

Department for Culture, Media and Sport
Secretary of State's Office

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BP 33/03/1-51

To Andrew Ramsay cc [redacted] PS/Patricia Hewitt
From [redacted] [redacted] PS/Stephen Timms
File Ref [redacted] Bill Bush
Date 3 April 2003 Sarah Hunter

Meeting with BSkyB, Wednesday 2 April

1. You were present when the Secretary of State met Tony Ball, Deanna Bates and Sheila Cassells, of BSkyB. [redacted] also attended.
2. Tony Ball began by saying there were 3 issues Sky wanted to discuss, all relating to the Communications Bill:
 - The lack of a right of appeal to the Competition Appeals Tribunal (CAT) in relation to some of OFCOM's broadcasting powers
 - Recognised Spectrum Access (RSA), which Sky would like to be exempted from existing deals with transponders have expired
 - The definition of 'plurality' in OFCOM's general duties

Right of Appeal to the CAT

3. Deanna Bates handed over a paper that explains Sky's case. She said they were not concerned about content regulation, which was clearly not a matter for the CAT. Rather, Sky are worried about OFCOM's powers under the Broadcasting Act (other than those specified for ensuring competition) to issue licence directions in relation to the pricing and packaging of services. They feel that were OFCOM to use these powers without specifying that there was a competition purpose, even where there was a clear economic effect, Sky would only have a right of appeal by Judicial Review and not by the CAT.
4. Nick explained that all OFCOM's Broadcasting Act powers are covered by Clause 310, which states that any power of OFCOM's used for a competition purpose should have a right of appeal to the CAT. You said this meant that any decision to use Broadcasting Act powers for a competition purpose without saying so would be open to Judicial Review. Sky would not accept this argument.
5. The Secretary of State said we would look at Sky's paper and would write in reply. If necessary, we would clarify the issue in Parliament at some point during the Bill's passage. [redacted]

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RSA

6. Tony Ball said that ideally he wouldn't want to see RSA introduced at all. Realistically, Sky will accept it, but would like to protect the deals they've already made. He pointed out that terrestrial broadcasters will be exempted from spectrum charging until the end of their current licences. Sky claim it would be analogous to exempt them from RSA until their existing deals with satellite transponders expire (these deals last about 8 years on average).
7. [REDACTED] was unsure that it was fair to compare Sky's position with that of the terrestrial broadcasters. In response, Deanna Bates quoted Stephen Timms' statement that RSA was a means to treat Sky in exactly the same fashion as other broadcasters. She said Sky were not looking for an amendment to the Bill – a clear statement of our intentions in the House would satisfy them.
8. The Secretary of State said this was primarily a matter for the DTI, and she would ask them to look into it (Action: Mike Warnes)

Plurality

9. Tony Ball wanted to know how we intend OFCOM to interpret their duty to maintain plurality. Sky believe this duty could be used to block potential acquisitions even when ownership rules allow them to take place.
10. The Secretary of State made it clear this is not our intention, and said we would again be happy to say so in Parliament. The only powers OFCOM will have in relation to potential changes of control, once they have been approved by OFT/Competition Commission, will relate to the scale and scope of licence conditions.
11. Sheila Cassells asked why the duty to maintain plurality wasn't exclusively linked to OFCOM's reviews of media ownership rules. [REDACTED] replied that OFCOM would have other responsibilities that mean plurality needs to be a general duty, not least the work they will do to protect the localness of local radio.
12. Deanna Bates asked whether OFCOM's duty to 'maintain' plurality meant they could refuse to accept any concentration of ownership that reduced plurality below existing levels. The Secretary of State said this was not the case. She said it was very important to maintain a flexible definition of plurality, to allow OFCOM to use its discretion as the market develops. There was no question of putting a figure on the 'right' number of media owners.

[REDACTED]
Private Secretary