

Department for Culture, Media and Sport
BROADCASTING POLICY DIVISION

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To Secretary of State

cc Patricia Hewitt
Jon Zeff

From [REDACTED]

File Ref

[REDACTED]
Bill Bush

Date 11 June 2003

- Capital will not be able to sell but won't lose
- Selection is important. Can't discriminate but can nevertheless chose
- for competition authorities

COMMUNICATIONS BILL: MEDIA OWNERSHIP – MULIPLEXES AND ADVERTISING AGENCIES

Issue

Whether to offer concessions on the media ownership policy on radio multiplexes and advertising agencies, two areas where we came under pressure during Lords committee.

Timing

2. Immediate.

Recommendation

3. That you do not make a concession on multiplexes but do concede on advertising agencies.

Consideration

(i) Radio Multiplexes

4. The existing multiplex ownership rules are complicated (see Annex A) but in essence there is no restriction on the number of local multiplex licences that one person can hold, and there are no restrictions on overlapping multiplex licences. The existing rules attempt to limit multiplex ownership by restricting the number of licensees in which a person can participate, but this rule is ineffective given that there is no limit on the number of licences that can be held by one person. In other words, one person is limited in the

number of joint ventures they can be involved in but could own outright every multiplex in the country. The Bill will replace these restrictions with one rule – no one can own two local radio multiplexes where the audience for one includes 50% or more of the audience for the other. As now, no one may hold more than one national radio multiplex licence.

5. Lord Eatwell, on behalf of CRCA, put down an amendment which would provide that, where there are three overlapping multiplex licences, the proposed rules be relaxed so that, instead of three separate owners, one owner could hold two of the licences. He has already re-tabled the amendment and, given that both opposition front benches supported Lord Eatwell's amendment in the Lords, there is the possibility of a defeat.

6. Local radio multiplexes are the means by which terrestrial digital radio services are delivered to a locality. Each multiplex holds up to 8 to 10 programme services, and the multiplex owner has a crucial gate-keeping role. The multiplex holder is entirely responsible for which services his multiplex carries, subject only to the requirement not to discriminate between service providers. This provides the multiplex holder with considerable influence. Allowing a multiplex holder to hold two out of three multiplexes would allow them to decide on the choice of two thirds of the digital services in those areas. Our view, and that of the Radio Authority, is that this represents a threat to plurality and should be resisted (but see para 9 below).

7. There is one complication to this. Under the existing rules RAu have already awarded two overlapping licences to one owner in one Scotland, and are proposing to do so again in another area (London/Kent). We understand that the position in London/Kent arose because the London coverage area was extended at the request on the industry. The Radio Authority recognised that this would lead to an "incidental" overlap and determined to deal with it in a pragmatic way. The award was made in the normal way in April but they are bringing forward the actual grant (the paperwork) so that it isn't invalidated by the new rules. Neither they, nor we, believe that this should challenge the general principle that one operator should not be able to determine two thirds of the digital services in an area. If we did relax the rules, it would also immediately allow one multiplex owner to hold two of the three existing London multiplexes and, in practice, it would be very difficult to introduce new tighter rules in the future as more multiplex overlaps are created – once the principle is conceded, it will not easily be retrieved.

8. The industry will not welcome such a decision, but they cannot claim that we are not supporting the development of digital radio. Not only have we significantly lessened the restrictions nationally on the ownership of digital multiplex, we are also amending the Bill at report to extend the period during which multiplex licensees can obtain an automatic renewal. Taken as a package, I believe that the overall policy strikes the right balance.

9. From a Bill management perspective, however, Chris Woolard is seriously

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concerned that we are setting ourselves up for an unnecessary defeat in the Lords. We are being set up to hold a line that the Radio Authority has already crossed. Chris believes we should give this concession. Are you content to stay with the current proposals or would you like to make a concession and, if so, when?

(ii). Advertising Agencies

10. There was a commitment in the Communications White Paper to remove the restrictions on advertising agencies holding broadcasting licences "and rely on the competition authorities to judge the likely impact of competition of agencies holding licences".

11. Lord Puttnam tabled an amendment which would leave the restriction in place. He argues that there is no support for this proposal from the advertising industry and that IPA, the main professional association for the industry, forbids its members from holding a broadcasting licence.

12. It is true that there is no pressure for this change. It was included in the White Paper on the basis that we have no specific plurality concerns. We believe that anti-competitive behaviour (eg, charging your own advertising agency a lower rate for advertising time) could be prevented by the competition authorities, and other abuses (eg, giving biased advice to your advertising clients that they should use your broadcasting arm) could be prevented through OFCOM guidance. That said, given the that no one especially wants the change and that there is some quite strong opposition to it, a concession may be useful as part of a wider package designed to get through more important parts of the Bill.

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Annex A

- hold a licence to provide a radio multiplex and be a participant with more than a 20% interest in more than 4 bodies corporate which hold such licences, or
- be a participant with more than a 20% interests in each of six or more bodies corporate which hold such licences