

SPD 6/3/1/2003

RESTRICTED - POLICY

To:

TESSA JOWELL
PATRICIA HEWITT
BARONESS BLACKSTONE

ci

PS/Stephen Timms
PS/Kim Howells
PS/Sir Robin Young
PS/Sue Street

From:

[REDACTED]
[REDACTED]
Communications Bill Team
Room G03/04
4 Abbey Orchard Street
[REDACTED]

Andrew Ramsay
Jon Zeff

[REDACTED]
Bill Bush
Kitty Ussher
Sarah Hunter No.10

13 June 2003

COMMUNICATIONS BILL: C5, PLURALITY, FOREIGN OWNERSHIP

Issue

Concession handling in the Lords.

Timing

2. We need a decision as soon as possible in order to give Parliamentary Counsel clear drafting priorities. Tessa Jowell should note before her dinner with Lord Puttnam.

Recommendation

3. That

- (i) given Baroness Buscombe's and Lord Puttnam's position we concede on plurality with the intention of holding firm on C5 and foreign ownership.

~~RESTRICTED - POLICY~~

(ii) We put forward a "plurality" test in the terms described below at paragraph.

(iii) In terms of the concession, we either –

Option A table the concession as an amendment for report.

Option B write to all Peers before Report indicating what the concession will be, but that it will be made at Third Reading in order to allow for a short period of public consultation.

Argument

4. Both Baroness Buscombe and Lord Puttnam have now made a clear linkage between a concession on plurality as the price likely to win over dissenting backbench Peers on all sides of the House on C5 and foreign ownership. Of course, there are no guarantees on this and if we adopt this route it must be clear to both of them that any concession is conditional upon them – particularly Puttnam – delivering their side of the bargain. (Incidentally, Puttnam phoned me this morning to say he had lined up "all but two" of his troops behind a similar deal and was going to sell it to McNally on Wednesday. He also said he was going to drop all the provocative stuff from his amendment and concentrate on plurality of voice – by which he means ownership).

5. An alternative would be to concede on 20/20 on Channel 5 – since this is the most easily understood concession for most Peers. The danger of this approach is that the answer for C5 – ie "let OFCOM examine this, then decide" is largely the same answer as one might give for foreign ownership. The final alternative is to wait and see the result on all three, but we need to balance the fear of giving too much now against the fact we will have to give far more if we try to recover from defeats rather than pre-empting them.

Options for giving the concession

6. Clearly our overall goal must be to avoid being salami-sliced by offering one concession, only to be faced with demands for another. You therefore need to choose the tactical route best designed to ensure any deal sticks. Two options occur to me:

- Option A – a straight "give" at Report. We should expressly state we are adopting Lord Puttnam's helpful suggestion made in Committee that this substantially addresses the widely held concerns about foreign ownership and C5. We should also acknowledge the concerns of business, but note

RESTRICTED - POLICY

they were expressed in response to a more regulatory consultation document (but this is pretty thin). Finally, we should make sure it is understood it would make no sense to keep this concession "on the table" if defeated on C5/foreign. The principal advantage of this route is our intentions are clear on the face of the Bill. Plurality is a difficult concept to sell and we will need to appear as "straight" as possible.

- Option B – we make clear our intention for Report as above at A and write to all Peers with a draft amendment which the Government intends to lay at Third Reading. Taking this approach allows for a brief consultation with interested parties – business, "citizen interest" groups, the OFT, OFCOM and the Competition Commission. Its principal advantage is to delay the moment we finally give for as long as possible, and by Third Reading we will have seen the results of the foreign ownership and C5 votes at Report. Equally, Peers may see this as too "tricky" and to some extent we are putting off the dilemma we face at Report only as far as 8 July.
- One final option would be to use an Enterprise Act order to do the same thing. Although it would be a much more considered route for doing this, I suspect it would not cut any ice with Peers.

The Plurality Test

7. The test itself needs to bite on some form of concept like plurality of ownership as opposed to diversity since the latter is secured by licensing – and we will be working with lawyers and Counsel to make sure we have something legally "workable". The test would apply to cross media mergers (including newspaper interests) and within broadcasting. The separate newspaper regime would apply to newspaper cases. We can try to make the new plurality test more targetted at major mergers by limiting the test only to qualifying mergers under the Enterprise Act (£70m or 25% market share) rather than the different wider tests used for newspapers or national security/defence.

8. In addition, confidential guidance would be available to businesses contemplating a merger as for newspapers and the DTI could issue comprehensive guidance on the use of the power (but the latter will take time).

Presentation

9. This is clearly a substantial change to the Bill – but in public terms less significant than a change on C5 or foreign ownership. In publicity terms, it will (and should) attract attention as a "government listens"/ "Puttnam wins

~~RESTRICTED - POLICY~~

safeguards" story, but will gain much less publicity than a Lords defeat on one, two or all of the three big ownership issues. In looking back on our consultation documents, we will be able to take a little comfort that business opposition was expressed against the background of an apparently more regulatory series of options for C5 and other areas.

