



Secretary of State for Trade and Industry

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11 January 1988

Colin Miller Esq  
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Dear Colin

Lord Young has received a further letter from Michael Darlow of the Independent Access Steering Committee. My Secretary of State thought it would be of interest to the Home Secretary and other members of MISC 128 and I am therefore attaching a copy.

I am copying this letter to Private Secretaries to other members of MISC 128 and to Trevor Woolley.

Yours

Jeremy Godfrey

JEREMY GODFREY  
Private Secretary

PS1AAO

# INDEPENDENT ACCESS STEERING COMMITTEE

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Lord Young of Graffham  
Department of Trade & Industry  
1-19 Victoria Street  
London SW1H 0ET

6 January 1988

Dear Lord Young,

## INDEPENDENT TELEVISION PRODUCERS

I am writing to you on the implementation of the Government's broadcasting policy and measures aimed at the enhancement of competition throughout British industry. In particular I am concerned about the current outlook for the successful introduction of the policy proposals aimed at increasing competition in the supply of television programmes.

As you know from my letter of 8th December talks between the independent producers represented by my committee and the ITV companies initiated by the IBA and aimed at establishing a voluntary basis for implementing Government policy on 25% access for programmes made by independents have recently broken down. However, similar talks on business guidelines for the period before a genuine competitive market in the supply of television programmes is established have now been brought to a satisfactory conclusion with the BBC. These two events therefore mark something of a watershed for the voluntary implementation of Government policy.

My committee suggested to the ITV companies business guidelines and working structures every bit as flexible as those now agreed with the BBC. As you know the ITV companies comprehensively rejected such proposals. In this context it is perhaps worth picking out some of the salient features of the arrangements agreed with the BBC. Fundamental to the agreement is the acceptance by both sides of what has come to be known as the 'Runway Principle': that is to say that it anticipates, and provides for, the phasing out of centrally agreed parameters for operating margins and shares of profit from overseas sales as genuine competition in programme supply is established. The guidelines on operating margins and levels of participation in overseas sales income were developed from the existing Channel Four system, but are more flexible and realistic than under that system. Margins are computed not only on the size of the production budget, but by assessment of market forces and the exigencies of the specific production. The

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agreement protects the BBC's right to editorial control over programme content and what it broadcasts, but also recognises and protects the vital intellectual or creative capital for an independent represented by a programme idea. Both sides recognise their shared interest in maximising profits from overseas and other sales. The guidelines also establish that while an independent may use BBC resources and facilities, if available, on a proper businesslike basis, agreement to use BBC facilities or staff must not be a condition of contract.

Of itself, this agreement does not guarantee that the Government's independent access policy will be successfully and fully implemented, even by the Corporation. The BBC is currently committed to achieving an annual rate of only 600 hours of independent programmes at the end of a three year period whereas 25% of new programme hours is closer to an annual rate of 2,500 hours. The BBC has also indicated that it will exclude independent programme producers from the provision of News and Current Affairs i.e. all programmes which fall within the orbit of John Birt, amounting to more than 20% of total BBC output. This is an exclusion which many independents feel is intolerable, as it seriously restricts the opportunities open to those who have built up a track record in current affairs with Channel Four or have aspirations to supply News and Current Affairs.

Nevertheless, although the BBC may still need reminding of the need to achieve a full 25% of independent programmes across all programme categories, a basis would now seem to exist for introducing an element of genuine competition into programme supply on that side of broadcasting duopoly, while at the same time maintaining and enhancing the quality and range of programmes available to the viewing public.

Clearly the outlook on the ITV side is much less good. In my letter to you in July I suggested that if the broadcasters were to continue in their refusal to enter into realistic arrangements with independent producers, which allowed the independent production sector the potential to develop in such a way as to become a competitive 'third force' in programme supply, the result could be the steady erosion of the sector's independence and competitive edge. It now seems clear to my Committee that the ITV companies have been pursuing a policy aimed at preventing the independent production sector emerging as a competitor to their own production arms.

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I have written to the Chancellor of the Exchequer pointing out the ways in which the current structure of the ITV Levy has the effect of placing independent producers at a considerable disadvantage vis-a-vis an ITV company when competing for a Channel Four commission, an overseas sale or establishing international co-production arrangements. I have asked him to consider amending the ITV Levy structure in the next Budget in such a way as to simultaneously counterbalance this disadvantage and stimulate the ITV companies to commission programmes from independents on a reasonable basis.

Fortunately independent producers are a great deal more efficient than ITV companies and manage to stay in business. Recent calculations of the true total cost of production of network television programmes, taking into account not only the profit margin added by independent producers but also the permanent staff, studio and production related overhead costs of the broadcasters (ITV and BBC), suggest that for every £100 an independent spends on a production, the BBC spends £120 and an ITV company £170. These figures perhaps explain why the independent producers are particularly happy to embrace the Government's commitment to introducing competition into programme supply in television, while at the same time being unhappy about the ITV Levy stacking the cards against them. It also accounts for our lack of surprise over the ITV companies opposition to the introduction of competition in the form of independent access as evidenced by their delaying tactics and ultimate refusal to enter into meaningful discussions.

Of course the ITV companies have recently commissioned some independent production and claim to have quite a lot more 'in the pipeline'. However, just what productions, from what 'independent' producers and in how long a 'pipeline' are all matters over which ITV has so far been less than forthcoming. Of commissions about which something is known, a great many appear to be being made by companies that would not qualify as independents or under conditions imposed by the ITV companies which negate the objective of establishing a separate and competitive third force in programme supply. In order to gain contracts with ITV companies independent producers have frequently had to surrender their rights in the programme's concept or script, have been denied participation in a programme's subsequent overseas exploitation or refused an adequate operating margin. Independents have had to face ITV companies with whom they were trying to negotiate contracts who, often at the last moment, made it a condition of contract that the independent use the ITV company's studios and crews. Even so independents have accepted such contracts, the alternative being the possibility of winding up, liquidation or antagonising a powerful potential future customer.

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The IBA's monitoring procedure on independent access is due to begin recording the level of independent production for ITV from the start of this year. Yet there is no agreement on terms under which independents will undertake commissions for ITV. The IBA's 6th August Policy Statement left most of the vital business matters extremely vague, being based on the assumption that voluntary agreement would be reached. John Whitney's hope when he initiated discussions in April was that 'the whole debate' on such matters would be over by the summer of 1987! Until the current ITV franchises run out the IBA would appear to lack adequate powers to impose any meaningful agreement on what conditions would apply to companies dealing with independents during the period before real competition in programme supply is achieved. Yet if Government policy is to be achieved and competition is to be introduced, not only between independents to supply programmes, but between broadcasters to acquire them, the next two years would seem to be crucial.

It is easy to forget that the BBC started off just as hostile to independent access as ITV. In the summer of 1986 at the Royal Television Society conference on the Peacock Report both BBC and ITV haughtily rejected the Committee's recommendations on independent access. The change in the BBC's attitude seems to date from the appointment of Michael Checkland as Director General. Once the new attitude had filtered down to the actual negotiator's the BBC dropped the negative attitudes of ITV and began to negotiate in earnest. The tying of the Licence Fee to R.P.I., coupled with the appointment of a Director General whose background is resource management, probably helped the BBC to recognise that independents offer the BBC something genuinely useful - control of costs with no loss of quality or editorial control. With Independents the BBC can pare down their in-house operation to its most cost effective size.

ITV has yet to confront any similar fiscal or administrative changes that might induce it to confront reality. On the contrary the short Broadcasting Bill which went through Parliament early in 1987 offered the prospect of a further three year extension to ITV franchises. With the prospect of real competition arriving in the form of DBS, 5th and 6th Channels and the spread of cable, the last thing the companies want during the remaining years of their franchises is the emergence of real competitors to their near monopoly in the supply of programmes. ITV therefore has a strong self-interest in stalling, buying time, as far as the independents are concerned.

In the meantime the companies are using the opportunity provided by the threat of the independents greater efficiency, and measures such as the Employment Act, for a long overdue attempt to get to

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grips with some of the worst trade union restrictive practices to which they have previously turned a blind eye. This is, of course, to be welcomed, by the independents and the BBC almost as much as by the ITV companies themselves - such union practices have serious knock-on effects. Nevertheless we should not attach undue weight to this welcome development. Recent research suggests that while wages are an important factor in ITV costs they are a diminishing element in television inflation; Capital, equipment and material costs are rising faster. The independent, BBC and ITV production costs mentioned earlier would seem to suggest that while union practices must contribute to exorbitant ITV costs the real problem is just as likely to be chronic bad management and the inherent inefficiency of the ITV system itself.

The ITV companies have recently started to suggest that competition already exists, that a market for television programmes is provided by the ITV companies competing between themselves. This is hardly convincing when one considers that there are currently some 2,000 independent production companies who, at the end of the initial two year period proposed by the IBA, will be competing to supply 500 hours of programmes to 16 consumer companies organised into one TV network. In the early days of ITV, Robert Fraser the then Director General of the ITA (as it was then known) deplored the coming of the networking system which still operates today - the absence of outside competition meant that the ITV companies represented a monopoly or cartel. Even allowing for the 1,000 hours independents supply to Channel Four and the new hours coming on stream from the BBC, Independents will continue to face a predominantly buyer's market for some years.

The ITV companies have also hinted that they consider the independents, through their trade associations, are some kind of cartel. That is hardly convincing: the trade associations on my committee represent only about half of the independent producers: the associations do not impose any terms on their members, who demonstrably remain completely free to do deals as they chose; the proposals we put to ITV were only guidelines, not Terms of Trade, were very flexible and have built into them, as a fundamental element, the commitment to phase out all key business elements just as soon as real competition is established.

In the light of the failure of attempts to achieve voluntary agreement on implementation of independent access with ITV my Committee concludes that if Government policy objectives are to be attained on anything like the timescale envisaged in Government statements something more than exhortation and leaving it to the IBA is now called for. Options seem to fall into two categories - short term fiscal measures and slower, longer term, legislative action. The imminent onset of real international competition through DBS etc means that time is of the essence. We therefore suggest that some combination of both types of action will be necessary. /...

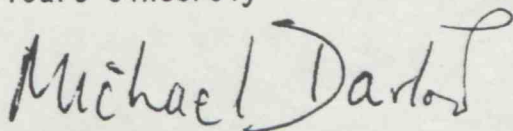


The most obvious short term fiscal instrument is adjustment of ITV Exchequer Levy. In addition to making changes to the rules about offsetting Channel Four programme costs, the Chancellor could remove or reduce the right of ITV companies to claim relief from ITV levy in respect of programme costs other than, say, expenditure incurred in respect of programmes commissioned from independents or contributions to the production of national network news through ITN. The current situation where ITV are able to claim relief against almost all programme costs is widely blamed for poor cost control in the production and facility side of ITV.

Legislative measures will obviously be more time consuming and there must be doubts about what changes could be affected during the life of the current ITV franchises. Legislation could seek to implement the 25% policy, with legal stipulations covering business and trading relationships. This seems potentially complex and inflexible. A more effective alternative means would seem to be a comparatively simple measure making it illegal for the holder of a franchise to sell TV advertising airtime to also produce programmes or own or supply programme production facilities to either himself or others. The Peacock Report hints at such an option in Para. 647. The regulatory mechanisms would remain in place, but real competition in programme supply would be bound to ensue. It is interesting to see that one ITV contractor - LWT - is itself currently evaluating an option whereby it will hive off all its production capacity. This development plus the experience of Channel Four gives reason to believe there need be no fear of loss of programme quality if such legislation were enacted. The number of independent programme suppliers is already growing very rapidly in the expectation of more work in television and I am confident that by the time legislation came into effect the source and quality of programme supply could also be guaranteed.

My colleagues and I would welcome an opportunity of expressing our concerns to you personally and giving you more detailed information about our experiences in dealings with ITV and the BBC than would be appropriate in a letter such as this.

Yours sincerely



MICHAEL DARLOW  
Head of Negotiations

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