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To Secretary of State

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FOREIGN OWNERSHIP

This note is for information and deals with (a) the Radio Authority (RAu)'s promised note on foreign ownership and (b) the possibility of our foreign ownership restrictions being incompatible with the ECHR.

(a) Radio Authority Note

2. The Radio Authority (RAu) have now produced the note you asked for on foreign ownership (attached). The RAu are not concerned about foreign ownership of independent national radio stations where the format control is much lighter, but are concerned about independent local radio. Their basic argument is that the evidence shows that large groups inevitably reduce the localness of a station. One might have thought that it is the localness of local radio that makes people listen to it in the first place, and that a new owner would not wish to undermine that. However, the RAu view seems to be that the economic benefits of targeting a specific audience, or the costs savings associated with not retaining localness, outweigh the potential loss of market, and point to the of ILR's loss of audience to the BBC as evidence that this has been happening. It would be "reasonable to assume" that this tendency would be even more pronounced with non-EEA owners.

3. The RAu may be correct that localness suffers when stations are owned by large groups. It is not obvious, however, that an American group would be significantly better or worse for local radio than a large European or even UK radio group. In my view, the RAu do not provide a strong case for maintaining a ban on non-EEA ownership.

(b) foreign ownership rules and ECHR

4. News International and Bloomberg have said that the restriction on non-EEA owners is in contravention of the ECHR. Our lawyers do not believe that the matter is quite so clear cut and, although they believe that there may be some substance in this argument, they consider it would involve an extension of the current law. If you were minded retain the existing restrictions, it would be advisable to obtain advice on the potential success of any legal challenge.

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RADIO AUTHORITY

4 February 2002

Foreign Ownership of UK Radio Licences

Note by the Radio Authority

It has been established since national commercial radio was first permitted in the UK, that Independent National Radio (INR) and Independent Local Radio (ILR) would be treated differently in terms of licensing and ownership. INR licences are awarded to the highest cash bidder, ILR licences against a series of specific statutory criteria. As a consequence, INR licences carry only a limited statutory format while ILR licences are much more detailed. Existing ownership controls on INR simply require that each licence shall be in separate hands, while there is a detailed points system for ILR across the UK as well as rules to safeguard local plurality of ownership.

2. Against this background, we consider that the implications of lifting the ban on foreign ownership should be considered separately for local and national radio. If any changes are to be made in legislation, it would be in line with previous precedent to apply different rules to ILR and INR, if that is what Government judges to be appropriate.

Independent Local Radio

3. We would be strongly opposed to lifting the existing restriction on non-EEA ownership of ILR licences, unless there were full and genuine reciprocity. Localness remains of great importance to ILR listeners. The consolidation of ownership within the UK has already led to that being diminished, and the Authority is clear that, even with careful policing of formats, where a station is owned and run by a large group rather than by local operators independently localness is inevitably compromised. We see no way in which light touch regulation can effectively prevent that, not least because it would be working against the natural tendency of the markets. Thus for example, when Radio Investments Limited (backed by the Guardian Media Group) took over the hugely respected local Spire FM service in Salisbury, although the service continues to operate within the terms of its licence, there has been an evident loss in the local character of the service. The new owners have worked successfully towards streamlining its programmes by sharing output with other stations it owns.

4. Indeed it has become clear over recent years that many commercial groups have been prepared to sacrifice genuine localness of output to the profit to be gained by targeting specific demographic groups (notably women 20 – 35) and cost-saving. This is commercially short-sighted (note the steady erosion of ILR's audience compared with the BBC) but beyond the capacity of anything except very interventionist regulation to prevent. It would be reasonable to assume, therefore, than non-UK ownership would take this trend still further, and localness would be even more compromised. European companies who have held ILR licences come from a different commercial culture, and have not demonstrated this trend away from localness.

5. Further, we are aware that a transfer of ownership of an ILR station from a local to a national group provokes a negative response in local areas which is disproportionate to the size of listenership of that station. When Breeze AM was bought by the GWR Group, despite having a comparatively small audience, there was local uproar which led to the Southend MP achieving a debate on an early day motion regretting the change. Such local reaction could be magnified if the ownership of a station transferred not to a UK group but to a non-EEA one.

6. We are keenly aware that there are several major radio companies in English speaking countries who are very anxious to buy UK radio stations. (With one possible exception, we know of no similar appetite among European mainland companies.) Clear Channel in the US, now the major owner of radio stations in that country, already has a minority investment here and is very keen for legislation to change to allow it to purchase stations. It is very well funded, and would have no difficulty in buying up to whatever was the new statutory maximum for ownership. Clear Channel is not well thought of by listeners and informed opinion in the US, because of the extent to which it tends towards centralising control of stations and a general corporatist approach. The Australian group Austereo also already has minority investments in UK radio stations, and would also be a keen potential purchaser. Austereo has been the subject of a significant scandal in Australia, relating to alleged abuse of dominant market positions. It would therefore be reasonable to assume that if foreign ownership of ILR stations were allowed, the greater part of the UK industry would pass very quickly into overseas hands. That would be likely to provoke a reaction significantly more extreme than the response which is generated when a local station moves into non-local but UK ownership.

7. There are also reasons to doubt whether even a facade of reciprocity would actually be delivered. A number of UK groups have from time to time investigated the possibility of buying radio stations in France. Although under EU rules there should be no restrictions placed in their way, they have reported to us that it has been made clear to them that whatever the wording of legislation they are not welcome as purchasers of French radio stations. This has been despite the willingness of the Radio Authority to license RTL as owners of UK stations (all of which they have subsequently sold). We would therefore stress that any relaxation based upon a principle of reciprocity would need to be able to rely upon that happening in practice and not just on paper.

Independent National Radio

8. INR and ILR may reasonably be distinguished, as we have explained above. For INR, it is much easier to envisage foreign ownership without the same threat to the character of the service. INR stations pay for their use of spectrum, and operate according to formats specified in the 1990 Act. One service has to be music which is not 'pop', one has to be predominantly speech and the third is unrestricted. Thus, from their start, they have been envisaged as much less regulated services, which have had to find a place within a market dominated by powerful BBC output. The notable success of Classic FM in this respect has come from the strength of the chosen format, not from any character bestowed by the nature of its ownership. At the Radio Authority, we have discerned no significant impact on the output of talkSPORT as a result of the shareholding held in that company by News International.

9. We therefore conclude that there will in practice be no overwhelming reason to resist foreign ownership of INR licences, subject to whatever UK ownership or competition rules are in place at the time in other respects.

10. If such a policy were to be adopted, the principle of reciprocity will inevitably be fudged. There are relatively few countries which have national commercial radio services, and there are no such services at all in the US or Australia from which non-EEA predators would be most likely to arise.

Conclusion

11. On reflection therefore, we would modify the proposals we made originally in response to the Ownership Consultation document in respect of foreign ownership. While, if reciprocity could genuinely be achieved, we would not oppose a relaxation of the rule for ILR, we do not believe that reciprocity would actually happen. We judge that the damage to the local character of ILR services – and the public and political fallout as a consequence – would be too high a price to pay for such an uncertain gain. However, in the case of INR services, we do not see any overwhelming reason to prevent non-EEA ownership, although we would hope that there would be some reciprocity achieved for UK broadcasters in the round, by way of return.

12. We will of course be happy to discuss or amplify any of these points.

Radio Authority
4 February 2002