

Department for Culture, Media and Sport

Tel [REDACTED]
Fax [REDACTED]*1. Agree 2. Patricia Hewitt - MO Canning
Bill*

To Tessa Jowell cc Patricia Hewitt Tony Susman
Kim Howells Peter De Val
From [REDACTED] Stephen Timms Bill Bush
Baroness Blackstone [REDACTED]
File Ref [REDACTED] Andrew Ramsay [REDACTED]
Date 28 June 2002 [REDACTED]

COMMUNICATIONS BILL - CLAUSES ON OWNERSHIP BY TELECOMS OPERATORS

1. In response to my submission of 25 June (attached) you asked for some supplementary information.
2. First, you wanted clarification of the options open to us. There is at present an order, made under the 1990 Act, which prevents national telecoms operators with a turnover of more than £2 billion holding licences to provide Channel 3, Channel 5 or national radio services. As the Bill stands, we have omitted the power under which the order was made, thus effectively revoking the order itself. Neither the power nor the order could be maintained in their current form, because they are inconsistent with the approach the rest of the Bill takes to networks and services. There are therefore two options:
 - To simply remove the power, as the Bill does at present, allowing the order to fall and leaving the matter there;
 - To remove the power in its current form, but re-draft it in a new form to produce a similar effect to that of the existing order (it will not be possible to achieve exactly the same effect).
3. We recommend the first option. My earlier submission referred to the fact that competition law would still apply to any merger, and you asked how the competition authorities might define the relevant market. The relevant market for any merger is defined on a case-by-case basis. At present, it seems unlikely that telecoms operators would be deemed to be a part of the market for free-to-air broadcasting services. However, convergence and digital switch-over may change that.

Department for Culture, Media and Sport

Tel [REDACTED]
Fax [REDACTED]

To Tessa Jowell
Patricia Hewitt

cc Kim Howells
Stephen Timms
Baroness Blackstone
Andrew Ramsay

[REDACTED]
Peter De Val
Bill Bush
Kitty Ussher
Ed Richards
[REDACTED]

From [REDACTED]

Date 25 June 2002

[REDACTED]

COMMUNICATIONS BILL - CLAUSES ON OWNERSHIP BY TELECOMS OPERATORS

Issue

What to do about an existing rule that prevents large telecommunications operators owning Channel 3, Channel 5 or national radio licences.

Recommendation

That you agree to the removal of this rule through the Communications Bill, and approve the attached letter for collective agreement.

Timing


Routine.

Considerations

1. The existing rule is the result of an Order made in 1991 under Part V of Schedule 2 to the Broadcasting Act 1990. It prevents any national public telecoms operator with a turnover of more than £2 billion owning any Channel 3, Channel 5 or national radio licence. It therefore catches at least 4 operators - BT, Orange, Cable and Wireless and Vodafone.
2. We did not refer to the rule in the White Paper, nor is it mentioned in the media ownership consultation paper or the draft Bill. We have received no submission asking for its removal.

3. However, neither Part V nor the Order made under it can be retained in their current form as they no longer correspond to the approach taken by the draft Bill to networks and services. There are therefore two choices:
 - to repeal the rule by omission from the Bill;
 - to draft clauses that could have the same effect as the existing rule.

 4. Retaining the restriction would not be consistent with the simplified and streamlined approach to media ownership rules announced on 7 May, and there seems no good reason to make an exception in this particular case. We therefore recommend repeal. If a national telecommunications operator wanted to acquire such a licence in future, the potential competition implications would be addressed through the merger regime in the normal way.

 5. As currently drafted, the Bill would revoke the order by removing the powers under which it was made. We have told LP Committee that we are still considering exactly what to do, but are content to consult on the basis of removal. We have said we will inform the Committee, and the Joint Committee, as soon as we have reached a firm position. A draft letter is attached.
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The Rt Hon Robin Cook MP
President of the Council and Leader of the House of Commons
2 Carlton Gardens
London
SW1Y 5AA

COMMUNICATIONS BILL: RULES ON OWNERSHIP BY TELECOMS OPERATORS

We wrote to you at the end of May to inform you of the imminent publication of draft clauses to reform the rules on media ownership. At that point there was one issue still outstanding - an Order under the existing Broadcasting Act that prevents national public telecommunications operators with a turnover of more than £2 billion owning a Channel 3, Channel 5 or national radio licence. This can not be retained in its current form, as it is inconsistent with the approach the Bill takes to networks and services. At the time of publication we were still considering what to do about it, but were content to consult on the basis of its removal (which is the effect of the draft clauses).

We promised to write again when we had reached a firm position on the issue, and have now concluded that we are content to revoke the Order by removing the powers under which it was made. No amendment will be required to the draft Bill as it stands. The rule is not consistent with the deregulatory position we have taken with regard to media ownership. If a national telecommunications operator wanted to acquire such a licence in future, any potential competition implications would be addressed through the merger regime in the normal way. We do not believe this change is controversial.

We are copying this letter to members of LP Committee. If there are no objections raised by July 8, we will inform the Joint Committee that is scrutinising the draft Bill of our decision.

Tessa Jowell

Patricia Hewitt

[REDACTED]

From: [REDACTED]
Sent: 28 June 2002 09:59
To: [REDACTED]
Cc: 'mpst.hewitt@dti.gsi.gov.uk'; [REDACTED]; 'Mpst.Timms@dti.gsi.gov.uk'; [REDACTED]; RAMSAY ANDREW; [REDACTED]; [REDACTED]; DE VAL PETER; BUSH BILL; [REDACTED]

Subject: RE: COMMS BILL - CLAUSES ON OWNERSHIP BY TELECOMS OPERATORS

Here's a further submission answering these questions.



Telecoms2.wpd



Telecoms2.doc

Original Message

From: [REDACTED]
Sent: 26 June 2002 12:00
To: [REDACTED]
Cc: [REDACTED]; RAMSAY ANDREW; [REDACTED]

Subject: COMMS BILL - CLAUSES ON OWNERSHIP BY TELECOMS OPERATORS

The Secretary of State has seen your submission of 25 June on Clauses on Ownership by Telecom Operators. She has noted that presumably competition rules would apply, but has questioned whether the markets would be regarded as the same?

Finally, she has noted that the options in paragraph 3 (repealing the rule by omission from the Bill, or drafting clauses that could have the same effect as the existing rule) do not correspond, and has asked why?

Can you put up the necessary additional advice for Fridays box? Let me know if this is a problem.

many thanks

RE: Media ownership by telecoms operators

Page 1 of 2

[REDACTED]
From: Hewitt MPST [MPST.Hewitt@dti.gsi.gov.uk]

Sent: 27 June 2002 09:26

To: [REDACTED]

Subject: RE: Media ownership by telecoms operators

The Secretary of State (Patricia Hewitt) was grateful for your submission.

She is content for the letter to issue. Having never dealt with a joint signature letter - d'you need this office to do anything else? (electronic SoS signature? Do we need to send it? etc)

Grateful if you could forward this response to your DCMS colleagues on your original copy list.

Many thanks,

[REDACTED]
PS/SoS

Tel: 020 7215 5623

Fax: 020 7215 5468

-----Original Message-----

From: [REDACTED]

[mailto:[REDACTED]]

Sent: 25 June 2002 11:59

To: mpst.hewitt@dti.gsi.gov.uk

Subject: FW: Media ownership by telecoms operators

Sending again as it didn't seem to work first time round:

> -----Original Message-----

> From: [REDACTED]

> Sent: 25 June 2002 11:25

> To: [REDACTED]; 'mpst.hewitt@dti.gsi.gov.uk'

> Cc: [REDACTED]; 'mpst.timms@dti.gsi.gov.uk'; [REDACTED] RAMSAY

> ANDREW; [REDACTED]

[REDACTED], DE VAL PETER; BUSH BILL;

> Subject: Media ownership by telecoms operators

> Please see the attached submission. [REDACTED] I will bring you a hard copy).

28/06/2002

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