on first-run originated output. This compares to a total spend of £266m on originated national/regional output by BBC, ITV plc, STV and UTV.

31. However independent producers can (and do) compete to supply both network and regional commissions. Given the total amount spent on original commissions it can thus be important for producers to retain their qualifying independent status.

32. It is also the case that around 30-40% of all network production by the Public Service Broadcasters is produced outside London. In value terms, in 2010, the figures were: All BBC – 37.8%; ITV1 – 38.8%; Channel 4 – 39.4% and Five – 26.4% (CMR 2011). This comes from a mixture of London-based independents producing outside London as well as from independent producers who are based and also produce outside London. These figures suggest a reasonably strong production base outside London which could in turn be well placed to participate in the development of local TV in the UK.

[5] BBC, ITV, Channel 4, Five and S4C

33. Exempting local digital television programme services from the 10% independent production content quota would not prevent independent producers from bidding for local TV commissions; it would simply remove the *guarantee* that 10% of commissions would be ring-fenced for these producers alone at the local level.

34. It is likely that local TV services broadcasting on DTT will be relatively small scale operations: for instance, the Shott review[6] and a later Enders Analysis report suggested that local TV services could operate at a reasonable cost of between £500k and £1.2m per annum. In that situation a requirement to comply with a 10% independent production content quota could impose significant strategic and administrative burdens on a local TV service. There would be the need not only to take the content quota into account when making decisions about on-going programming strategy but also there would be the need to have in place systems to monitor compliance with the quota. Exempting local digital television programme service providers from the 10% independent production quota would therefore give local TV service providers some greater flexibility in their programming decisions and reduce the administrative burden.

35. This approach may also reduce the cost burden for local TV channels as it may be more cost effective for small broadcasters to produce their content in-house. Furthermore it is possible, given that local TV stations are likely to have very small programme budgets (see above reference to Shott review), that it might be difficult to find independent producers that could deliver suitable programmes. It could thus be difficult to compel local TV stations to comply with a requirement that could be hard to achieve without distorting their commissioning decisions.

36. Whilst the Government understands that local TV services may indeed choose to commission programming from independent producers, it appears disproportionate to automatically expect this.

37. Overall, dis-applying the quota for local TV is entirely consistent with the European Directive by enabling member states to dis-apply the quota to local services. It also restores the previous position whereby there was no quota obligation in relation to local analogue services.

38. *The Government consultation will welcome views on whether exempting local TV services from the 10% independent production content quota will give local TV service providers greater flexibility in programming decisions and also reduce the administrative burden on them. It will also seek evidence for any negative consequences or costs which might be incurred due to removal of this quota.*

Lowering barriers to participation in the awards process for local TV station licences

39. It is important to reduce barriers to different industry players participating in the licensing award process for local TV in order to ensure there is a robust competitive process operating. This potentially offers better services for audiences as a result.

40. Under the current rules, an independent producer that wished to be involved in operating a local TV station would be prevented from bidding in its own right – unless it was also prepared to give up its qualifying independent status if it was successful. Losing its independent status could affect an independent producer's ability to secure programme commissions from other (non-local) broadcasters. Given the importance of this revenue stream, this may discourage independent producers from applying to run (wholly or jointly) local TV services.

41. In order for an independent producer to participate in the bidding process for local TV and retain its qualifying independent status it would have to be a minority shareholder (owning 25% or less) in a partnership with at least one other partner. Any consortium made up of independent producers would have to be made up of more than 4 partners to ensure that each remained below the current ownership

[6] http://www.culture.gov.uk/publications/7655.aspx

ceiling of 25%. The process of setting up and managing a (successful) joint venture or multi-partner consortium is obviously more complex (and is likely to require significantly more time and management effort) than simply being able to bid on a stand-alone basis[7].

42. Enabling independent producers to bid for and operate local TV services in their own right would provide them with greater flexibility in terms of choosing how to participate in the provision of local TV services and could enable a greater number of bidders for local TV services. The removal of the ownership ceiling for local TV services would not force independent producers to bid in their own right – they could still choose to be part of a partnership or consortium – but it would enable them to adopt different approaches in different parts of the country according to local factors if they wished.

43. If an independent producer owned a number of local TV services there might also be greater scope for sharing programming and resources between the different services (as suggested in the final Shott report).

44. The Government will also consider, through the consultation process, the possibility that the ceiling could be increased rather than removed altogether. For example, an increase from 25% to 49% would allow greater involvement of independent producers in local TV but they would still remain as minority stake holders. The Government's preference is for complete removal of the ceiling. It is assumed that an increase in the ceiling, rather than complete removal, would have less significant (though still some) benefits. These are likely to be a lighter version of the benefits outlined in this impact assessment.

45. <u>The Government consultation will welcome views on whether allowing independent producers to become local TV service providers without losing their qualifying independent status is likely to increase participation by independent producers at the award stage. It will also seek views on any unidentified negative consequences or costs from removal of the ownership ceiling.</u>

Policy objective

46. The Government wants the local TV framework to be successful. In particular, it wants to attract the largest number of bidders possible and to provide the opportunity for different bidders to compete on an equal footing.

47. Because the Government wants local TV to succeed in the long-term, it wants to remove unnecessary burdens which would be imposed on local TV providers where possible.

48. There is logic in dealing with the two issues highlighted here together. The current independent production quota system functions by defining the concept of an independent producer by reference to (among other considerations) the size of the stake it can hold in any broadcaster. If this quota obligation is dis-applied in relation to local TV broadcasters, then there is an argument to also remove the ownership ceiling which prevents independent producers from owning a local TV service without losing their independent status. It seems right that there should be a balance between, on the one hand, saying that independent producers in the UK will not be able to take advantage of the potential revenues which a quota on local TV broadcasters would provide and, on the other, saying that independent producers may have a larger – or indeed, a total – share in a local television broadcaster without losing their independent status. It would be disproportionate to dis-apply the quota yet continue to maintain a barrier preventing independent producers from holding a local TV broadcast service licence.

Description of options considered

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7 At the same time we do recognise that a consortium approach would be a way of sharing the risks involved in bidding for and operating a local TV station.

49. The provisions which dictate the ownership restrictions for independent producers and the quota for content are both contained within legislation. Secondary legislation is the only way to achieve the policy outcomes outlined above, but both measures could be dis-applied through just one statutory instrument (an Order under the Communications Act 2003) and by way of a revised notification from the Secretary of State to Ofcom.

<u>Policy Option 1: Do nothing</u>

50. Local TV content broadcasters could be burdened by content quotas which were not intended for use at this local level. If the Government does nothing, then the content quota would still apply to local TV services on DTT. Local TV services would be obliged by law to source at least 10% of their content from independent producers. This could represent a significant, unnecessary and perhaps even unachievable burden on local TV licensees.

51. Existing rules may prevent independent producers from making full use of the opportunities afforded by the new local TV framework. When local TV licences are advertised, independent producers may choose not to bid because of a concern that if they win the competition for the licence they will lose their 'independent' status which in turn may impact on their ability to get commissions for national level programming. This means that they cannot take full advantage of the new market opportunities being created by the new local TV framework. A number of independent companies may potentially be well placed to provide local TV due to their particular connections to a local area.

<u>Policy Option 2: Intervene to remove regulation in relation (a) to the independent production content quota for local digital television programme services and (b) to the ownership ceiling precluding independent producers from having more than a 25% share in a local TV licence whilst maintaining their 'independent' status.</u>

52. Intervention through secondary legislation and a revised notification from the Secretary of State to Ofcom would mean that we could remove the undesirable outcomes outlined above, i.e. (a) remove the content quota such that local TV content broadcasters are not required to source at least 10% of their content from independent producers which, as outlined above, may prove to be a significant, unnecessary and perhaps even unachievable burden on local TV licensees; and (b) remove the ownership ceiling which, as outlined above, is likely to discourage independent producers from applying to become local TV broadcasters.

Costs and benefits of each option (including administrative burden)

<u>Option 1: Do nothing</u>

53. The 'Do nothing' option is presented as a counter-factual option. In this case, there would be no change to the existing regime as set out in the statute.

<u>Costs</u>

54. In the current status quo, independent producers would not be able to fully partake in the local TV market. They would not be able to both bid in their own right and retain their independent status. This would mean that they would not be able to participate fully in the opportunities offered by local TV compared to other industry players (e.g. broadcasters with their own in-house production capabilities).

55. Local TV providers would be required to fulfil their obligation to procure at least 10% of their content from independent production companies. This could represent a potential financial and/or administrative burden on new local TV services in their start-up phase. It is possible that a local

broadcaster may be able to produce content in-house more cheaply than an independent producer could. Local TV operators would need to put in place mechanisms for taking into account operation of the quota and ensuring compliance with it.

56. Under this option, there is a risk that there might be fewer bidders for local TV with less diversity in the range of applicants and so some genuinely innovative approaches might not come forward.

57. It is possible that local TV services might find it difficult to attract sufficient interest from independent producers in commissions (due to small budgets); this could result in local broadcasters failing to fulfil their quota obligations or distorting their programming strategy in order to comply with the quota.

Benefits

58. The independent sector would still benefit from the range of new local TV service providers who would be obliged to commission at least 10% of their output from independent producers; this would represent “new” money coming into the sector, although the value of this revenue stream remains unclear. Independent producers would also still be able to have part-ownership of a local TV broadcaster, as long as their ownership stake did not exceed 25%.

Option 2: Remove the ownership ceiling which currently prohibits independent producers from owning more than a 25% share in a local TV licensee without losing their independent status; and dis-apply the 10% independent production content quota for local TV

Costs

59. Removal of the 25% ownership ceiling for independent producers may lead to a small number of powerful producers becoming proprietors of local TV licences, although broadcasting local television could not become their main activity if they wished to retain their independent producer status. This may reduce the variety of voices and content that is made available. If a particular producer gains control of many local licences this result might take on more than local significance.

60. The independent sector would not gain from a guaranteed revenue stream from local TV services. However, this would not prevent independent producers from securing local TV commissions; it would simply remove the *certainty* that 10% of commissions would be ring-fenced for these producers.

Benefits

61. Removing the ownership ceiling would allow independent producers to bid for local TV licences without losing their ‘independent’ status. This could increase competition at the bidding stage, i.e. potentially lead to an increase in the number and range of bidders for local TV licences. There is thus the potential for a greater diversity of services and approaches in the provision of local TV services, which could in turn benefit consumers.

62. Exempting local digital television programme services from the 10% independent production content quota would mean that local TV operators are not obliged to source at least 10% of their content from independent producers. However, it is assumed that in many instances, local TV would choose to source content from independent producers. This option simply removes the obligation from local TV that forces them to source such content, thus reducing the regulatory burden upon these services.

63. Implementing this option could increase the degree of competition among content providers in that ‘non-qualifying’ producers (i.e. non-independents) would be able to compete for an additional 10% of

commissions that they would otherwise have been prevented from bidding for if the quota were in place, but it is expected that this would only represent a small change.

64. Overall, option 2 is intended to be de-regulatory. The Government will welcome views on the assertions made in this impact assessment through its consultation. In particular, market players and interested parties are encouraged to share data and information on the potential costs, benefits and consequences of making these changes to help inform the analysis presented here.

Risks and assumptions

65. This impact assessment is based on the assumption that the rules governing independent producers at the national level will not change. This IA is based only on the rules as they will operate within the new local TV framework.

<u>Option 1: Do nothing</u>

66. It is possible that limited budgets could prevent local TV services from attracting sufficient interest from independent producers in commissions; this could result in local broadcasters failing to fulfil their quota obligations, leaving them open to potential sanction.

67. Retaining the 25% cap on the stake an independent production company can hold in a local TV service might limit the number of applications for local TV licences in some areas.

<u>Option 2: Remove the ownership ceiling which currently prohibits independent producers from owning more than a 25% share in a local TV licensee without losing their independent status; and dis-apply the 10% independent production quota for local TV services</u>

68. Removing the ownership ceiling should incentivise more independent producers to participate in local TV.

69. Early indications from PACT (the UK trade association representing and promoting the commercial interests of independent creative content producers) suggest that while it is not opposed to the proposed changes, the sector would be wary of changes that could harm ‘independent’ status. Some existing broadcasters may have an in principle objection to independent producers owning a licence enabling them to broadcast in the UK (albeit only a local licence).

70. The current proposals would allow an independent broadcaster to own as many local station licences as it wanted, *but* only on condition that its local TV broadcasting did not become its main business activity, i.e. did not account for more than 49% of its revenue. This condition is proposed in order to ensure that the definition of the concept of independence remains consistent with the purposes of the AVMS Directive.

71. The independent production sector would not benefit from guaranteed “new money” coming to the sector from a range of new local TV service providers seeking to commission at least 10% of their output from independent producers. Independent producers may object to this proposal as a result. However whilst the proposal does not guarantee income for the sector neither does it prevent independent producers from seeking these commissions.

72. Niche national services may consider that local TV services with potentially sizable audiences may have an unfair regulatory advantage if local TV channels have a comparable audience share but no quota obligations.

Micro-business

73. Micro-businesses are not exempt from this Impact Assessment as the proposed measures are de-regulatory. Burdens are not being imposed through these measures. Micro-businesses which are independent producers could benefit from the increased ownership ceiling, allowing them to have more of a stake in local TV broadcasters should they wish.

Summary, preferred option and implementation plan

74. The Government is implementing a new framework for local TV. It wants to remove unnecessary burdens and restrictions relating to independent producers and local TV. This will help to ensure the long-term success and sustainability of local TV.

75. The preferred option is to remove both restrictions, so that:

- independent producers will be permitted to own a local TV broadcaster, without losing their independent status.

- the 10% content quota will be removed from local TV services – which would mean the local content broadcasters would not be required to source at least 10% of their content from independent producers.

76. The Government now intends to consult on the above proposals and this consultation-stage impact assessment will form part of that consultation. This will enable stakeholders to contribute views and consider any impacts – intended or otherwise – from the changes suggested above.