Department for Culture, Media and Sport

File - MO Comms Bill

| | | | | |
|---|---|---|---|---|
| To | Tessa Jowell | cc | Patricia Hewitt | [redacted] |
| | | | Kim Howells | |
| | | | Baroness Blackstone | Paddy Feeny |
| From | [redacted] | | Andrew Ramsay | [redacted] |
| | | | Diana Kahn | Bill Bush |
| File Ref | | | [redacted] | Kitty Ussher |
| | | | | [redacted] |
| Date | 14 May 2002 | | | Ed Richards |
| | | | Chris Dawes | [redacted] |
| | | | [redacted] | |

MEDIA OWNERSHIP PROPOSALS - PRESS REACTION

1. You asked for a note on the more speculative/negative angles that the press have come up with in the first week of coverage. Some defensive lines are attached to the relevant stories at Annex A.

2. I have only covered stories that relate to ownership. You have been briefed separately on the issue of Recognised Spectrum Access (the supposed 'dish tax').

3. The initial press excitement now seems to have passed, although the trade press and specialist commentators will doubtless have more to say.

4. Annex B is an updated page of key quotes that you could use.

[redacted]

ANNEX A

## MEDIA OWNERSHIP - DEFENSIVE BRIEFING ON PRESS STORIES FROM THE FIRST WEEK

*Foreign ownership will bring a decline in quality* (*eg. Telegraph, Friday*)

Public service television licences will retain requirements for independent production and original production (and in the case of Channel 3 for UK regional production and regional programming). OFCOM will be given a new duty to protect and promote the local content of local radio. Whenever a national TV or local radio licence changes hands, OFCOM will be able to vary its conditions to maintain the existing character of the service. So different ownership, foreign or not, will not mean a dilution of the quality and diversity we expect from British media.

*It's a stitch-up with Murdoch* (*Many examples - most flagrantly Emily Bell in The Guardian, Wednesday and Monday*)

No it's not. Our proposals are proprietor-neutral, and provide more certainty and consistency for business than the existing regulations. Our approach has been to deregulate wherever possible, whilst keeping a simple set of rules that can prevent too great a concentration of ownership and political influence.

We will remove <u>all</u> rules on the ownership of Channel 5, which is a relatively new channel that does not reach the whole UK population, has a small audience share and few public service requirements. This will allow increased investment from a range of possible sources. <u>Any TV company, any newspaper company or any foreign media company would now be able to buy into Channel 5</u>. The result should be a better service for viewers.

*Kim Howells seemed to suggest the Government pre-agreed this deal with C5* (*Telegraph, Wednesday*)

Channel 5 management have said they would welcome new sources of investment. We see no reason to stand in their way. However we reached this conclusion through open consultation on the subject. C5's opinion was considered alongside all the other responses we received, and given no special consideration.

*Sky will buy Channel 5 and use it as a tool to cross-promote Sky Digital and increase their dominance in the market for pay TV* (*FT, Wednesday*)

The same guidelines would apply in such a situation as those that applied to ITV when they were promoting ITV digital. We need analogue TV channels to provide information about the services available on digital television. However we also want to prevent a company abusing a position in the analogue terrestrial TV advertising market to further its position in the digital market.

Were Sky to own Channel 5 (and who's to say RTL wants to sell, or Sky wants to buy, or another bidder wouldn't be successful):

- Generic promotion of digital TV would be allowed on C5;
- Direct advertising of Sky Digital would be allowed ONLY in adverts;
- Prices could ONLY be mentioned in adverts;
- Any new Sky service could be provided directly on Channel 5 (in the same way that ITV2 or Film4 could be provided on ITV or Channel 4)
- When referring to a service available on digital platforms, Channel 5 would have to detail <u>all</u> the platforms that gave access to the service.
- They could always refer to services being available on 'cable', 'satellite' or 'DTT' but they could not use brand names such as 'Sky' or 'Telewest' unless the services were available on all platforms

*C4 will be forced to privatise. Draft Bill doesn't offer it enough protection.*
*(Mark Thompson - Independent, Friday; Guardian, Monday)*

We have absolutely no plans to privatise Channel 4. Our proposals rest on the assumption that the economics of the TV market will continue to work roughly as they do now, and that Channel 4's core revenue will be sustained. In that context, we want to encourage more investment and competition in the television market by freeing up the ownership of ITV and Channel 5. As public corporations, Channel 4 and the BBC will play a vital role in maintaining the diversity of content available.

***This package is actually anti-Murdoch - it keeps him out of ITV while his US competitors can move in.***
*(FT, Wednesday; Economist, Saturday)*

The package is anti- no one. We have removed foreign ownership rules because they are outdated and inconsistent, applying only to non-Europeans, and because we want to encourage inward investment wherever possible.

However we will retain limits on any undue concentration of cross-media ownership within the UK market. This means preventing the joint-ownership of a substantial share of the national newspaper market and a substantial part of Channel 3, our largest and most influential public service broadcaster. Most people rely on TV for their information and newspapers for analysis and opinion, and ITV is by far the biggest, most influential commercial TV station. Competition law will not guarantee ITV's independence from the largest newspaper companies. So for democracy's sake, we need to retain specific regulation to provide such a guarantee.

The restriction will apply equally to all large national newspaper owners, foreign or not.

***BskyB is the only organisation on the planet that can't buy ITV. The Taliban, or the North Korean Politburo could buy it, but not Sky.*** *(Tony Ball quotes, Telegraph, FT, Guardian - Saturday)*

That's a ridiculous statement. For a start the restriction on ITV ownership applies equally to all large national newspaper owners, including Trinity Mirror and Daily Mail and General Trust. It is proprietor-neutral.

In addition we're retaining disqualifications on the ownership of ITV or Channel 5 by any political or religious organisation, and any individual connected with such an organisation.

***OFCOM could scupper a Channel 5 deal by insisting on numerous changes to the licence for any new owner.*** *(Observer, Sunday).*

If the Channel 5 licence changes hands, OFCOM will be able to vary its requirements to maintain the <u>existing</u> character of the service. This will not allow the regulatory to enforce punitive or preventative changes. OFCOM will only prevent a company acquiring Channel 5 if there are clear competition grounds for doing so.

The politicians only care about TV, and the opportunities it provides for self-promotion. They've neglected to give the radio industry the degree of deregulation it needs. *(Independent on Sunday)*

The radio industry is not being neglected. We are removing all limits on radio ownership at a national level, just as we are removing limits on ownership of national TV services. Competition law and content regulation should ensure neither advertisers nor consumers suffer from this deregulation.

Local radio, however, is a different medium to national TV and a comparison between these two is not very useful. There are hundreds of local radio services, owned by some 70 different companies, providing distinctive news and opinion to local communities. It is important to preserve plurality where it exists at local level, and this is the objective of the radio ownership rules.

The proposals we are putting forward stem from a joint agreement between the radio industry (in the form of the Commercial Radio Companies Association) and the Radio Authority. We accept the view they expressed that the new rules are simpler than the existing regulations, and should permit significant consolidation while providing an adequate safeguard of plurality.

*There's an inconsistency in announcing a lighter-touch approach to newspaper mergers only days after Melanie Johnson asked the DGFT to investigate the implications of local concentrations of ownership. (Peter Preston - Observer, Sunday)*

Regulatory powers for both mergers and markets are designed to allow the government (and in future the independent competition authorities) to investigate and, if necessary, impose remedies where they believe that there will be a detrimental impact on competition and the wider public interest.

The 'lighter touch' for the new newspaper regime will remove the: requirements for prior consent; mandatory references for qualifying transactions; and criminal sanctions. It is therefore significantly deregulatory. However, this does not mean that we will or should remove the ability to investigate and intervene in either mergers or markets that appear to raise competition concerns.

Following its detailed investigation into local newspaper markets in the East Midlands, the ~~Competition Commission has highlighted its concern over the tendency of major publishers to~~ develop clusters of titles. It is therefore entirely appropriate that they have proposed that the OFT should given early consideration to whether an industry wide-inquiry should be initiated.

In line with the CC's unanimous view, Melanie Johnson invited [NOT asked] the DGFT to consider whether to initiate such an inquiry. It is now for the DGFT to consider the conclusions of the CC's report and assess whether an OFT inquiry would be appropriate.

*Sky should be broken up, and its content and platform operations separated. (Guardian, Monday)*

We said in the White Paper that we do not believe it right to prevent the vertical integration of companies in any form, and we do not intend to break up successful, vertically integrated companies.

First, such a move would slow down investment in high-speed networks. Second, network operators would in any case pursue exclusive agreements with content providers in order to deliver attractive packages to the consumer.

The right approach is for the regulator to be able to act forcefully to prevent any abuse of vertical integration. We suggest that the regulator should have the power to judge at what point a network should be opened up to all content providers and we propose that where a vertically integrated company has a dominant position in one market, the regulator should also take account of the effects of its activities on competition in any related markets.

*In addition to its competition powers, OFCOM should develop mathematical guidelines about the maximum share of total media voice that is permissable on democratic and cultural grounds.* *(Ian Hargreaves - FT, Tuesday)*

The rules we are retaining on cross-media ownership are designed specifically to protect democracy from any undue concentration of ownership. Within individual media markets, OFCOM's competition powers will tend to encourage a dispersal of ownership and new entry, but we will also retain minimum guarantees of plurality:

- at least 3 separate free-to-air public service TV stations;
- at least 3 separate commercial radio operators in every well-developed market;
- a targeted newspaper merger regime that can address democratic and cultural concerns.

In our consultation paper last November we made clear our view that any so-called 'share of voice' scheme would risk being over-ambitious, confusing and impractical. We invited its advocates to put forward specific, workable proposals that could address these potential problems, but none have been forthcoming.

ANNEX B

KEY QUOTES

Andrew Flanagan, chief exec of SMG:

"We welcome what appears to be a very liberalising piece of proposed legislation that should free up UK media companies to grow and compete."

Stephen Carter, managing director of NTL:

"The legislation marks a quantum leap forward as the fast converging communications industries will be put in step with a modern set of broadcasting and telecoms policies."

Ralph Bernard, chief exec of GWR:

"The draft Bill is a step in the right direction."

Cindy Rose, head of Walt Disney UK and Ireland:

"The Government took some visionary steps. We warmly welcome it [the Bill] and we congratulate them."

CMS Select Committee:

"We believe the case for particular restrictions on media, or cross-media ownership in any sector is now out-dated. These restrictions should therefore be removed."

Tim Yeo:

"I'm disappointed you are not prepared to go all the way and leave questions of media ownership to the competition authorities."

Michael Powell, the Republican chairman of the FCC (the US regulator):

"Yes, we believe in diversity in media. Yes, we believe in diversity of viewpoints. The problem is choosing vehicles for fostering that. It's not just about efficiency and competitiveness. Otherwise we'd just punt to the Antitrust Division and be done with it."

Professor David Currie, Dean of City University Business School:

"The media should be subject to more stringent competition thresholds than other sectors, as in the draft Bill ... Please let us not fall into the trap, which the Government has so far avoided, of seeking to treat broadcasting and the media like baked beans."