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PRIME MINISTER

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ITV LICENCES: COMPETITIVE TENDERING

The White Paper Proposal

This was in two parts:

- (a) The first stage involved applicants passing a quality test, consisting of a) positive programme requirements (ie showing high quality international news, producing and broadcasting regional programmes, and the diversity of proposed schedules) and b) consumer protection requirements.
- (b) In the second stage applicants who had successfully completed the first stage would put forward financial tenders and the ITC would choose the highest bid.

Criticisms Made During the Consultation Process

The White Paper proposal came under heavy criticism during the consultation process, especially from the ITV companies. The four major criticisms were:

- (i) allocating licences to the highest bidder would reduce the diversity and quality of programmes;
- (ii) payments for the licence should not be in a lump-sum form but should be spread over the entire licence period, otherwise small firms would find themselves at a disadvantage;

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- (iii) the quality test (ie programme quality) needed strengthening (ie the ITC should have powers similar to the existing IBA system of regulation);
- (iv) another hurdle, namely a "quality of money" test should be introduced to allow the ITC not to have to allocate the franchise to the highest bidder.

## The IBA Proposal

One particular proposal, which the Home Office found attractive, was that put forward by the IBA. It consists of the following elements:

- (a) the ITC decide what licences it is prepared to offer on Channel 3 and Channel 5;
- (b) payment for the licence would be spread over the duration of the licence period;
- (c) when making a bid the applicant would publish an open dossier with company information as well as programme schedules;
- (d) at the same time the sealed bid would consist of a 5 year business plan, plus a financial tender, consisting of:
  - a fixed sum payable in annual amounts
  - a proportion of net advertising revenue (NAR) calculated annually
  - a prescribed cash bond (which would be returned to all but the successful applicants).

The importance of this proposal is that assessment would be made



in a single and not a two-stage process, and that the ITC would not necessarily award the licence to the highest bidder.

### Criticisms of the IBA Proposal

The suggestion that payments should be over the term of the licence is a useful one.

But the two central features of the proposal - the "quality of money" test, and the strengthening of the quality hurdle raise difficulties.

#### 'Quality of Money' Test

Some assessment of the quality of management backing individual bids is essential to judging alternative proposals. It was because of this that the first hurdle in the White Paper proposal involved the ITC assessing the management competence of applicants and their ability to deliver their proposed schedule of programmes.

But the 'quality of money' test now proposed by the IBA would be far more than this. It would involve a detailed examination of:

- the 'quality' of each applicant's money;
- the 'realism' of the expected increase in net advertising revenue to the applicant;
- the cost of each applicant's operations in relation to its bid for a percentage of NAR;
- the allocation of costs between different programme areas relative to the expected schedule of programmes.

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In short, it would be an attempt by the ITC to second-guess every conceivable commercial judgement made by applicants.

This, however, is precisely what a free market is all about. Any applicant wishing to raise funds from investors would already have had to convince merchant bankers of the strength of their case. Involving merchant bankers as advisers as part of this comprehensive second-guessing by the ITC is a duplication and waste of resources. Not only that, but it assumes an arrogance little short of staggering - is the ITC really better qualified to assess the commercial judgements not only of the Murdochs, Bernsteins, Bransons and Maxwells of this world, but also of their merchant bankers? I very much doubt it.

This is a totally unnecessary government interference with the disciplines of the market itself.

#### **Raising the Quality Hurdle**

The existing quality hurdle in the White Paper already poses some difficulty. In addition to consumer protection requirements (impartial and accurate news, not offending taste and decency, the content of advertisements, etc) the quality hurdle would involve successful applicants

- showing high quality news and current affairs during the main viewing period;
- broadcasting and producing a certain amount of regional programmes;
- providing a diverse selection of programmes, and
- ensuring a minimum of 25% production from independent producers.



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Achieving high quality news can be dealt with by specific restrictions which involve the continuation of ITN or a successor company. The 25% requirement can be easily verified. The amount of regional programming can be guaranteed by specifying a given percentage. But this still leaves the problem of defining quality and diversity.

Diversity was introduced originally to ensure that Channel 3 did not become a pop-music or quiz-show channel. It would be important to avoid defining diversity in the Bill in terms of given minimum percentages for arts, drama, wildlife, films, etc. This would be more restrictive than the present system and a rejection of viewer choice. If the expression in the White Paper regarding diversity were changed to "in addition to providing high quality news and current affairs to provide a diverse selection of programmes" this would almost certainly achieve the objective.

To go further than this and insist on a 'pure' quality test is impossible. Quality in the White Paper is particularly relevant to current affairs and regional programmes. Here we must and should rely on the good sense of the average viewer to register complaints in various ways, should the quality of these programmes fall.

Any attempt to raise the quality hurdle by adding some expressions such as "and to provide high quality diverse programmes" would not only give the ITC enormous discretionary power, but as it would relate to comedy, light entertainment, drama, films etc, would be impossible to assess objectively.

The White Paper positive programme requirements are sufficient to ensure quality in certain key areas and diversity in others. For the rest we must rely on the tastes and interests of viewers who will not be prepared to put up with a simple diet of quiz-

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shows and police films. Certainly the advertisers have no vested interest in seeing this result.

## The Way Forward: A Proposal

We should accept the useful suggestions made during the consultation process and build on the strength of the White Paper proposals. We should also view with scepticism the intense lobbying by existing companies to reduce competition in the Bill.

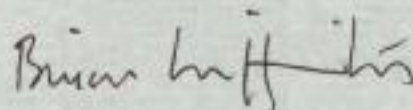
One sensible scheme might therefore be as follows:

- (a) retain the basic structure of the White Paper;
- (b) but modify it as follows:
  - (i) make the licence fee payable over the full period of the licence;
  - (ii) divide the payment into two parts - an initial lump sum and a percentage of NAR;
  - (iii) ensure that diversity refers to programmes other than just news and current affairs.

## Recommendations

Retain the basic structure of the White Paper proposal on competition tendering but modify it as above.

This will ensure adequate checks on applicants. It will also reduce the discretionary power of the ITC. This is of critical importance as the ITC could easily be the back-door way by which the companies limit competition.



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