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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES (MISC 128)

BROADCASTING WHITE PAPER

CONCLUSIONS

1. You will wish the Group to reach a clear view whether the draft White Paper circulated by the Home Secretary on 14 September, as amended by the revised passages he circulated on 4 October, is now ready to go forward to the Cabinet.

2. Subject to the Group's agreement, the White Paper will be considered by the Cabinet at the meeting on 27 October and published as soon as practicable thereafter, during the overspill. (The precise day of publication is still being considered by Mr Ingham, as part of the programme for early announcements.) At this meeting of MISC 128 the Education Secretary will be present, and the Foreign Secretary will be represented by Mrs Chalker. This, rather than Cabinet, is the occasion for them to register any comments.

3. There have been some changes of direction since MISC 128 last met and you will wish to be satisfied that the overall balance of the package has now come out right. You will particularly wish the Group to reach decisions on the following outstanding policy issues, which are discussed under "Main Issues" below.

- a. Local services and transitional arrangements for cable operators.
- b. Transmission.
- c. Should the new franchises for commercial services be for fixed periods or open-ended?
- d. ITN and the provision of news services on Channel 3.
- e. Subscription and night hours services.
- f. Options for Channel 4.

BACKGROUND

4. The present review of broadcasting policy started with the Peacock Report in July 1986. Legislation must be enacted in the 1989-90 session to enable new arrangements to take over from the present ITV franchises at the end of 1992. The main decisions so far taken by the Group, and reflected in the draft White Paper are

- (i) the introduction of competitive tendering and the lifting of public service broadcasting requirements from Channel 3;
- (ii) the replacement of the IBA and the Cable Authority by a new Independent Television Commission;

- (iii) the authorisation of a new Channel 5 and, possibly, a new Channel 6;
- (iv) the provision of an enabling framework for technology-neutral local services, embracing both cable and MVDS;
- (v) the enablement of subscription on both the BBC and independent television;
- (vi) strengthened "consumer protection" on programme standards; and
- (vii) provision for the deregulation and expansion of radio under a new Radio Authority.

5. The fundamental issue throughout this policy review has been to strike the right balance between, on the one hand, deregulation, efficiency and competition and, on the other hand, the protection of broadcasting standards where they really matter. You have insisted on the establishment of a Broadcasting Standards Council to oversee the portrayal of sex and violence and you are concerned that the new regime should encourage ITN to continue to provide the news service on Channel 3, so that there is a reliable counterpoise to the BBC in that field. The final balance of the White Paper will be settled by what is said about Channel 4 and the future of the BBC, since these will be seen as the key to the general quality of television in the UK. Many opinion-formers regard British television as being of very good quality in

comparison with foreign systems, and will allege that deregulation in France and Italy has led to the lowering of standards there. They will argue that the BBC and Channel 4 constitute our bastion of high quality television which should be fully protected if deregulated competition is allowed to rule elsewhere in the system. You will wish to balance those arguments against the need to be seen to be exposing the BBC and Channel 4 to more of the discipline of the market, through making a real start with weaning the BBC off the licence fee, and developing a financial structure for Channel 4 that does not encourage it to indulge in extravagance at other people's expense.

MAIN ISSUES

(a) Local services and transitional arrangements for cable operators (Chapter VI, paragraphs 31-39, pages 47-52 of main text of White Paper)

6. These proposals for a "technology neutral" regime for local services, including the way in which existing cable operators might opt in to the new arrangements, have been worked-up since the last meeting of MISC 128. The substance should be fully acceptable to all members of the Group, and you will probably not wish time to be taken up with a detailed discussion. On presentation, however, Lord Young has commented, in his letter of 3 October, that the transitional arrangements are clearly going to be difficult and controversial, that this part of the White Paper has particularly "green edges", and that it may be necessary to adjust the transitional arrangements in the light of responses to the White Paper. He therefore suggests that the Government should seek to put a term on the period of uncertainty in the cable industry by committing itself in the White Paper to publish a

further document, setting out firm proposals for local services, not more than about 2 months after the end of the consultation period. You may wish to check that the Home Secretary, and other members of the Group, agree with Lord Young about this.

(b) Transmission (Chapter IX, revised text of White Paper)

7. Your Private Secretary's letter of 28 September conveyed your wish for further consideration to be given to this topic, and in response the Home Secretary has tabled a revised passage canvassing a provision requiring the BBC to contract out the operation of its transmitters as far as possible. You will wish to consider whether this goes far enough to meet your concern that neither the BBC nor the ITC are really appropriate to own transmitters or otherwise be in the transmission business, and that there should be a fair deal for new entrants.

8. While it is common ground in the Group that the operation of the UHF transmission system should be privatised as quickly as possible, there are two problems about the future ownership of the infrastructure that is currently shared by the BBC and IBA. First, the BBC Charter, which runs until 1996, specifically authorises the BBC to establish and use transmitting stations. Second, no policy has yet been worked-out for the regulation of a privately-owned transmission infrastructure, though some guarantee would presumably be needed against an inadequate service. (The Peacock Committee side-stepped this question by proposing a Broadcasting Transmission Authority, but that would simply be another public sector authority.)

9. The Official Group (MISC 128⁹) considered that the IBA and BBC transmission systems were so intertwined that it was impossible to privatise the IBA system alone, and that insisting on contracting out the operation of the system was all that could be done until the Charter runs out. The Home Secretary (and, I believe, the Chancellor of the Exchequer) accept this advice, though as a result of your intervention last month, the Home Secretary now acknowledges that it will be possible to require - rather than simply to ask - the BBC to contract out the running of the system to private operators. Lord Young, however, may well revert to the suggestion in his letter of 3 October that the BBC should be invited to allow the Charter to be amended now, so that provision for the whole UHF transmission infrastructure to be privatised could be included in the new legislation. The Home Secretary will oppose this, on the grounds that the future of the Charter is a high political matter, and that it would be tactically unwise to ask the BBC for their agreement to nibble at it piecemeal. He may also point out that the Government would be on poor ground to ask the BBC to dispose of its transmitters until it has developed proposals for the oversight of a privately-owned infrastructure. While a policy on this will be needed before 1996, it is not in existence now.

(c) Fixed or open-ended franchise periods? (Chapter VI, paragraphs 18 and 33, pages 40-41 and 48 of main text of White Paper)

10. At the Group's previous meeting Lord Young argued that Channel 3 licences (and by analogy other independent television licences) should be of unlimited duration. This was because, during the final years of a fixed term contract, there would be

little regulatory or market discipline over the franchise holder, since the company could in practice ignore any strictures from the regulatory authority without fear of losing its licence and similarly there would be little risk of a takeover during this period. The Home Secretary, on the other hand, was concerned that, with unlimited licences, it would be very difficult to make any changes to the system, for example, to adjust either the geographical boundaries or the time-slots operated by the different licence-holders. The Chancellor of the Exchequer was concerned that with unlimited licences the exchequer would benefit only once from the competitive tender procedure. In summing up the discussion, you suggested that it might be necessary for the White Paper to set out both sides of the argument. Paragraph 18 of the Home Secretary's text is drafted accordingly, but expresses a preference for a fixed term of 8 years, subject to considering any views that might be expressed before the legislation is drafted. Lord Young's letter of 3 October, however, repeats his preference for open-ended licences, and asks that the arguments in paragraph 18 should be reversed so as to express a strong presumption in favour of the open-ended approach.

11. So far as we know, the position remains that the Home Secretary and the Chancellor are content with the present draft (though they would ideally prefer to announce a clear decision in favour of fixed term licences) while Lord Young will argue for precisely the opposite approach. When this topic came up at your bilateral with the Home Secretary on 27 September the Home Secretary recalled how the present drafting of the White Paper was

decided at the last MISC 128 meeting as a deliberate compromise designed to accommodate the difference of views in the Group, and you agreed with him that the present draft paragraph 18 was right. You will probably wish to stand by the Home Secretary on this matter, therefore, unless some totally new point should be injected into the discussion.

(d) ITN and the provision of news services (Chapter VI, paragraph 12 of revised text of White Paper)

12. Throughout the Group's work you have been concerned that the new arrangements should not so undermine ITN that the BBC were presented with a virtual monopoly of television news. The arguments for freer competition in the provision of news, were, however pressed by other members of the Group, particularly the Chancellor, and at the meeting on 9 February you summed up that the Group were content in principle that ITV companies should be given the option to untie themselves from ITN, provided that there was an effective mechanism for ensuring that the BBC did not develop a monopoly in the provision of news programmes. By the time that this decision was incorporated in the first draft of the White Paper, however, the depth of competition that could be foreseen between Channels 3 and 5 and the various satellite services had become more apparent, and this added force to your original anxieties. You therefore asked the Home Secretary to reconsider the matter, and he has produced the revised text which broadly proposes the maintenance, for Channel 3 alone, of the present statutory underpinning for ITN. The Chancellor's letter of 6 October to the Home Secretary, however, records his preference for the decision that the Group took earlier in the

year. You will doubtless wish to make it clear that you fully support the thrust of the Home Secretary's second thoughts, and you may wish to comment that the broadcasting environment has changed since the Group took its provisional decision in favour of enabling contractors to untie from ITN.

13. You will also wish to consider whether the Home Secretary's proposals for bringing outside shareholders into ITN are acceptable. You will recall that at your bilateral with him you expressed a preference for outside shareholders being in the majority, since the television companies were not altogether reliable. In his new draft paragraph the Home Secretary is proposing that a majority of outside shareholders is an eventual aim, that detailed arrangements will require further consultation, but that one model would be for the new legislation to start with Channel 3 licencees holding the majority, or all, of the shares in the news organisation, with the ITC being under a duty to ensure the selling of shares to outsiders at a later time. It would clearly be impracticable to insist on an outside majority from the start, and you may think that the Home Secretary's draft represents a reasonable approach.

(e) Subscription (Chapter VI, paragraph 44, page 55 of main text: Chapter III, paragraphs 12-14 of revised text)

14. At their meeting on 17 December 1987 the Group agreed that the BBC should be empowered to charge subscriptions, that this should be reflected in the level of the licence fee from 1991 onwards and that the BBC should lose one of its night-time channels, the franchise for which should be awarded by the ITC on

the basis of a competitive tender. They also agreed that independent television should be empowered to charge subscriptions, that the night hours on Channel 3 should be the subject of separate licences, and that Channel 4 should be allowed to retain its night hours. In his minute of 19 August the Home Secretary suggested that the use of only one channel of night hours would provide an insufficient basis to push the BBC very hard down the road to subscription, and he proposed that the BBC should therefore retain both its channels at night, on the presumption that it would use them for subscription services. You believed, however that this would simply serve to increase the BBC's dominance, and perhaps make it a market-leader in subscription, and the Home Secretary has therefore reverted to the original proposition that the BBC should keep only one channel of night hours, subject to the Government's intention 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."

15. Since subscription is seen as the route for the eventual abolition of the licence fee, the main question is the balance between that long-term objective and the operating latitude that the BBC are given in the meantime. Enabling the BBC to carry out extensive subscription experiments may carry risks but there seems to be no other line of attack on the licence fee. (You may wish to note that paragraph 12 of the revised draft says that "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.").

16. The Chancellor and Lord Young will want to raise rather different points on subscription.

(i) Lord Young is content that one set of night hours on the BBC will be a sufficient "soft start" with subscription, but he is very concerned that the BBC apparently intend to use their night hours for specialist services such as the one proposed for doctors. He does not believe that this would represent an adequate trial of subscription, and he believes that it is in any event a very wasteful use of scarce spectrum. The Home Secretary, on the other hand, has so far tended to take the line that the BBC should be allowed to experiment with subscription in whatever way they like, under the spur of the Government's pressure on the licence fee.

(ii) The Chancellor fears that subscription experiments confined to one set of BBC night hours will be too limited to move subscription along as fast as the Government wishes, though he would like to see the White Paper threatening an actual reduction in the licence fee to reflect the possibilities of subscription. In order to stimulate subscription, he would like the White Paper to keep open the option of requiring some of the new commercial services to be financed by subscription (which, we believe, could probably only be achieved by prohibiting advertising). You may remember that your first reaction to the night hours proposals was that such restricted experiments would not be a convincing

demonstration of subscription, and to that extent you may sympathise with the Chancellor's approach. But the idea of overriding operators' commercial judgement by a requirement for subscription financing would be a large change for the Group to accept at this late stage. The Group will particularly need to consider the implications for BSB if competition for the subscription sector of the market were stimulated by the Government; and whether it would be reasonable to accept the loss of advertising outlets that a requirement of subscription financing would carry with it.

17. All these strands of argument about subscription ultimately depend on assumptions about technological advance in this field, and the speed at which it will be accepted by the public. This scene is changing very fast. You may, therefore, first wish to ask Lord Young to bring the Group up to date on the present intentions of Astra and BSB, and the likelihood of the public being accustomed to pay-as-you-view television before 1993.

(f) Channel 4 (Chapter VIII, paragraph 23, revised text of White Paper)

18. The Group have had a number of discussions about Channel 4, and various financial structures for it have been proposed. The Home Secretary feels strongly that privatising Channel 4 as a profit-making company would inevitably drive its programming down-market, and Lord Young has agreed with that view. The Chancellor, on the other hand, has consistently argued that full privatisation is the only effective route to efficiency, and that Channel 4's remit could be effectively policed by the regulatory body. At the

Group's previous meeting it was confirmed that the distinctive Channel 4 remit must be preserved, and that the channel should sell its own advertising, but no further decisions were taken.

19. In his original text of the White Paper the Home Secretary exposed the options of full privatisation and of a non-profit-making body whose income would be topped up by the ITC (from the Channel 3 contractors) if its own advertising revenue was insufficient to support the remit. You discussed this in detail with the Home Secretary in your bilateral with him on 27 September, emphasising that you would be very concerned with any proposal that enabled Channel 4 to live extravagantly and then put its hand in other people's pockets. The Home Secretary, on the other hand, said that he felt more and more strongly that a convincing guarantee of the Channel 4 remit would be a vital factor in the White Paper's reception, and you finally agreed that the White Paper should canvass a range of options. The Home Secretary's revised text therefore illustrates his original two options plus a new variant that is very close to the present arrangements, but with Channel 4 selling its own advertising. The Chancellor has commented that this last option would surely give Channel 4 too little incentive for efficiency.

20. Your Private Secretary's letter of 10 October also suggests that it would be helpful if the options displayed in the White Paper were expanded to include the possibility of a private company which incorporated both Channel 4 and Channel 5. That approach would help in the creation of a commercially viable

"third force" able to stand alongside the BBC and Channel 3.

21. As you may know, the idea of a link between Channel 4 and Channel 5 is one of the options being canvassed by Channel 4 (notably Mr Michael Grade) as possible ways of safeguarding their remit. Channel 4's main anxiety is that their present good performance in securing advertising revenue is no guide to what will happen in the far more competitive environment that is taking shape. They fear that the additional competition of advertising on satellite and on Channel 5 will simply mean that there will not be enough advertising money to support their remit, and that some additional source of finance therefore needs to be tapped. If some form of subscription from the rest of the independent sector cannot be maintained, then Channel 4 believe that they would be better able to protect their distinctive remit if they were twinned with Channel 5 than if they were forced to stand on their own two feet.

22. While there is an attractive ring to the idea of a "third force" that would include quality programming and would stand against the BBC, you may wish to be cautious about endorsing this model too specifically. While one can understand Channel 4's reasons for proposing it as a second best option, it is not clear what wider advantage there is in wrenching Channel 4 away from its link with Channel 3, simply to amalgamate it with Channel 5. The prospective regional contractor on Channel 3 might well feel that he faced disproportionate competition from a combined C4/C5 operation that embraced two commercial channels broadcast

nationally. And a Channel 4 that was run on a profit-making basis alongside Channel 5 might not even be altogether successful in securing public confidence that the distinctive remit would be maintained.

23. We do not know what line any other members of the Group are likely to take on the C4/C5 proposal. You may wish to say that the Government's twin aims must be to secure the distinctive Channel 4 remit, but in a way that encourages efficiency rather than dependence. You are aware that the C4/C5 option is currently attracting attention, and you would like to hear the Group's general reaction to it. But the essential thing is that the options exposed in the White Paper should make the Government's objectives plain.

HANDLING

24. You may wish to welcome the EDUCATION SECRETARY and MRS CHALKER. (We understand that the Education Secretary has no specifically departmental points on educational broadcasting, though the Foreign Secretary may be writing before the meeting on the international dimension. Both Ministers may have general political contributions.)

25. You may then wish to say that you hope the White Paper can now be published in the overspill, with Cabinet consideration on 27 October.

26. After the Home Secretary has introduced the White Paper, you may wish to work through the outstanding points, in the order in which they appear under "Main Issues" above.

27. Assuming that no points are left unresolved, you will wish to invite the HOME SECRETARY to circulate the draft White Paper to Cabinet, under cover of a paper that he should discuss with the Chancellor and Lord Young as necessary.

A.J.L.

A J LANGDON

14 October 1988