



FILE
ECL

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

21 December 1987

SUBSCRIPTION TELEVISION

BF 11 The Prime Minister's attention has been drawn to the working paper enclosed, which *in folder.* was produced by the Rank Organisation. The Prime Minister would be grateful for your comments on the proposal made in paragraph 4.2 that television transmissions for subscription television could be authorised under the Wireless Telegraphy Act 1948 rather than under the broadcasting legislation.

I am copying this letter to Philip Mawer (Home Office) and Trevor Woolley (Cabinet Office).

(David Norgrove)

Miss Alison Brimelow,
Department of Trade and Industry.

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4.
PRIME MINISTER

18 December 1987

DWS
18/12
Subscription Television

Following the discussion yesterday in MISC 128 I thought you might be interested to see the enclosed which arrived on my desk this morning.

It is a proposal by The Rank Organisation to run a fifth channel using subscription. I would draw your attention to the highlighted passages in the text and to Exhibits 2 and 3 which show the growth of subscription TV in France (Canal-Plus) and the US (Home Box Office), and on which the profitability of the venture rests.

It would however be useful if the DTI could comment on the validity of the claims made in para 4.2.

Yes please mt

R. Crossman

For

BRIAN GRIFFITHS

cc Blyp



PRIME MINISTER

INDEPENDENT PRODUCERS

MINUTE BY THE HOME SECRETARY OF 16 OCTOBER

MEMORANDUM BY TRADE AND INDUSTRY SECRETARY: MISC 128(87)14

LETTER OF 11 DECEMBER BY HOME SECRETARY'S PRIVATE SECRETARY AND OF
16 DECEMBER BY TRADE AND INDUSTRY SECRETARY'S PRIVATE SECRETARY
ABOUT LETTERS FROM MR MICHAEL DARLOW

CONCLUSIONS

a. 25% target

1. The Home Secretary's minute reports that both the BBC and IBA have undertaken to secure 25% of their programmes from independent producers by 1993. You will wish the Group to decide whether to accept his proposal that the Government should now announce its acceptance of this target date, and the voluntary arrangement with the broadcasting authorities for meeting it, but that officials should maintain the preparatory work on legislation simply as an insurance against the voluntary arrangements collapsing.

b. Terms of trade

2. The Trade and Industry Secretary's paper reports that satisfactory legislation to impose fair commercial treatment for the independents would be extremely difficult, and that a monopoly reference to the Monopolies and Mergers Commission (MMC) would be a better route at this stage if anything further needs to be done to protect the independents. You will wish the Group to decide whether the independents should be encouraged to approach the Office of Fair Trading (OFT) with a view to such a reference.

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c. Mr Darlow's letters on behalf of the independents

3. These say that talks have been broken off with the ITV companies because they are not negotiating in good faith. The reply should reflect the Group's decisions under a. and b. above. You may wish to give the Home Secretary an outline of the sort of reply you want to see, but you will probably not wish the meeting to become a detailed drafting session. You will doubtless wish to ask the Home Secretary to circulate a revised draft reply in the light of the discussion.

BACKGROUND

4. The Peacock Report recommended that the BBC and ITV should be required to reach a 40% target for the use of independent producers over a 10 year period. At the meeting on 30 October 1986 (MISC 128(86) 2nd Meeting) the Group agreed that the target should be set at 25% to be reached in 4 years. At the time of the meeting on 20 July (MISC 128(87) 1st Meeting) you felt that the BBC and ITV proposals for meeting the target were quite inadequate and that the target would only be reached by imposing it in legislation: you commissioned the necessary detailed work on that from the Official Group. You had also heard serious allegations about unfair restrictions by the broadcasters on the rights of independent producers to exploit their programmes. You thought that this subject, too, would probably only respond to legislation, and you commissioned further work on that as well.

MAIN ISSUES

5. The Group is clear that the expansion of a healthy independent production sector is vital, both to provide domestic competition and to stand poised ready to exploit the international opportunities that will be expanding in the 1990s. The Group will also recognise that there is a trade-off between the 25% target and the alleged unfair trade practices. If the 25% target is ostensibly achieved, but only at the cost of underpaying the independent producers or unfairly restricting their exploitation rights, then

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the target's objective of fostering the independent production sector will be undermined.

6. It is clear that the Home Secretary and the Trade and Industry Secretary look at these issues from somewhat different points of view. The Home Secretary feels that - under the threat of legislation - the broadcasters have been very reasonably cooperative over the 25% target, and he believes that there is everything to be said for continuing to proceed by voluntary agreement with them. He will point out that the independents have this week made an arrangement with the BBC on terms of trade, and he will probably say that he cannot see what is preventing a similar arrangement with ITV. If such arrangements can be made - and the independents gave a warm welcome to their deal with the BBC - then there is no need for a monopoly reference or anything else to safeguard them. The Trade and Industry Secretary is more inclined to support the independents' version of events. While he is not in favour of legislation to protect the independents, he probably sees merit in a monopoly reference, at least.

7. The three things that you will particularly wish to bear in mind in assessing these points of view are the constraints imposed by the timing of legislation, the difficulty of constructing a statutory machinery, and the lack of hard information on the independents' case.

a. Timing of legislation

8. MISC 128 has already decided that there should be Broadcasting Bills in each of the next two sessions and that the first one should be mainly devoted to radio policy and broadcasting standards. On that footing, any legislation on independent producers would be in the second Bill, in the 1989-90 session. But even if legislation on the independent producers were brought forward to next session, it would be too late to influence the letting of the ITV contracts for 1990-93, since the IBA propose to finalise these in 1988. Even if MISC 128 did decide on early legislation on these matters, therefore, it could not bite on the

IBA's contractors until the contract period starting 1 January 1993. (Requirements on the BBC might theoretically bite rather sooner, but virtually no complaints are being levelled at the BBC's treatment of independent producers.) Given this very long lead time, and the absence of hard sanctions in the meantime, the Home Secretary believes that the Government will do far better to trust the broadcasters' promise of voluntary action than to put all its faith in legislation taking effect so far ahead, though the threat of legislation should be kept hanging over the broadcasters to ensure good behaviour. Although the Home Secretary's prime concern will be that the voluntary route is taken to the 25% quota, similar arguments apply to the issue of fair terms of trade.

b. Difficulty of legislation

9. The considerations here are quite different as between legislation to impose a 25% target and legislation to enforce fair trading terms for independents. Legislation to impose the target could undoubtedly be drafted, though it would run the risk of definitional loopholes that could be exploited by broadcasters who wished to do so. On the other hand, it now seems clear that it would not be feasible for legislation to spell out a prescription for ensuring fair trading terms. The Trade and Industry Secretary accepts that what is fair varies a good deal between one programme and another. Legislation could, therefore, do no more than set up a special arbitration arrangement, involving much qualitative judgement, for this particular corner of commercial dealings. The Trade and Industry Secretary is loath to do that except as a last resort.

c. Establishing the facts - a MMC reference

10. The Trade and Industry Secretary's paper emphasises that no full and impartial study of the market exists, and this is borne out by the most recent complaints from the independents.

Mr Darlow's latest letters are vague and difficult to follow in many respects, though it does seem that the independents are

shifting their fire from the question of restrictions on exploitation rights to the straightforward issue of adequacy of remuneration. The Trade and Industry Secretary argues that this confusion itself provides a powerful reason for encouraging an MMC reference, since the first stage in that process would involve the Office of Fair Trading in producing an impartial study of the market. Even if the MMC route got no further than that, an agreed statement of the facts would represent a great advance on the present situation and if all else failed, legislation establishing some kind of arbitration machinery could still follow in the 1989-90 Bill. Before the Government committed itself to the MMC route, however, you would wish to be assured that a monopoly reference would indeed be within the terms of the Fair Trading Act 1973. Paragraph 6 of the Trade and Industry Secretary's paper deals with this point, which is essentially one for the DTI lawyers. You may, however, wish to probe the issue with the Trade and Industry Secretary.

11. The counter-argument which the Home Secretary may canvass, is that the independents should be encouraged to sort out their differences with the ITV companies as quickly as possible. He may say that legislation is at best an imperfect answer that cannot bite until years ahead, and that even a MMC reference will simply waste another year or so. If the independents could this week make a deal with the BBC, why cannot they conclude a similar deal with ITV without waiting for a monopoly reference? Is it feasible that the ITV companies genuinely rejected an agreement in general terms that the BBC had no difficulty in accepting?

d. Mr Darlow's correspondence

12. In deciding how to handle Mr Darlow's letters, you will wish to bear in mind that the object of the independents' criticism is not the 25% target as such but the unfair trade practices that they allege to be ranged against them. There is, therefore, little point in assuring Mr Darlow about the Government's firm intentions on the 25% target, since he does not dispute this. If the meeting does decide to encourage the independents towards an

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MMC reference, then that is the main point on which the reply should focus as Lord Young suggests. Alternatively, the meeting may decide, in the light of the independents' agreement with the BBC, that the best line is simply to encourage them to go back to the negotiating table with the ITV companies.

HANDLING

13. You may wish to suggest at the outset that the handling of Mr Darlow's letters should be discussed at the end of this item, in the light of the decisions taken. You may also wish to say that you wish the meeting to consider the 25% target and unfair trade practices together.

14. You may wish to ask the HOME SECRETARY to speak to his minute and the TRADE AND INDUSTRY SECRETARY to his paper. The CHANCELLOR OF THE EXCHEQUER will have views on most of the main points.

AJL

A J LANGDON

16 December 1987

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