

Department for Culture, Media and Sport
Broadcasting Policy Division



To Secretary of State cc Kim Howells
Andrew Ramsay
From [REDACTED]
File Ref [REDACTED]
Date 28 November 2002

OFCOM'S DUTIES

Issue

Whether we should change OFCOM's duties so that it should have to take account of plurality.

Timing

2. Immediate.

Recommendation

3. That you should agree that OFCOM should have a duty to take into account plurality. You are also asked whether you would prefer it as a Government amendment or as an arranged amendment.

Consideration

4. One of OFCOM's general duties is to secure the availability of a range of TV and radio programmes calculated to appeal to a variety of tastes and interests. It also has to have regard to the desirability of promoting competition. It does not, however, have a specific duty to promote plurality. Under the existing legislation this did not matter as there were specific ownership restrictions set out in the primary legislation which were designed to ensure plurality. However, after the Communications Bill comes into effect, OFCOM have a new duty to review the ownership rules at least every three years. We believe that, unless OFCOM has a specific duty to have regard to plurality, there is a real risk that it would find it hard to justify continued ownership restrictions, even if it thought that plurality was threatened.

5. There are a number of those within the radio industry who argue that greater concentration of ownership will increase diversity because owners of a number of stations will not want to cannibalise their markets. They will also argue that competition rules are the only limit on concentration necessary. When OFCOM come to review the ownership rules, the opponents of the rules could argue that explicit OFCOM's duties are to promote diversity and competition, not plurality, and that this could best be done by dismantling the ownership rules and allowing greater concentration of ownership. Although there are counter-arguments that could be raised, OFCOM could find it very difficult to resist the logic of this argument unless it can point to a separate plurality duty against which these considerations can be weighed. We therefore recommend that OFCOM need a specific duty to protect plurality if the ownership rules are to be sustainable.

6. Rather than a duty set out in Clause 3 ("General Duties of OFCOM"), we think it would be sufficient for this duty to be included in clause 337 which deals specifically with the ownership reviews. By focussing the duty in this way, it should not get entangled with OFCOM's other functions where it may not be relevant. We will, however, have to discuss this with Parliamentary Counsel. Whichever approach is adopted, the overall effect we are aiming for is that OFCOM will have to review the ownership rules taking into account the need to promote competition, diversity and plurality.

Handling

7. We know the Radio Authority share our concerns about the lack of a plurality duty so it should be possible to offer this as an arranged amendment to one of the many MPs with whom the RAu have good relations, which would probably look better (ie, the Government listening as opposed to the Government got it wrong). The alternative is a Government amendment. Do Ministers have a preference? The amendment should not be controversial, although the radio industry in particular may seek to re-open the argument that plurality rules are unnecessary and competition rules will suffice. It may also lead to a broader debate on the general merger plurality test proposed in the Puttnam report.

Next Steps

8. If you agree, we inform LPC, draft an amendment with lawyers and, following discussion with the Radio Authority, give further advice as to how it should be introduced.