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P.0998

PRIME MINISTER

Cable: Draft White Paper

(E(TP)(83)1 and 2)

BACKGROUND

FLAG A
On 2 December last year the Home Secretary outlined in the House the Government's policy towards the development of cable, and undertook that the Government would set out more detailed proposals in a White Paper in the early months of 1983. The draft White Paper attached to E(TP)(83)1 accordingly restates the broad policies announced last December; draws together subsequent Ministerial decisions in this area (for example about competition between cable operators and BT and Mercury); and sets out detailed proposals developed in the light of public debate and discussions within the Government since last December.

2. The draft White Paper has already been circulated to those Ministers outside E(TP) whose interests are most affected. If E(TP) approves the broad lines of the draft White Paper, the next steps will be for the Home Secretary to circulate it to the Cabinet as a whole for clearance by correspondence, with a view to publication in early May. The Cabinet has provisionally agreed that a Cable and Satellite Broadcasting Bill should be included in the Government's legislative programme for the 1983-84 session if it is of normal length. (CC(83)12th Conclusions, Minute 4.)
FLAG B

MAIN ISSUES

3. In E(TP)(83)1 the Home Secretary identifies five areas in which the proposals in the draft White Paper are likely to be particularly contentious or sensitive:

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- a. "pay per view" and exclusive screening agreements;
- b. advertising;
- c. foreign programme material;
- d. programme standards;
- e. whether the Government should license some broadband cable services and permit new services on existing cable relay systems before the proposed legislation takes effect.

FLAG C

The CPRS note (E(TP)(83)2) comments on these subjects, and discusses in addition:

- f. monopoly and competition;
- g. criteria for selecting cable operators; and
- h. powers and duties of the proposed Cable Authority.

Pay per view and exclusive agreements

4. At issue here is the extent to which cable operators will be able to, or will be thought able to, deprive the BBC and independent television of major sporting and other events. A copy of a Home Office guidance note about the way the draft White Paper proposals will work is attached as the Annex to this brief.

5. At present the Home Secretary has powers to prevent exclusive arrangements for the broadcasting of sporting or other events of national interest; in practice the broadcasters have, by agreement, not sought exclusive rights to a list of major national events. The draft White Paper, following Hunt, proposes similar powers to prevent cable operators from buying exclusive rights to specified major events. The broadcasters would thus have the right to bid for the event concerned on the same terms as a cable operator (and vice versa).

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The question of whether the event continued to be shown by the broadcasters or was shown by cable operators would depend on how much they were prepared to pay. The policy on pay per view arrangements, which might substantially increase cable operators' revenues in these cases, has therefore an important bearing on the availability of major national events.

6. The Hunt Committee argued that pay per view should not be permitted on cable for the time being. The Home Secretary argues that the complete exclusion of pay per view would unreasonably limit the sources of finance open to cable and inhibit its development. He proposes that pay per view should be permitted in general; but that it should be forbidden for an item which had customarily been shown on one of the existing public service channels. This would include, but go beyond, the "protected events" described in the previous paragraphs. Any programmes which fell into this category would thus have to be paid for in some other way - eg a special subscription sports channel. The effect would be to reduce the chance of cable operators' being able to outbid BBC and ITV for major events.

7. The CPRS suggests that a better way to hold the balance between the concern about depriving public service broadcasting of major events and the need to pay due regard to the principles of free competition might be as follows. There would be no restrictions on the ability of cable operators to earn revenue by "pay per view". They would then be able to bid up the price for major events to the benefit of the organisers of these events and the performers. The broadcasters would however be given a preference and exclusive rights to the events provided that they at least matched the highest price which the cable operators were willing to pay. This route would be potentially more costly to the broadcaster but would bring more revenue to the organisers of the event. We understand that this alternative approach is not favoured by the Home Office. They think that by moving even further away from the Hunt line on "pay per view" it would provoke controversy; that it would probably not be attractive to the cable operators who might not be willing to bid if the broadcasters could secure exclusive rights at the end of the day; and that any extra costs for the broadcasters would make it more difficult for

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them to maintain adequate standards of public service broadcasting.

8. The Sub-Committee will need to be clear first of all that it accepts the need for some measures which will safeguard the availability of major national events for the general viewing public. If so, it will then need to consider whether the Home Secretary's proposals strike the right balance or whether some alternative approach would be preferable.

Advertising

9. The main question for consideration here is whether there should be any restriction on the amount of advertising on cable. Hunt recommended none; the CPRS question the need for restriction, on the grounds that:

i. the Government wishes to remove unnecessary obstacles and restrictions to the development of cable;

ii. it is unlikely that an unrestricted regime would lead to an excessive amount of advertising on cable.

The Home Secretary argues that if the amount of advertising on cable is unlimited the Government will be pressed to ease the restrictions on independent television and local radio advertising. He proposes that the IBA limits (six minutes per hour as an average for television programmes) should apply on channels with programme material similar to that shown by the existing broadcasting networks. The limits would not however apply to classified advertisements or to specialised advertising channels.

10. On the content of advertising, where Hunt proposed use of the IBA Code the draft White Paper envisages that the Cable Authority will have its own advertising code, sharing a "common core" with the IBA's but adapted as necessary to the particular nature of cable services.

Foreign programme material

11. The Hunt report suggested that there should initially be no prescribed



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quotas for British material on cable, but that in time the Cable Authority might impose general obligations relating to British content. The draft White Paper proposes, on the other hand, that from the outset the Cable Authority should be required, when considering competing franchise applications, to give weight to the applicants' plans for using British (and European Community) material and for stimulating new domestic production. Mr Rickett's letter of 8 April to the Home Secretary's Private Secretary (copied to Mr Jenkins's office but not to E(TP) generally) asks whether it would be possible to go further than this and set limits to the proportion of foreign material used - perhaps initially 50 per cent, moving gradually to 33½ per cent. The CPRS has pointed out that restricting access to foreign material too tightly in the early stages is likely to slow down the commercial development of cable. The Sub-Committee will need to consider where the balance of advantage lies.

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Programme standards

12. In relation to programme standards the Sub-Committee will wish to judge whether an appropriate balance will be struck between commercial and individual freedom on the one hand and public policy on the other by the proposals in the draft White Paper, ie:

- a. no obligation on cable operators to provide a wide range and balance of programmes; but
- b. requirements that:
 - i. news coverage should be accurate and impartial;
 - ii. bias across the generality of services should be avoided;
 - iii. individual political or religious groups may not control whole channels;
- c. the same "taste and decency" requirements for the BBC and IBA, with no exemption for "adult channels" with electronic locks.



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13. The CPRS suggest that responsibility for the interpretation and application of the "taste and decency" requirements should lie with the Home Secretary as a matter of political judgement. Ministers may however prefer to give this responsibility to the new Cable Authority, by analogy with the responsibilities given to the BBC and IBA.

Pre-legislative moves

14. The draft White Paper says that the Government will, in advance of the proposed legislation, permit new revenue earning entertainment services on existing cable systems. So far as we know, there is likely to be no objection to this. In addition, however, it is proposed that the Government should be prepared to authorise a small number of new cable systems before the new legislation comes into effect. In his covering memorandum the Home Secretary expresses doubts about this course (which has been advocated by Department of Industry Ministers) on the grounds that it would be difficult both in practical terms and politically (not least because the Home Secretary would become directly responsible for supervising programme services and interpreting, and defending before Parliament, the rules applicable to them). You will want the Sub-Committee to weight those considerations against the advantages of permitting pilot projects before new legislation: maintaining the momentum for the expansion of cable systems and encouraging further developments in cable technology.

15. The Home Secretary envisages that, if these pilot projects were to be permitted, the rules should be more restrictive in certain respects than those which will apply when the Cable Authority has been set up. In particular he proposes that "pay per view" should not be permitted at all during this interim period because this is a matter on which the policy will have to be worked out by the Cable Authority. The CPRS question whether this limitation is necessary.

16. The text of the White Paper leaves open whether applications for authorisation in respect either of existing systems or new pilot systems should be invited as soon as the White Paper is published or after Parliament has debated the White Paper. Ministers may think it more prudent to follow the



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latter approach, provided that a debate on the White Paper can be arranged before too long.

Monopoly versus competition

17. It is common ground that the Government wishes to foster competition but that in many areas cable systems will develop only if both the cable provider and the cable operator are monopoly suppliers. The draft White Paper makes it clear that the Cable Authority is to work towards the development of genuine competition wherever possible. The CPRS make three specific suggestions (paragraph 7 of E(TP)(83)2) for tightening up the requirements for avoidance of monopoly wherever possible. The Home Office takes the view that it would be impracticable to tie down the Cable Authority so tightly. The Sub-Committee will need to consider whether these additional points should be included in the draft White Paper.

18. There may also be concern about ownership links between cable interests and other media interests. Paragraph 4.15 of the draft White Paper states that, when considering a franchise application, the Cable Authority will have to ensure that it does not lead to a concentration of ownership and power which is contrary to the public interest (for example through the participation of existing media companies in cable consortia). We understand that the Secretary of State for Trade may suggest that, in addition, there should be a reserve power for the Secretary of State for Trade to refer to the Monopolies and Mergers Commission franchise applications which seem likely to lead to an undesirable concentration of ownership. If he does so, and if the Sub-Committee sees force in such a proposal, it will be for consideration whether the draft White Paper should be amended accordingly; or whether the Government should leave it for a later stage.

Criteria for selecting cable operators

19. The CPRS ask whether the criteria described in paragraph 4.17, which the Cable Authority is to bear in mind when considering franchise applications, should be minimum requirements or guidelines for deciding between competing bids. We understand that the latter is the intention. The Sub-Committee

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may take the view that, at least at this stage, it is impractical to lay down minimum requirements as such; and that the priority to be given to the considerations listed in 4.17 will have to evolve in the light of experience.

Powers and duties of the Cable Authority

20. The CPRS suggest that it might be useful to have a paper drawing together the powers and duties that it is proposed to give to the Cable Authority. The Home Secretary is likely to argue that he hopes that Ministers will feel that they have a sufficiently clear idea of the way the Cable Authority is expected to operate for the purposes of publishing a White Paper. In the light of reactions to the White Paper, detailed legislative proposals will be drawn up and there would be a further opportunity at that stage for Ministers to consider the precise powers and duties of the Authority.

HANDLING

21. You will wish to ask the Home Secretary and Mr Sparrow to introduce E(TP)(83)1 and 2 respectively, and to invite comments particularly from the Secretary of State for Industry and the Minister for Information Technology (Mr Baker).

CONCLUSIONS

22. You will want to reach conclusions on the following points:

- i. the specific matters raised by the Home Secretary in E(TP)(83)1, ie:
 - a. pay per view and exclusive agreements;
 - b. advertising;
 - c. foreign programme material;
 - d. programme standards;
 - e. pre-legislative moves;
- ii. any other points on which the Sub-Committee wishes to see amendment to the draft White Paper;



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iii. subject to i. and ii. above, whether the Home Secretary is authorised to circulate the draft White Paper for clearance in correspondence by the Cabinet with a view to publication as soon as practicable thereafter, and early debates in both Houses.

PLG

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19 April 1983

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Exclusive rights and Pay Per View - A guidance note

These subjects are closely interrelated and are essentially about the coverage of sports events. The effect of the White Paper proposals is that:

- (1) cable operators would be free to bid for all sporting events but;
- (2) in the case of any of the great national events (eg FA Cup Final) they would be barred from signing an exclusive deal and;
- (3) in the case of an event customarily shown on BBC/ITV (ie the great national events plus others) they would not be allowed pay per view, though they could include the event on any other kind of channel.

Three examples

- (1) Liverpool v Arsenal: BBC/ITV have not customarily shown live league football so cable could offer the match on any basis including pay per view.
- (2) England v Scotland: The broadcasters have customarily shown this match live but it is not on the protected list of events. Thus cable would not be allowed to buy it up for pay per view showing but could sign an exclusive deal for it on a sports channel paid for by advertising, sponsorship or subscriptions (ie pay per week or per month).
- (3) FA Cup Final: A 'protected' event and one customarily shown by the broadcasters. Cable could not show it on pay per view and in addition could not contractually exclude the broadcasters from buying the rights at the same price.

NB The exclusive rights restriction will not stop deals which are in effect though not in law exclusive since the price may be more than the broadcasters feel able to pay. Additional protection could be provided only by completely banning cable from showing these events.