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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES
THE PUBLICATION OF INFORMATION ON CONTRACTS BETWEEN
BROADCASTERS AND INDEPENDENT PRODUCERS :

MISC 128(88) 3

DECISIONS

1. You will wish the Group to reach a clear view on
 - i. whether the Trade and Industry Secretary's proposals for requesting the broadcasters to submit six monthly reports to the Office of Fair Trading about the contracts concluded with independent producers are on the right lines; and
 - ii. whether the initial approach to the broadcasters should be made by the Home Secretary or by the Office of Fair Trading.
2. You may also wish to make the point that nothing should be said publicly about the introduction of six monthly reports until after the broadcasters have been approached about this.

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BACKGROUND AND MAIN ISSUES

3. MISC 128 agreed at their last meeting (MISC 128(87) 5th Meeting, Minute 2) that the Home Secretary should make known the Government's acceptance of the undertakings by the BBC and IBA for achieving the 25% target for independent productions by 1 January 1993. They also endorsed the Trade and Industry Secretary's advice that workable new legislation to ensure fair terms of trade between the broadcasters and independent producers would be difficult to construct and that, while the possibility of legislation should certainly not be renounced, the existing machinery provided by the OFT should be used to the fullest extent. At the time of the last meeting, the Independent Access Steering Committee (IASC), representing independent producers, had reached complete agreement with the BBC on a framework document on terms of trade, but they had broken off negotiations with the ITV Association. Mr Darlow of IASC had written to Ministers complaining that the ITV companies were not prepared to reach a sensible agreement and asking how the Government proposed to take this forward.

4. The meeting recognised that, while an independent producer could complain to the OFT about a particular contract if he felt that a broadcaster had abused its monopsony position, independent producers were unlikely to take this route in practice (fearing, no doubt, that

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This is more a matter of intellectual property rights & without referring to post-hoc competition.

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it could provoke victimisation). The Trade and Industry Secretary proposed therefore that the broadcasters should be asked to provide six monthly reports to the OFT containing details of contracts with independent producers. The purpose of this would be to enable the Director General of Fair Trading, who has a general duty under Section 2 of the Fair Trading Act 1973 to keep commercial activities under review with a view to becoming aware of monopoly situations etc., to consider whether competition was being distorted and whether a monopoly reference might therefore be appropriate. Both the BBC and the IBA already plan to monitor individual contracts, so a requirement on them to submit reports to the OFT should not be unduly onerous.

5. The idea of six monthly reviews had surfaced only a short while before the meeting and the Home Secretary, in particular, had not had an opportunity to reflect on it. However, there was general agreement in the Group that it seemed a sensible way forward and the Trade and Industry Secretary was invited to work up the details. This has taken some time, and meanwhile a substantive reply has not been sent to Mr Darlow because DTI have felt that the scheme for six monthly reports is one of the most significant things that can be

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told to IASC. It is clearly important, however, that nothing be said to the independents about this until after the broadcasters have been approached about the proposals.

6. The proposals set out in the Trade and Industry Secretary's memorandum for requiring the broadcasters to submit regular reports are very much along the lines of those canvassed at the Group's last meeting. One issue which has caused some difficulty was whether the reports should be made public. The Trade and Industry Secretary suggests that in many respects it would be commercially improper to publish them; but you may wish to probe whether there is any scope for publishing at least some of the details without disclosing the names of the companies involved.

7. The remainder of the package seems on the right lines and the Chancellor and the Home Secretary are likely to be able to endorse it without difficulty. The Home Secretary may suggest that an approach by him to the broadcasters to ask them to furnish the necessary reports would run some risk of an embarrassing rebuff, and that it would be better therefore for such an approach to be made through the OPT. You will probably wish to support the Home Secretary's judgement on how best to handle his relations with the broadcasters on this.

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8. If the broadcasters decline to provide this information, the memorandum suggests that this might in itself be of interest to the OFT. But you may wish to probe with the Trade and Industry Secretary to what extent the OFT could, if necessary, require the broadcasters to come forward with the necessary details.

HANDLING

9. You will wish to invite the TRADE AND INDUSTRY SECRETARY to introduce his paper. The HOME SECRETARY, in particular, will have comments.

AJL

A J LANGDON

5 February 1988

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