

From: THE PRIVATE SECRETARY

CCPS



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

5 October 1988

Dear Dominic

*not seen by DM
file copy attached*

BROADCASTING WHITE PAPER

You may have noticed that there was an error in paragraph 3 of the Home Secretary's minute to the Prime Minister of 4 October. In the fourth sentence the words "divided stream" should read "dividend stream". Apologies for the mistake.

I am copying this letter to the Private Secretaries to recipients of the Home Secretary's minute.

*Yours
Catherine*

MISS C J BANNISTER

Dominic Morris, Esq.



CCP/6
CCP/54

PRIME MINISTER

BROADCASTING WHITE PAPER

top enc.
I am grateful to you for your comments on the draft White Paper as conveyed in your Private Secretary's letter of 28 September. Now that we can see the package of reforms as a whole for the first time I recognise the case for making some adjustments to it. I have gone through the same process myself. I discuss in turn below the points you raise.

News Provision on Channel 3

2. The draft White Paper envisages, in paragraph 11 of Chapter VI, an obligation on each Channel 3 station to show news and current affairs. Since this is, and is likely to remain, the most popular channel in competition with the BBC, I believe we need to be more explicit about this. We should make clear that the obligation should be to show high quality news and current affairs dealing with national and international matters, and that the ITC should have a duty to ensure that the news (and possibly also current affairs) is shown during the main viewing periods. We want to avoid the possibility that licensees might shuffle news into the non-peak hours - say in the middle of the afternoon or very late at night. On the other hand, we must be careful not to reintroduce the whole panoply of bureaucratic regulation of scheduling which the present system entails, and which we are agreed ought to go.

3. This would meet some of our objectives, but, like you, I believe there is a strong case for going further to ensure that there are adequate institutional arrangements to provide a news service which, at the level of quality achieved by the ITN, is necessarily expensive. A modified version of section 22 of the Broadcasting Act 1981 would impose a duty on the Independent Television Commission (ITC) to ensure that there was at least one body effectively equipped and financed to provide news on its Channel 3 service. Channel 3 licensees would be required to finance the organisation and in exchange would have the opportunity to own shares in it. The organisation should provide news to Channel 3 licensees under an arm's length service contract, incorporating a profit margin sufficient to generate a divided stream. However, whereas the present ITV contractors hold all the shares in ITN - and the fact that they will not automatically cease to do so if they lose their franchises complicates the position - I agree that under the new provision shares, perhaps a majority, would eventually be held externally, by companies without licences on any television channel. It may be necessary for the licensees to hold the majority of shares initially until a record of trading has been established; the shareholding should then be widened to bring in external shareholders. The ITC would have powers to ensure that the news service provided by this body was shown by the stations and, as already mentioned, that this should be at proper times.

4. I attach a revised passage covering these points (Chapter VI, paragraph 12). If colleagues agree to this approach I believe we should drop as no longer needed the suggestion in paragraph 14 of Chapter VI of the White Paper that one of the licences offered for Channel 5 would be for a service with a substantial proportion of news and current affairs among its output.

BBC Night Hours

5. In my minute of 19 August I explained the case for allowing the BBC to retain the night hours on both channels on the basis that this would assist in moving the BBC over to a subscription basis. But there is a case for removing one of its channels to reduce its dominant position and to avoid the risk that it could become the market leader of subscription services. The Trade and Industry Secretary has already expressed doubts about the approach I canvassed and I would be content, if that reflects the general view of colleagues, to revert to our earlier decision to remove the night hours from the BBC on one of its channels. Probably the best way of doing this would be to hand the frequency to the ITC who would allocate it by competitive tender, on a similar basis to the night hours on Channel 3. The BBC would then have to do its best to introduce subscription on its remaining channel, though whether it found it best to proceed through further specialised services like its present one to doctors or by more general entertainment channels is something we might leave to them. Obviously our ability to reduce the licence fee in recognition of subscription income would be less than it would otherwise have been, but we can nonetheless make it clearer that replacement of the licence fee is our overall objective. I do not myself believe that we should be able to achieve this objective quickly, but until we have some experience of subscription there can be no certainty about this.

6. I attach a revised passage for Chapter III.

Channel 4

7. I welcome your view that the White Paper should set out options as to the future constitution and structure of Channel 4. It is already clear that when the White Paper is published much attention will be focussed on our proposals on this. I am myself increasingly conscious of the need to

ensure continued and adequate competition for the BBC and its audiences across the full range of programming (including quality programming). We have all agreed that Channel 4's special remit must be preserved. We need to make sure that Channel 4 provides a bulwark of quality broadcasting in the independent sector which stands comparison with the BBC. While we agreed that advertisements on Channel 4 must be sold separately from those on Channels 3 and 5, which is the main change which the advertisers want to see on Channel 4, there are of course different ways of achieving it. I attach a revised passage setting out a rather fuller discussion of the options for constitutional change for this purpose. My own view remains that Channel 4 should stay as a non-profit making body, and that a fully commercial entity would find it difficult to fulfil its special remit. Having, like you, looked at our proposals in the round, and thought further about the likely course of public and Parliamentary debate on quality, I hold this opinion more strongly than before, but am content that we should at this stage simply describe the options.

Transmission System

8. I have looked again at what the draft White Paper says about transmission. As to the BBC, I agree we could go further than officials proposed and that we should convass a provision, parallel to that envisaged for the ITC, requiring the BBC to contract out as far as possible the operation of its transmitters. If the White Paper says that is what we want to happen, there is a reasonable prospect that the BBC will proceed to do it without waiting for legislation, and we could take a final decision on whether it is necessary to include a specific provision in the Bill nearer the time. I am persuaded that while the present Charter is in force - until the end of 1996 - it would be difficult to go further and to require the BBC to divest itself of transmission sites, transmitters and associated equipment. This is because the Charter expressly authorises the BBC to establish and use transmitting stations.

9. As to the ITC, you question whether the ITC should own the transmitters. Paragraph 5 of the Official Group's report (MISC 128(88)11) suggests that it would be sensible for the ITC to take over the transmission infrastructure (e.g. sites and masts) presently owned by the IBA (and accordingly in the public sector). They argue:

"The extent to which the IBA's network is entwined with that of the BBC makes it impractical to contemplate privatisation of the infrastructure until the Corporation's Charter comes up for renewal."

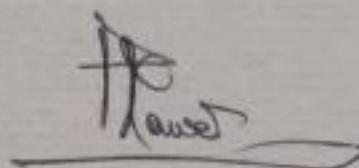
10. It might be possible to go beyond this and to transfer the IBA's assets to private sector contractors appointed by the ITC. But it is not clear to me that there is much purpose in doing so when we can achieve our main objectives by other means: namely requiring the ITC to contract out the operation of servicing of the transmission system. Going further would create real practical problems. These stem from the fact that there are relatively few UHF transmitters, that all existing aerials are directionally attuned to them, and that the IBA/BBC system is, for good technical reasons, intertwined. For example, it would be difficult, on that approach, for the ITC to replace a transmitter contractor, perhaps because of incompetence, unless of course the departing contractor were required to sell the sites etc to the newcomer, in which case his "ownership" would effectively be a sham. It would be worse if the dismissed contractor were able to retain the infrastructure given the inter-relationship with the BBC and the fact that the present transmitters occupy the most suitable sites and that aerials are aimed at them.

11. Accordingly I believe that in the case of the ITC, too, we should await the review of these arrangements when the BBC Charter falls in at the end of 1996. I attach a revised version of the Chapter which reflects my view that we could require the BBC, as well as the ITC, to contract out

the operation of the transmission function. The passage also makes it clear that when the ITC and the BBC do contract out this function it should be to more than one private sector operator: our objective should be to foster the development of a competitive private sector transmission capacity.

12. I thought it would be helpful to circulate these revised passages straightaway, without waiting to make the consequential editorial changes in the rest of the text. I hope that they, together with the draft as a whole, will commend themselves to you and to other colleagues and that we can consider them at the forthcoming meeting of the Ministerial Group.

13. I am sending a copy of this minute to the other members of MISC 128, to the Foreign Secretary, the Secretary of State for Education & Science and to Sir Robin Butler.

A handwritten signature in dark ink, appearing to read 'Hawes', with a long horizontal flourish underneath.

APPROVED BY THE HOME SECRETARY
AND SIGNED IN HIS ABSENCE

4 October 1988

NEWS SERVICES ON CHANNEL 3

CHAPTER VI, PARAGRAPH 12

12. Taken together these requirements will ensure that Channel 3 helps forward the main objective of enlarging viewer choice. The first reflects the Government's agreement with the Home Affairs Committee (paragraph 171 of their Report) that the regional basis of what will become Channel 3 is crucial. The third will ensure - on the same basis as for national commercial radio services - that the Channel is not monopolised by programmes of appeal to only a single target audience. The fourth and fifth will ensure a competitive programme production market. It will be open to Channel 3 licensees to contract out all their programme making if they find it efficient to do so. The second requirement, concerning news, would in itself do much to ensure that the public does not lack opportunities to keep itself informed. However, the Government believes it necessary to go further, in the case of Channel 3 alone, to ensure that there is adequate competition to the BBC and to guarantee the continued availability of a high quality news service of the kind which ITN has provided throughout the existence of the ITV system. ITN has its existence by virtue of section 22 of the Broadcasting Act 1981, which requires there to be at least one news organisation in which each ITV contractor must be given opportunities to invest. The Government intends to

retain this provision in modified form: it will impose a duty on the ITC to ensure that there is at least one body effectively equipped and financed to provide news on its Channel 3 service. Channel 3 licensees would be required to finance the organisation and in exchange would have the opportunity to own shares in it. However, whereas at present all ITN shares are held by ITV contractors, under the new provision some shares would be held externally, by bodies without licences on any television channel. The Government envisages that eventually a majority of shares might be held by non-licensees. The detailed arrangements require further study and consultation, but one approach would be as follows. Initially the Channel 3 licensees might hold the majority, or all, of the shares in the news organisation or organisations. The supply of news to Channel 3 would be governed by a service contract which would, unlike the funding for ITN at present, include a profit element to establish the organisation's commercial value. The ITC would be under a duty, at the appropriate time, to ensure that some, perhaps the majority, shares were sold to non-licensees. No external investor should hold more than 5% of the shares. Although not having general control of scheduling, the ITC would have powers to ensure that the news service provided by one or more of the news organisations was shown by Channel 3 stations and, as already indicated, that this should include exposure during peak viewing times. As a necessary safeguard, the ITC would have power to withdraw, after adequate notice, its approval of a news organisation which failed to deliver an acceptable service.

BBC NIGHT HOURS

CHAPTER III, PARAGRAPHS 12, 13 AND 14

12. As new television services proliferate the system of financing the BBC television and radio services by a compulsory licence fee alone will become harder to sustain. Though the Government accepts the advice of its consultants that a sudden, wholesale switch to subscription would be undesirable and damaging, there should be a greater role for subscription. The Government looks forward to the eventual replacement of the licence fee, the timing to depend on experience gained of the impetus and effects of BBC and other new subscription services. So the Government has decided that the right course for the present is to encourage the progressive introduction of subscription on the BBC's television services. Account will need to be taken in due course of the implications for financing of BBC radio services.

13. The Government accordingly proposes to authorise the BBC to encrypt its services so that it can raise money through subscription. The extent and pace of the move towards subscription will be for the BBC to judge in the first instance. But the BBC will have in mind the objective of replacing the licence fee; and, to provide a financial incentive, the Government intends after April 1991 to agree licence fee increases of less than the RPI increase in a way which takes account of the BBC's capacity to generate income from subscription. The Government has informed the BBC of these decisions and will be discussing the details further before firm targets are set. The Government proposes to authorise the BBC to run subscription services during the night hours. The BBC [has already started] [plans to start soon] a downloaded service, in conjunction with a commercial partner, British Direct Television, providing information for the medical profession. It plans to run other similar services, and also to move into entertainment services, catering for particular tastes and interests, drawing on its programme archives. It will be for the BBC in this area, as more generally, to decide the best mix of programme services within the framework of financial incentives laid down.

14. The Peacock Committee proposed that the night hours (1 am to 6 am) should be removed from the BBC and other broadcasting authorities and sold for use to provide new services by the highest bidder (paragraph 652). There is, however, scope for new services to be provided in other ways. Removal of the night hours on both its channels would make it hard for the BBC to introduce subscription without running the risk of depriving viewers of valued programming which they had been accustomed to receive free. It would also hamper the BBC's plans for building substantially on its initial downloading experiment in a way which offered the prospect of substantially widening viewer choice and establishing a firm base for subscription technology. However the Government accepts the case for removing the night hours from one of the BBC's channels, and assigning it to the ITC (see Chapter VI, paragraph 14). The Government therefore proposes to allow the BBC to retain the night hours of one of its channels, on the basis that it uses it as fully as possible for developing subscription services.

CHANNEL 4

CHAPTER VIII, PARAGRAPH 23

23. The Government accordingly believes that Channel 4's special role is best fulfilled by an independent organisation subject to ITC oversight, but without direct financial or structural links to the Channel 3 licensees. The ITC would be responsible for transmitting the service, as explained in Chapter IX. Advertising will be sold separately from the advertising on Channel 3 or other channels; while this is probably best made the responsibility of Channel 4 or the ITC it might in practice choose to contract this out. But there are a number of different constitutional models which might meet these objectives, and the Government would welcome comment on the best way forward. The following list of options is intended to be illustrative rather than exclusive:

(i) The service on the Fourth Channel could be provided by a private sector company licensed by the ITC in much the same way as services on Channel 3. On this approach the programme remit would need to be clearly expressed in the form of licence conditions which the ITC would need to enforce rigorously. The licence could then be awarded by competitive tender, as described in paragraph 15. In particular it would be necessary to ensure that the Channel should continue to provide a service which, as well as being innovative and experimental, addressed a wide range of minority tastes. However, an express requirement that it should be different from all services licensed by the ITC could not sensibly be laid down as a licence condition. The Channel would be given the freedom to recover the costs of fulfilling its programming remit by its own efforts in selling air time, charging subscription or raising funds through sponsorship.

(ii) Channel 4 could remain as a non-profit making body, in the form of a subsidiary of the ITC, but again made self-sufficient in funding through the sale of advertising, subscription and sponsorship. Additionally, while Channel 4 could be funded in the first instance from its own efforts in raising money through advertising, sponsorship or subscription, this could be on the basis that the ITC would have a reserve power to top this up if necessary, to reach a predetermined minimum level, the money coming from the proceeds of competitive tender or a precept on independent television companies.

(iii) Channel 4 could remain as a non-profit making body, in the form of a subsidiary of the ITC, but instead of being made self-sufficient its revenue could be determined independently, as it is now, of its audience share or its success in raising money through advertising, subscription or sponsorship. Various mechanisms could be devised to achieve this outcome. For example, Channel 4's income could be determined by the ITC subject to Government approval by a formula, perhaps expressed as now in the form of a percentage of the advertising revenue of Channels 3, 4 and perhaps 5, combined. The money would come from advertising on Channel 4, the sale of which would be contracted out to a private sector operator independent of any ITC licensee. This would be supplemented if necessary by the proceeds of the levy, and any surplus would be creamed off by the ITC and applied to the revenue for the Welsh Fourth Channel. Channel 4's management would accordingly have no financial incentive to chase the ratings or to enlarge its audience at the expense of Channel 3.

There are competing considerations: a fully privatised Channel 4 would have greater incentives to efficiency and the Government believes this approach would be practicable; but there are fears that if Channel 4 were operated by a profit maximising private company concern about its revenue would put powerful pressure on

its adherence to its special remit, and on any regulatory structure designed to secure such adherence. On the other hand if Channel 4 remains in the public sector, and particularly if it does so under an arrangement which, like the present system, guarantees its income and accordingly insulates it from any market disciplines, then the incentive to efficiency will be diminished and, in programming matters, it may be vulnerable to sterile elitism or precious self-indulgence. The Government would welcome views on these and other possible arrangements from the industry, other interested parties and from viewers.

<mg>Min/Pas/Chan4

CONFIDENTIAL

IX: TRANSMISSION

1. The transmission networks run by the BBC and the IBA give a highly effective service to the public. They reach 99.4% of the households in the UK, providing them with a reliable, high quality signal. This is a considerable engineering achievement, and it is highly regarded internationally. As broadcasting enters a more competitive phase, the Government intends to see that high technical standards are maintained, while opening up transmission more to private sector competition.

2. Overall responsibility for spectrum management must remain with the Government. The Government believes that the ITC should have responsibility for frequency planning for all non BBC services and for overseeing the transmission of all national or quasi-national independent UHF services (ie Channels 3, 4, 5 and, possibly, 6). The Government considers that there are clear advantages in retaining a single body with responsibilities to arrange the transmission of these services, particularly as there will be a number of licensees using the frequencies in different areas, or at different times of the day or week. It will make it easier to plan the use of frequencies in such a way as to maximise coverage. There are advantages for viewers in an integrated UHF transmission system for all independent services operating from a minimum of sites, since this will reduce the likelihood that they will need different aerials for different services. The Government believes, however, that the ITC should discharge this responsibility as far as possible through private sector transmission contractors chosen periodically by competitive tender. The ITC should have a number of different contractors, each operating in a particular part of the country, with the aim of fostering a competitive transmission industry in the private sector. Its role will be mainly to appoint the contractors and monitor their performance. The Government sees merit in principle in privatising the ownership of the transmission infrastructure as

a whole but believes this is difficult at present given the way in which the IBA's system is entwined with that of the BBC. However, it envisages that this issue will be reviewed when the BBC Charter comes up for renewal at the end of 1996.

3. Under the existing arrangements the IBA owns and operates the uplink for its DBS contractors. The Government believes that DBS licensees should in future be responsible for the uplink themselves along with the rest of their transmission system (ie the satellite). The IBA is presently constructing the uplink for British Satellite Broadcasting and will operate it while the law remains as it is. The Government will discuss the transitional arrangements with the parties concerned.

4. The BBC's transmission responsibilities are reflected in its Charter which lasts until the end of 1996, and the Government does not wish to question the BBC's continuing transmission role, at least in that period. The advent of new services will, indeed, open up new commercial opportunities for the BBC. The Government hopes that the BBC will make the best of these opportunities by offering a transmission service to other broadcasters on a commercial basis, and the BBC has indicated its interest in pursuing that. In the same way the BBC should test the market for the operation by others of its transmission system. The BBC has already tested the market for a range of support services as part of its general policy of devoting as great a proportion as possible of its resources to programme making. The Government sees advantage in it adopting the same approach to the transmission area too. Accordingly, while it wishes to consult the BBC about the approach, it envisages that the BBC should contract out to the private sector, as far as possible, the operation and servicing of its transmission system; and the Government will keep in mind the possibility of legislating to that end. As in the case of the ITC, the Government expects the BBC to engage a number of transmission contractors. That approach

is compatible with the BBC, at the same time, offering a transmission service to other broadcasters, for example the new national commercial radio services and those wishing to offer an MVDS delivery service. The Government appreciates that there is some risk that because of its dominant position as a vertically integrated national broadcasting organisation the BBC may be able to undercut commercial competition for transmission contracts. It will keep under review the extent to which market distortions, through pricing policy or otherwise, arise and if necessary will seek remedies under the competition legislation.

5. The holders of local delivery franchises will be responsible for making their own transmission arrangements, though they will be subject to ITC oversight, especially since it will be responsible for planning, and for providing advice to government on co-ordination and international clearance for the use of the relevant frequencies. It will be open to operators to have an in-house transmission operation, or to make arrangements with a private sector company, with the BBC or the ITC, or any combination of these.

BROADCASTING: BBC Finance Pt6.

