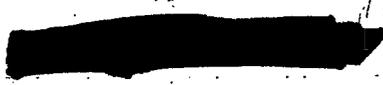


Policy Lead:
02/07/2003



15K06/3/1/20

Plurality

13

Plurality	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	---

NOTES ON AMENDMENTS

Clause 340

RESIST: Amendments 189,190,191,192

- The Lord Putnam
- The Lord Crickhowell
- The Lord McNally
- The Lord Hussey of North Bradley

Before Clause 340

THE LORD PUTNAM
THE LORD CRICKHOWELL
THE LORD McNALLY

THE LORD HUSSEY OF NORTH BRADLEY

189 Insert the following new Clause—

“Media plurality public interest consideration

- (1) Section 58 of the Enterprise Act 2002 (c. 40) (specified considerations) shall be amended as follows.
- (2) After subsection (2B) (which is inserted by section 368 of this Act) there shall be inserted—

“(2C) The public interest in the promotion and maintenance—

- (a) of a plurality of media owners committed to a balanced and impartial presentation of news and to a balanced presentation of comment, and
- (b) of a wide range of voices such as to satisfy a variety of tastes and interests

is specified in this section.”

- (3) In subsection (3), after the words “any consideration”, there shall be inserted “(other than the consideration specified in subsection (2C))”.

Policy Lead: [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	---

190

Insert the following new Clause—

“Adaptation of role of OFT in initial investigations and reports

- (1) Section 44 of the Enterprise Act 2002 (c. 40) (investigation and report by OFT in public interest cases) shall be amended as follows.
- (2) After the words “newspaper public interest consideration” (which are inserted by section 369(1) of this Act) there shall be inserted “and the media plurality public interest consideration”.
- (3) After subsection (5A) (which is inserted by section 369(2) of this Act) there shall be inserted—
- “(5A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to the media plurality public interest consideration mentioned in the intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 45.”
- (4) After subsection (7) there shall be inserted—
- “(7A) In this Part “media plurality public interest consideration” means any consideration which is specified in section 58(2C).
- (7B) In this Part—
“media owners” means persons—
 - (a) holding broadcasting licences under the Broadcasting Act 1990, the Broadcasting Act 1996 or the Communications Act 2003,
 - (b) controlling bodies corporate for the purposes of Schedule 2 to the Broadcasting Act 1990, or
 - (c) carrying on an enterprise which is supplying newspapers of any description; and
 “voices” means views and opinions represented to a significant degree in the media.””

191

Insert the following new Clause—

“Additional investigation and report by OFCOM: media

Policy Lead: [REDACTED]
02/07/2003

<p><i>Plurality</i></p> <p>Clause: Before Cls 340</p>	<p>RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36,</p> <p>Given on Friday 20 June 2003</p>
---	--

plurality public interest cases

After section 61A of the Enterprise Act 2002 (c. 40) (additional investigation and report by OFCOM: certain newspaper mergers) (which is inserted by section 373 of this Act) there shall be inserted—

“ **Additional investigation and report by OFCOM: media plurality mergers**

1
B.

- (1) Subsection (2) applies where—
 - (a) the Secretary of State has given an intervention notice in relation to a relevant merger situation; and
 - (b) the intervention notice mentions the media plurality public interest consideration.
- (2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.
- (3) The report shall contain—
 - (a) advice and recommendations which are or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 45; and
 - (b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.
- (4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section.”

192 Insert the following new Clause—

“Enforcement powers in relation to media mergers

In Schedule 8 to the Enterprise Act 2002 (c. 40) (provision that may be contained in certain enforcement orders) after paragraph 20A (which is inserted by section 380 of this Act) there shall be inserted—

“Media mergers

20B

- (1) This paragraph applies in relation to any order—
 - (a) which is to be made following the giving of—

Policy Lead: [REDACTED]
02/07/2003

<p><i>Plurality</i></p>	<p>Clause: Before Cls 340</p> <p>RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36,</p> <p>Given on Friday 20 June 2003</p>
-------------------------	--

- (i) an intervention notice which mentions the media plurality public interest consideration; or
 - (ii) a special intervention notice which mentions the consideration specified in section 58(2C); and
- (b) to which that consideration is still relevant.
- (2) The order may make such provision as the person making the order considers to be appropriate in all circumstances of the case.
 - (3) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.
 - (4) Provision made by virtue of this paragraph may, in particular, include provision—
 - (a) altering the constitution of a body corporate (whether in connection with the appointment of directors, the establishment of an editorial board or otherwise);
 - (b) requiring the agreement of the relevant authority or another person before the taking of particular action (including the appointment or dismissal of an editor, journalists or directors or acting as a shadow director);
 - (c) attaching conditions to the operation of a newspaper or of a licensed programme service;
 - (d) prohibiting consultation or co-operation between subsidiaries.
 - (5) This paragraph is without prejudice to the operation of the other paragraphs of this Schedule in relation to the order concerned.”

342/297/38

Clause 342
THE LORD PUTTNAM
THE LORD CRICKHOWELL
THE LORD McNALLY

Policy Lead: [REDACTED]
02/07/2003

<p><i>Plurality</i></p>	<p>Clause: Before Cls 340</p> <p>RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36,</p> <p>Given on Friday 20 June 2003</p>
-------------------------	--

Page 297, line 38, at end insert—

“(1A) No order may be made under section 403(2) for the coming into force of subsection (1) in relation to the matters specified in subsection (1B) until after an order has been made under section 279 of the Enterprise Act (c. 40) (commencement) for the commencement of section 58(2C) of that Act.

(1B) The matters specified in this subsection are the provisions of Part 4 of Schedule 2 to the 1990 Act insofar as they relate to Channel 5.”

384/333/33

Clause 384
THE LORD PUTTNAM
THE LORD CRICKHOWELL
THE LORD McNALLY

Page 333, line 33, leave out “and”

384/333/36

Page 333, line 36, at end insert “and

(e) his powers under Part 3 of that Act relating to the media plurality public interest consideration.”

RESIST: Amendments 189

Policy Lead: [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	---

Purpose: To introduce a media plurality public interest consideration into section 58 Enterprise Act 2002.

Effect: The test as drafted would apply to mergers that satisfy the jurisdictional criteria of the Enterprise Act 2002 (i.e. enterprises cease to be distinct, and either the turnover of the enterprise being acquired exceeds £70 million, or as a result of the merger the combined entity would account for at least 25% of the share of supply of goods or services of any description in the UK or in a substantial part of the UK – a “relevant merger situation”) provided that the mergers involves media owners (defined in amendment 190). The Secretary of State would be able to intervene in such mergers to consider the impact of the merger on the public interest in the promotion and maintenance of a plurality of media owners and of a wide range of voices such as to satisfy a variety of tastes and interests. Such consideration would be in addition to a consideration of the effect of the merger on competition, which would be carried out by the Office of Fair Trading.

RESIST: Amendments 190

Purpose: To provide for a role for the Office of Fair Trading to prepare a report for the Secretary of State following the issue of a public interest intervention notice specifying a media plurality public interest consideration. The report covers whether a relevant merger situation had been created, the effect of the merger on competition and may include a summary of any representations received on the impact of the merger on the media plurality public interest consideration. The Office of Fair Trading is not required to advise the Secretary of State on media plurality public interest issues, this role is reserved to OFCOM. This amendment defines media owners as including broadcast media and newspapers and defines voices as views and opinions represented to a significant degree in the media.

Effect: The effect of the definitions would be to require the Secretary of State to have regard to an interest in views and opinions represented in the media notwithstanding the fact that the broadcast media ownership rules require impartiality. In addition, no distinction is made between broadcast media mergers and cross media mergers involving newspapers. The inclusion of newspapers as media owners means that the test could apply in relation to any merger involving a newspaper and not merely a cross media merger. This would create a potential conflict with the operation of the newspaper merger regime.

Policy Lead
02/07/2003

Plurality	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	---

RESIST: Amendment 191

Purpose and Effect: Creates a role for OFCOM in the event that the Secretary of State issues an intervention notice in relation to a relevant merger situation specifying a media plurality public interest consideration. OFCOM is required to prepare a report to the Secretary of State advising her on considerations relevant to her decision on whether or not to make a reference to the Competition Commission on media plurality public interest grounds, to summarise any representations received in relation to that public interest consideration and to carry out such investigations it considers appropriate for the purposes of preparing this report.

RESIST: Amendment 192

Purpose: Adds additional enforcement powers to schedule 8 of the Enterprise Act 2002 intended to deal with issues other than competition issues.

Effect: These powers are in addition to the general enforcement powers set out in schedule 8. The powers include an ability to require the alteration of the constitution of a body corporate, requiring prior consent of the relevant authority for certain actions (eg appointment/dismissal of editors) attaching conditions to the operation of a newspaper or licensed programme service and prohibiting co-operation between subsidiaries. These additional powers are modelled on the powers set out in relation to newspaper mergers.

RESIST: Amendment 342/297/38

Purpose and Effect: To prevent relaxation of the Channel 5 ownership rules coming into effect until the provisions of the Enterprise Act 2002 containing the media plurality public interest consideration has been implemented.

RESIST: Amendment 384/333/33 and Amendment 384/333/36

Purpose and Effect: Includes a review of the operation of the media plurality public interest intervention process as part of OFCOM's three-yearly review.

Policy Lead: [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	---

Speaking Notes

This has been an interesting and informed debate about what many would consider to be the most important aspect of the Bill.

I would like first to deal briefly with the amendments before us, and explain why the Government cannot accept them in their current form. I would then like to make it clear why we nevertheless accept the principle behind them, and outline our own plans to bring forward amendments for consideration at Third Reading.

Let me turn to the amendments we are discussing. As I have just indicated, we are supportive of the principle behind the amendments that essentially we safeguard plurality and diversity or "the public voice" as Lord Puttnam has described it.

Policy Lead: [REDACTED]
02/07/2003

<p><i>Plurality</i></p>	<p>Clause: Before Cls 340</p> <p>RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36,</p> <p>Given on Friday 20 June 2003</p>
-------------------------	--

However, in respect of the specific amendments, I have to be negative for a moment and say we have very grave concerns about the way in which the drafting does not appear to distinguish adequately between broadcast media and newspapers. As a result, we fear that the amendments would blur the distinction between the two in a way which would be damaging to both.

For example, amendment 189 refers to the need for “a wide range of voices”. “Voices” is further defined as “views and opinions represented to a significant degree in the media” rather than any sense of diversity as such. This confuses broadcast media, where there is already strong content regulation, with the print media. The concept of “views and opinions” is completely alien to broadcast media. All licensed broadcasters are already required by law to ensure that news, and I quote from

Policy Lead [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340 RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	--

clause 312 of the Bill, is “presented with due impartiality” and “reported with due accuracy”. Furthermore, all broadcasters must exclude from their programmes, and I quote from Broadcasting Act 1990 Act, “all expressions of the views and opinions of the person providing the service on matters...which are of political or industrial controversy or relate to current public policy.”

Broadcast media services therefore do not, and should not, have “views and opinions” in the same way that newspapers, quite rightly, have an editorial stance. Taken to one possible logical conclusion, the text of this amendment could have the effect of stopping broadcasters from being impartial, and allowing them to have “views and opinions”. I cannot believe – and I would not want to argue - that this is the intention behind the amendments. Yet at the very least, they would

Policy Lead [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340 RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	--

introduce uncertainty into the proper functions and role of broadcasters. This would be absolutely catastrophic for the integrity of British broadcasting.

The amendments would also seem to encourage the introduction content regulation into newspapers. A free press is a cornerstone of democracy, and we tamper with it at our peril. This may not be the intention behind the amendments, but it is how the need for "a balanced presentation of comment", for example, could be interpreted.

For these reasons, we cannot accept the amendment as they stand.

With the technical points aside, I can be much more positive. I would now like to turn more generally to the subject of media ownership and plurality. Media

Policy Lead: 
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	--

plurality is important for a healthy and informed democratic society. The underlying principle is that it would be dangerous for any one person to control too much of the media because of their ability to influence opinions and set the political agenda. It is therefore essential to set limits on concentrations of ownership.

Competition law will do this to some degree and may, in fact, be all that is needed in many cases. But there is no guarantee that this will always be so. This is particularly true in the case of cross media concentrations where the competition authorities may well take the view that the markets are separate, and consequently there is no effect on competition. This is a completely proper conclusion as regards competition, but may not be sufficient to safeguard the appropriate level of plurality. That is why we have specific restrictions on media ownership which are additional to competition rules.

Policy Lead [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340 RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	--

Plurality is a very subjective notion. It is not susceptible to the same sort of economic analysis as competition issues. It is much more a matter of judgement, of what “feels” right.

For this Bill, our approach has been to look at each media audience, including cross media audiences, and make a judgement as to the level of plurality which we think is necessary. It is important to recognise that setting artificial limits on markets can make them economically less efficient. Nevertheless, we need to protect plurality, and recognise that there is a minimum level of plurality that we must never go below.

But it is important to recognise that more is not always better. A very fragmented industry is certainly a very plural industry. But small, weak players may not have

Policy Lead [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	---

the necessary resources or skills to produce high quality programming. Greater consolidation which does not threaten plurality should improve services to viewers and listeners. High quality, really memorable TV programmes are only possible because we have TV companies with the necessary resources to make them. We must not lose sight of this fact in this debate.

The purpose of the amendments before us is to introduce an additional level of protection to plurality by extending the public interest test in the Enterprise Act to enable a media plurality test to be carried out in the event of a qualifying media merger. A qualifying merger is one where enterprises cease to be distinct and either the UK turnover of the acquired enterprise exceeds £70m or the new entity has at least a 25% share of supply of goods or services of any description in the UK, or in a substantial part of the UK.

Policy Lead
02/07/2003

<p><i>Plurality</i></p>	<p>Clause: Before Cls 340</p>	<p>RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003</p>
-------------------------	-----------------------------------	--

We originally proposed the idea of a plurality test in the consultation document on media ownership, which we published in November 2001. The responses were generally unenthusiastic, as it was felt that it introduced an unhelpful degree of uncertainty into media mergers.

However, the world has moved on since then and a number of our policies have changed and developed. We are now proposing a more liberal ownership regime for local radio, and are proposing removing the restrictions on foreign ownership, and allowing a major national newspaper to own Channel 5. We have also listened carefully to the points made in this House and elsewhere.

There have been two main arguments used in favour of a plurality test, both essentially about the need to "future-proof" the Bill. Firstly, it is argued that a plurality test

Policy Lead: [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	--

allows for the gradual dismantlement of media ownership rules over time. As we move towards a digital, multi-channel future, the degree of choice available to us will make it increasingly difficult for any one person to have a dominant position in the media, and may remove, or reduce, the need for ownership rules. Under these circumstances, a plurality test may be a sufficient safeguard of plurality.

Secondly, circumstances may change. We took the view that there were many good reasons for removing the restrictions on a major newspaper owning or controlling Channel 5, and I won't repeat the arguments now. However, it is possible that over time Channel 5 may become much more similar in size and reach to Channel 3. It is impossible to predict whether this will happen but, given the possibility, we must have a plurality

Policy Lead
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	---

regime which is flexible enough to react to changing circumstances such as these.

I would add a third argument in favour of a plurality test. I have already mentioned the rule which prevents a national newspaper with more than 20% of the market, or a body in which such a paper has more than a 20% interest, from holding a Channel 3 licence. This is sometimes referred to as the 20/20 rule. This rule has served us well to date but it has a "cliff-edge" element to it. On the one hand, it makes an absolute distinction between a national news paper with 19.9% of the market and one with 20.1%. On the other hand, it makes no distinction between a newspaper with 20.1% of the market and one with 35% or 40% or more. The rule is therefore somewhat arbitrary in its effect. A plurality test would, in principle, allow the Secretary of State to

Policy Lead: [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	--

make a judgement on media mergers, based on the particular circumstances of the case.

The Government is therefore persuaded that we should accept the principle behind these amendments, and bring forward government amendments at Third Reading to introduce a plurality test.

Let me outline how we think such a test would operate.

We propose to extend the scope of the Enterprise Act so that qualifying mergers could be subject to a media plurality test. In these cases, the Secretary of State will be able to intervene where she believes the merger would have a damaging effect on plurality. The test would not be “does the merger lessen plurality?” Any merger, by definition, reduces plurality to some extent. It will be for Ministers to determine whether the merger causes

Policy Lead
02/07/2003

<p><i>Plurality</i></p>	<p>Clause: Before Cls 340</p> <p>RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36,</p> <p>Given on Friday 20 June 2003</p>
-------------------------	--

sufficient plurality concerns for it to be blocked, or for conditions to be attached. Similarly, the test must also recognise that there is a minimum level of plurality which must be maintained.

We propose that the power be wide enough to capture all media mergers, including cross media mergers. We would intend as a matter of policy normally to apply the test in practice only to those areas where the current rules are being removed completely. This would mean that, usually, the Secretary of State would only consider intervening on plurality grounds in the following areas:

- national newspapers with more than 20% of the market/ Channel 5;
- national newspapers with more than 20% of the market/national radio service;

Policy Lead: [REDACTED]
02/07/2003

<p><i>Plurality</i></p>	<p>Clause: Before Cls 340</p> <p>RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36,</p> <p>Given on Friday 20 June 2003</p>
-------------------------	--

- Channel 3;
- Channel 3/national radio;
- Channel 5/national radio;
- national radio/national radio

Lord Puttnam asked if this test would [“effectively rule out”] a major national newspaper owning Channel 5. The answer is that the test will ensure that the Secretary of State can investigate any merger which threatened plurality. It will clearly prevent unacceptable levels of cross media dominance. But it is inherent in the nature of a test that one cannot predict the outcome in advance – it will be necessary to analyse and consider all the relevant circumstances at the time on a case-by-case

Policy Lead: 
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340 RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	--

basis. This, of course, is exactly the same approach as would have to be taken if the amendments tabled by Lord Puttnam and other noble Lords were agreed.

I do not believe that it would normally be sensible or desirable to intervene and apply the test to areas where there have never been media ownership restrictions, or to areas where there continue to be ownership rules, as the continuing rules will protect plurality.

In order to give the media industry some degree of certainty, the Government will publish guidance setting out in more detail the areas where the test will generally be applied and the factors that will be considered. It is not the Government's intention that the test should apply more widely. However, guidance obviously cannot fetter the Secretary of State's discretion, and we would not rule out its wider use in an extreme and rare case.

Policy Lead: [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	---

I believe that the plurality test should consider the number of owners in the relevant market. The market would be a single medium or, in the case of a cross media merger, a number of media markets.

In addition, the test will also address:

- the need for a wide range of high quality broadcasting which is calculated to appeal to a wide variety of tastes and interests, and
- the need for a genuine commitment to the issues covered in OFCOM's standards code, set out in clause 312 of the Bill, including the need for impartiality and accurate presentation of news.

Policy Lead: [REDACTED]
02/07/2003

<p><i>Plurality</i></p>	<p>Clause: Before Cls 340</p> <p>RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36,</p> <p>Given on Friday 20 June 2003</p>
-------------------------	--

The plurality test would sit along side the special newspaper regime, which would continue to consider newspaper-only mergers.

Lord Puttnam asked for an assurance that such the plurality provisions will be brought into force before or at the same time as the lifting of restrictions on media ownership restrictions contained in the Bill. The answer is yes, I can readily give him that assurance. He also asked if it is intended that the Secretary of State's powers of intervention under sections 59 - 66 of the Enterprise Act will extend to the media plurality provisions. The answer again is yes.

I hope that the assurances that I have given noble Lords about our intention to introduce a media plurality test, and my detailed explanation of how the test would operate, will persuade noble Lords not to press for the

Policy Lead: 
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340 RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	--

amendments before us. I will be tabling Government amendment for consideration at Third Reading [before the end of the week]. I will also circulate the text of our amendments to every noble Lord who has spoken in this debate.

Policy Lead: [REDACTED]
02/07/2003

<p>Plurality</p>	<p>Clause: Before Cls 340</p> <p>RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36,</p> <p>Given on Friday 20 June 2003</p>
-------------------------	--

Q&A

Will this test “effectively rule out” [Puttnam’s phrase] a major national newspaper owning Channel 5?

The test will ensure that the Secretary of State can investigate any merger which threatened plurality. It is inherent in the nature of a test that one cannot predict the outcome in advance – it will be necessary to analyse and consider all the relevant circumstances at the time on a case by case basis. But it will clearly prevent unacceptable levels of cross media dominance.

There should be a plurality “floor”?

This seems to be an unworkable concept designed, intentionally or otherwise, to undo the ownership relaxations contained in the Bill. It would presumably fix the level of plurality where it is now, and only allow changes which increased the number of players in the market or left it unchanged. It would have the perverse effect of allowing non-media owners to buy up media companies while preventing media players themselves from consolidating, and would render the proposed liberalisation redundant for those whom it is intended to benefit. For example, in the field of radio, it would allow the American Clear Channel to buy an existing radio group but would prevent an existing UK owner such as GWR or Capital from doing the same. Is this really the intention?

You should use the exact words of the amendment?

In addition to the concerns I have outlined, the amendment as it stands is defective in a number of technical respects and would have a number of unintended “knock-on” effects on the application of the newspaper public interest considerations. It would be wrong and irresponsible for Parliament knowingly to include it in legislation. We will come back

Policy Lead: [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	---

with a Government amendment which is not defective and which can be considered fully by noble Lords at Third Reading.

The plurality test should refer to “a wide range of voices”?

For the reasons, I have given the idea of voice meaning “views and opinions” could be very damaging for the impartiality requirements of broadcast media. The licensing regime for broadcast media is already geared to ensure a wide range of service designed to appeal to a variety of tastes and interests so to that extent there is a range of voice, if by voice one means diversity. Newspapers, of course, provide a range of voices in terms of opinion. Nevertheless, we will look at the drafting of our amendments to see if the concept of voice has any relevance.

Government u-turn?

We have reconsidered the position in the light of representations and the changes we have made to our ownership proposals. We believe that a plurality test provides an additional safeguard to plurality in implementing our proposals.

Why limit the application of the test to areas where you have removed the ownership rules?

We need to strike the right balance between ensuring the necessary level of plurality and letting businesses grow and prosper. Where rules have been retained, they should ensure sufficient plurality. We do not see any benefit in having “double jeopardy” where someone could comply with the plurality (and competition) rules but theoretically fail the plurality test. Since we do not think this would happen in practice, we do not generally intend to look at areas which comply with continuing ownership rules

[If pressed: In the future, the test could be applied more widely should it be desirable to do so.]

Policy Lead: [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	--

How does this affect foreign ownership?

~~Foreign ownership is not, of itself, a plurality issue. If a foreign company buys a UK media group, the number of owners in the market remains unchanged [and plurality is unaffected.] The main safeguards in connection with foreign ownership are content and other regulation, which apply to all owners, regardless of nationality. However, it would be relevant if it was thought that a foreign owner would undermine the need for a wide range of high quality broadcasting calculated to appeal to a wide variety of tastes and interests, or did not show a genuine commitment to OFCOM's standards code, including the need for impartiality and accurate presentation of news.~~

The fact that s59-66 of the CA Act means any plurality test could be used bite.

Plurality test is unnecessary and more regulatory?

The test will only apply in areas where we have removed ownership rules. It potentially allows for the eventual dismantling of the media ownership rules, and allows the Government to respond to changes in circumstances, such as significant changes in market share. In short, it allows us to implement our policies with more confidence that plurality will not be threatened.

Plurality test is unnecessary and more regulatory?

We propose that the test should generally only apply in areas where we have removed ownership rules. It potentially allows for the eventual dismantling of the media ownership rules, and allows the Government to respond to changes in circumstances, such as significant changes in market share. In short, it allows us to implement our policies with more confidence that plurality will not be threatened.

Lots of mergers will get caught, even small ones?

Policy Lead [REDACTED]
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments. 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	--

Not so. Firstly, they have to be qualifying mergers (either the turnover of the acquired enterprise exceeds £70m or the new entity has at least a 25% share of supply of goods or services in the UK, or in a substantial part of the UK). Secondly, the Secretary of State has to decide to intervene. We intend generally only to intervene in those areas where we have removed all ownership rules, though we cannot rule out the possibility that in exceptional circumstances we will look at other mergers which raise plurality concerns.

How will the new media plurality test work?

It will form a part of the new Enterprise Act 2002 public interest merger regime by enabling Ministers to intervene in a media merger on media plurality grounds where the merger satisfies the jurisdictional thresholds of that Act. The media plurality public interest considerations will be specified in the Enterprise Act in addition to the newspaper public interest considerations. The latter will be enable Ministers to intervene in newspaper mergers on those grounds.

The jurisdictional and competition aspects of media transactions will be examined by the OFT and, if the merger is referred, by the Competition Commission, in the same way as for any other merger. However, where a particular media transaction is identified as raising a specified public interest concern in relation to media plurality, there will be a power for Ministers to intervene by issuing an intervention notice. OFT will then be obliged to report on jurisdiction (ie does the merger satisfy the share of supply or turnover test) and competition (ie the substantial lessening of competition test). OFCOM will be obliged to prepare a report on the media public interest considerations. The Secretary of State will then decide whether to refer the merger to the Competition Commission to examine these aspects of the transaction in detail. The Competition Commission will report to the Secretary of State with its conclusions as to jurisdiction, the competition impacts of the transaction (where relevant) and the overall public interest impact of the transaction, taking into account both the media public interest considerations and

Policy Lead: Stuart Brand
02/07/2003

<i>Plurality</i>	Clause: Before Cls 340	RESIST Amendments 189,190,191,192, 342/297/38, 384/333/33, 384/333/36, Given on Friday 20 June 2003
------------------	---------------------------	--

competition. If it is concluded that the merger operates or may be expected to operate against the public interest, the Competition Commission will recommend appropriate remedies.

However, it will be for the Secretary of State to make any final decision, although she must have regard to the Competition Commission's report.

Would Carlton/Granada be caught?

The Carlton/Granada merger would be caught in principle. In practice, however, Carlton/Granada has been referred to the Competition Commission under the Fair Trading Act 1973 so under the transitional arrangements the current proposed merger is to be decided (as a matter of merger law) according to the public interest test under the FTA and this plurality test will not catch it. If the merged company was acquired in the future, it is likely that that transaction would be caught by the plurality test.