

1. ~~AT~~ 2. ~~RT~~ 3. ~~by~~ 4. Plurality

SPD 6/3/11/20

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Rennie Vanni

To Secretary of State cc Patricia Hewitt
From [redacted] Andrew McIntosh
Andrew Ramsay
Jon Zeff

File Ref



Date 26 June 2003

Bill Bush

COMMUNICATIONS BILL: PLURALITY TEST

Issue

Further advice on the plurality test.

Timing

2. Immediate.

Recommendation

3. That:

- A) Any test should be wide (in line with normal merger law practice) and then its scope limited by guidance.
- B) That we use the Enterprise Act as the vehicle for the test.
- C) That no real time (only 2 days) is available for consultation after the issue is discussed at Report stage, so therefore officials should write to interested parties on a "Ministers are minded" basis by the end of the week.

D) That in terms of concession handling, we start with a narrow test as previously agreed and then possibly expand the test as set out at paragraph 6.

Background

4. You asked for further advice on recommendations A and B above. Our conclusions are as follows:

- It would be very difficult to draft a test that limited competition investigations to only specified mergers – such as those involving a C3 licence or C5 licence where rules had been removed or making the distinction that in some areas where rules ensured a plurality floor (such as local radio 2+1). Furthermore, we could not credibly rule out that there might be one or two rare cases where Ministers might properly call in a merger in the future. Creating the limitation on the use of the power by guidance gives industry a clear steer without fettering the Secretary of State's discretion. The latter approach will also carry weight with Puttnam supporters. It is important to recognise that the industry will see this as having the potential to introduce additional restrictions into areas where there are no specific media restrictions or where restrictions continue to apply. On balance, we nevertheless recommend a wide test, limited by guidance.
- Using the existing licence review powers is superficially attractive as it avoids any danger that we would stir up the newspaper debate again by amendment to the Enterprise Act. However, by the time we had built in the necessary safeguards such as a two stage investigation and an appeals mechanism, we would effectively be re-inventing the Enterprise Act wheel. Furthermore, both Puttnam supporters and industry could be suspicious that we were not using the established Enterprise Act route for any "plurality" test. We therefore recommend the Enterprise Act route.

5. In terms of Lord Puttnam, we should have some form of text to discuss with him by the end of the week or early next. Given his amendment already effectively covers the following ground, he will probably press for more than plurality of owners, the question is how much to give and when. On a sliding scale the options appear broadly to be:

Test	Coverage
Numbers only	Limit (by guidance) only to areas where rules have been removed
<u>Plus</u> either (a) test the broadcaster's commitment	As above plus, any broadcaster

to impartiality or the Part 3 broadcasting standards generally.	involved in a merger (UK or foreign) with a track record of news production.
<u>And/or (b)</u> test how the merger will contribute to the overall range of high quality, varied broadcasting	Effectively any merger involving broadcasters

6. We think that in handling terms it is more likely that if Lord Puttnam is not happy with numbers only, he would be satisfied with numbers plus (a) than numbers plus (b) but we may end up being pressed to concede numbers plus (a) and (b).

