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cl/s

The Rt. Hon. Nicholas Ridley MP
Secretary of State for Trade and Industry

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Note
Discussed in Rm G... and
|| agreed NBRP will have office expand
RTF (week.)

Rec 6
19/1

Dear David

CROSS-OWNERSHIP RESTRICTIONS INVOLVING NON-DOMESTIC SATELLITE SERVICES

I have been giving some thought to our policy in relation to cross-ownership restrictions between non-domestic satellite and UK terrestrial television services. This follows earlier correspondence ending with a letter of 27 November from the Prime Minister's office and of 1 December from yours, both to my Private Secretary.

I think the case for having a discretionary regime for dealing with questions of cross-ownership between non-domestic satellite channels and Channels 3 and 5, DBS and national commercial radio (NCR) is a strong one. A blanket 20% limit is very strict and is likely to prevent much otherwise welcome commercial activity in the broadcasting sector. Our aim in the Bill is to release broadcasting from its present state of over-regulation as far as possible and this particular area is one in which I believe it is possible to rely on existing competition law, slightly strengthened.

A particular case, with which you may be familiar concerns W H Smith which has two channels on Astra and a 21% share in the Yorkshire television franchise. W H Smith would very much like to increase its share of terrestrial broadcasting but, with the rigorous 20% limit currently proposed, they could not even retain their present holding in Yorkshire. This seems to me to be an unreasonable restriction.





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Under such a regime any qualifying mergers between non-domestic satellite channels and ITC licensees for Channels 3 or 5, DBS or NCR (or indeed any other ITC licensees) would be considered by the OFT in broadly the normal way. I think it would be necessary in these cases for the OFT to have the additional duty to consider, in particular, the need for accurate presentation of news and free expression of opinion, just as the MMC currently has in the case of newspaper mergers. New definitions of qualifying merger would also be needed, to take into account audience size and, unlike the newspaper mergers provisions, I see the OFT rather than my officials advising me on referral.

I am conscious that if such a regime were applied at the initial licensing stage the possibility of an MMC reference (even if it lasted only three months) would create an unacceptable delay. I would therefore propose that merely for the purposes of initial licensing, the ITC should be given the discretion to decide which bids to allow based on similar criteria to those used by the OFT/MMC. I appreciate that such discretion was not favoured in MISC 128 but I think it is sufficiently restricted, and not inconsistent with the ITC's discretion in other areas (eg qualify hurdle, news provision) as to be justified in producing thereafter a more flexible regime.

I note the Prime Minister's remark (in Paul Gray's letter of 27 November) about European broadcasters with newspaper interests. If European broadcasters do continue to move into satellite channels with a European audience then my proposals will make it a little more likely that some may bid for UK channels. But, so far, the major European players, such as Bertelsmann, have tended only to take minority stakes in satellite channels and so would not even be caught by our current proposals. In any case, the quality safeguards are enough to ensure that any that do win will provide suitable programming. As for newspaper interests, the important point must, I think, be where the newspapers are read. I cannot see that it makes any difference whether or not a Spanish broadcaster also owns a Spanish newspaper in his application for a UK channel, unless that newspaper is widely read here.

Having outlined what I would ideally like the regime to look like, and indeed I understand that Sir Gordon Borrie shared my view in a letter to Tim Renton in October, I recognise that there are difficulties in being seen to liberalise our cross-ownership regime at this stage. You agreed to consider revised proposals in the light of initial reactions to the Bill and you are in a better position than I am to judge what those reactions have been. I do, however, put forward my proposals as a workable alternative approach, arguably more in line with the overall thrust of our broadcasting policy and

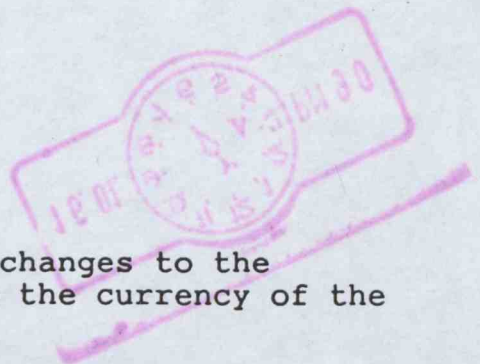


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more readily adaptable to the significant changes to the broadcasting market that will occur during the currency of the Broadcasting Act.

I am copying this letter to the Prime Minister, the Lord President, other members of MISC 128 and to Sir Robin Butler.

*James
Murray*



