

PRIME MINISTER

27 JULY 1990

BROADCASTING : 25% INDEPENDENT PRODUCTION QUOTA

Earlier this week I received the enclosed letter from Michael Darlow. I met him today and we discussed it in detail.

The situation quite simply is that both BBC and ITV are effectively crippling the 25% initiative.

I believe that the main issues are set out well by Mr Darlow in his detailed letter but the worst offender at present is the BBC.

Apart from insisting that independents use BBC facilities and impose unfair terms, BBC's output of news and news related programmes in 1986 was under 23% - today the best guess is that it is 51%. For ITV the figure is 44%.

The only way for the initial proposal to succeed is for you to take up the matter with the Home Secretary and for the Home Secretary to take the issue up with his Broadcasting Department.



BRIAN GRIFFITHS

P.S. I enclose the numbers employed by major broadcasting companies in the world. The BBC figure is around 30,000! - the only larger employer is Russian radio. (022)

# INDEPENDENT ACCESS STEERING COMMITTEE

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Professor Brian Griffiths  
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24 July 1990

CONFIDENTIAL

Dear Professor Griffiths

## 25% INDEPENDENT TELEVISION PRODUCTION INITIATIVE

Thank you very much indeed for agreeing to see me. I don't wish to burden you with huge additional amounts of paper, but I thought you might find it useful if I set out the basis of our concerns before we meet on Friday.

There is mounting evidence that unless urgent steps are taken, either through amendments to the Broadcasting Bill or through secondary legislation, the 25% initiative's effectiveness is going to be fatally weakened and that the plan to bring competition into programme supply will fail.

Four main issues need to be addressed urgently:

- 1 the way in which the 25% is interpreted as regards both the number of hours and value of commissions to independents by broadcasters;
- 2 the terms on which independent productions are commissioned as regards open competition in the supply of facilities, equipment and personnel;
- 3 the establishment of a fair contractual balance of power for negotiation between independents and broadcasters over programme distribution and other associated rights;
- 4 the definition of an independent producer or programme for the purposes of the initiative.

Each of these matters has been the subject of debate since the 25% policy was announced, but it now looks ominously as if an alliance of the broadcasters and the civil servants are going to succeed in fudging and blunting each one to the point where the total impact of the initiative will be marginalised.

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THE PRODUCERS  
ASSOCIATION

IPPA

THE INDEPENDENT PROGRAMME  
PRODUCERS ASSOCIATION

1 At the Prime Minister's recent seminar on the film industry representatives of The Producer's Association received the clear impression that the Prime Minister believed that the 25% initiative would be implemented in full; that is to say, the wording in the Bill (Clause 16 2f) 'that not less than 25% of the total time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of a range and diversity of independent productions' means what it says, and that any interpretation which excludes 'news or news related' programmes from the calculation of the 25% target was not to be used so as to reduce the hours of original production commissioned from independents. However, the broadcasters, and the BBC in particular, are quite openly interpreting this part of the Bill in a way that will effectively halve the number of hours commissioned from independents. Indeed the evidence points to a small group of Home Officials and their opposite numbers in the BBC and the IBA privately carving up the definition between them so as to reduce the hours made by independents to a minimum - about 12.5% of the originated hours on BBC and ITV.

If they get away with this, the result will be to minimise competition, management re-organisation and economies in the broadcasting organisations. Something has to be done to stop the broadcasters from diverting their output into news and thus protecting their organisations from the competition provided by the independent initiative. Alternatively, compensatory amounts of other categories of programmes have to be offered to independents. 25% should simply mean what it says.

There is, of course, no inherent reason why independents should be prevented from making news programmes. Indeed, a limited number of news inserts in the Channel Four News are now made by independents without either loss of quality or increase in cost. It might even be considered that there is something inherently unhealthy, as regards freedom of expression and information in a democracy, for the dominant television channels to be supplied by only two news organisations, each operating an effective monopoly on the channel they service. Nevertheless, if the Government wishes news programming to remain outside the ambit of the independent production sector, this decision should not be used to reduce the 25% target.

We have expressed our concerns to the BBC in correspondence copied to David Mellor about the BBC's slow implementation of the 25% initiative. In the year to March 1990 only 4% of original programmes transmitted by the BBC were made by independents. My officials are now seeking an urgent meeting with the BBC to establish the basis for the figures already supplied by the Director General. If BBC policy towards independents is allowed to continue, it will not only lower the overall impact of the initiative but damage the prospects for the growth of the independent sector and employment outside London and the Southeast in particular. (See Appendix A)

2 One provision of the Trading Guidelines drawn up between the broadcasters (BBC & ITV) and the IASC following the announcement of the Government initiative, was that an independent producer should not be put under duress to use the broadcaster's staff or production facilities. In fact, many ITV companies and most of the BBC regional centres continue routinely to make it a prior condition of contract that the independent shall use broadcasters' own facilities and staff. They do this in order to protect their own businesses and reduce the effects of competition. As facilities and technical staff account for a major part of broadcasters' business, and historically have been a major source of their inefficiency and restrictive practices, this matter too ought to be dealt with specifically in the Bill or the secondary legislation.

3 A further factor serving to undermine the 25% initiative is the extent to which the broadcasters use their privileged position in the market to take control not only of the rights necessary for them to transmit on their own networks programmes commissioned from independents, but all other broadcasting and related rights in such programmes and material flowing from them. For independent producers the asset represented by their programmes is the only real asset upon which to build a viable business. While the broadcasters deny independents these rights, or 'cherry-pick' the commercially valuable programmes, our sector will be unable to acquire the financial maturity and weight necessary to provide real competition in programme supply to the broadcasters own production arms.

By taking the rights in independently produced programmes the broadcasters are also able to ensure that they distribute and sell these programmes. In this way they prop up their own, often inefficient, distribution arms, while at the same time hindering the financial development of independent distributors and reducing programme sales income to independents. Not all the broadcasters take control of every programme they commission but they do take control of those they judge the most commercially valuable and prevent sales (even of those programmes over which they have chosen not to exercise control) to any broadcaster they consider might be a competitor. This even applies to Channel Four who control distribution of only the one third of their programming that has real export sales potential. The broadcasters do this even though they have made no financial contribution to the programme beyond that related to commissioning it for transmission on their own channel. Quite apart from the fact that this is inequitable and prevents or reduces the independents' ability to benefit from his or her own work, it also reduces the potential income available from programme exports, and inhibits competition in programme distribution.

As you know, the question of rights ownership is currently under initial examination by the Office of Fair Trading. However hints emerging from the OFT, and the legal advice we have received from leading competition lawyers, suggest that even though the OFT may uncover problems in this area, those problems may not fall strictly under competition law, being more in the nature of an imbalance of power between the contracting parties. In which case it would be necessary, if the imbalance is to be corrected, for the Government to act. We are advised that precedents exist for this kind of corrective measure; for instance, in the Landlord and Tenant Act of 1954 as regards business tenants, the Unfair Contract Terms Act and in the proposed changes in the law as regards compensation for commercial agents. If this is the case, we hope that the Government would consider an appropriate amendment to the Broadcasting Bill or related secondary legislation in respect of the definition of an independent production qualifying for the 25% initiative.

- 4 One final, but fundamental, area of concern is the definition of an independent producer as regards programmes qualifying for the initiative. We understand that the secondary legislation will address this issue. Clearly, unless the definition is tightly enough drawn, the way will be open for broadcasters, whether by taking effective control through minority shareholdings acquired by themselves, their subsidiaries or other associated companies, or by the exercise of undue influence, to undermine the intentions of the initiative. Home Office civil servants have been discussing this subject with the broadcasters. The independents have not been consulted.

To summarise: broadcasters remain able, with impunity, to impose far worse trading terms on independents than those that apply in other industries where there is greater competition. Ironically, because of the anticipated increase in independent production resulting from the 25% initiative, and consequent growth in the number of independent producers competing for the broadcasters uncertain favours, the contractual imbalance between individual broadcasters and individual independent producers doing business together is likely (unless corrective action is taken) to become even greater than it was when independents effectively dealt with only one broadcaster - Channel Four.

The potential loophole created by the broadcasters through the exclusion of 'news and news related' programmes from the 25% quota (effectively halving the initiative's impact), taken together with their continued ability to force independents to use their facilities and the rights deals they are able to impose, means that the broadcasters are going to be able to contain the initiative on the margin and dodge its impact. In the case of the BBC, I believe that they are hoping that the next election will bring a Labour victory and that they will be let off the hook, with the result that they are playing for time while putting off difficult management decisions.

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As you know, my colleagues and I are convinced that the 25% independent production initiative has enormous potential to create a diversity of programmes, to release new sources of creative energy and to introduce the benefits of competition into the programme production industry. If fully implemented it contains the basis for creating the efficient industry necessary for British television production to succeed in the coming era of international competition and to generate large export earnings from international programme sales. However, if the escape routes for the broadcasters are not blocked this potential will not be realised.

Yours sincerely

*Best wishes*  
*Michael*

Michael Darlow  
Chairman

P.S. An Appendix on the effect of the 'News Exclusion' and calculation is attached.

## APPENDIX A

The latest figures available from the IBA suggest that of 3,888 hours of original programming networked, 720 hours came from ITN, and that of 6,342 hours of local original programming, 3,840 hours were within the category 'news and news related'; the effect is to reduce the total hours qualifying for the independents' target of 25% of original programmes from 25% to under 14%.

Parallel figures for the BBC have been the subject of correspondence between the Independent Programme Producers Association and the Director General of the BBC in recent weeks. The latest published figures from the BBC suggest that of 5,871 hours of original network programmes transmitted, 1,195 hours were categorised as 'news and news related' and of 3,242 of regional programmes 2,120 hours were categorised as 'news and news related'. These figures themselves show a marked increase in news programmes, at the expense of programmes in categories where independents can compete for commissions, over figures available when the Government announced the initiative. Figures supplied more recently still by the Director General of the BBC to IPPA imply even greater cuts in the target figure of programmes in categories for which independents can seek commissions.

The latest figures supplied to us by the Director General appear to demonstrate that the production of programmes in the non-news categories for regional BBC audiences is being massively reduced, apparently from circa 2,000 per annum in the last year for which BBC published figures exist, to circa 100 in the current year. No plans have been announced by the Corporation for a reduction of their regional programme staff or facilities on an equivalent scale. The Director General has said that the BBC is not planning to recategorise these hours as 'news or news related' programmes - the areas from which independents are excluded - nor does it seem from the figures given by the Director General that it is planned to increase by a compensatory amount either the total number of hours of network production or the hours of network programmes made in the regions. The BBC's regional hours therefore remain a mystery. Local non-news programmes are notably popular with BBC regional audiences (recent series of documentary programmes to which independents have contributed in the regions have gained audiences two or three times as big as those for BBC local news programmes). So if the BBC does plan to increase the local programmes made by news departments at the expense of other programmes it will be doing a notable disservice to the licence payers as well as striking at the roots of the economic viability of many independents outside the London area.

The BBC could easily come out with a clear statement on the hours and the way in which the percentage of news to other programmes has varied in the years since the 25% initiative was announced. They seem remarkably coy about doing this in a straight forward manner. We suspect that this is because the figures would show that in that time the proportion of news programmes has about doubled and that today 'news and news related' programmes account for almost half their original output. If so, the independents' 25% amounts to just 12.5%.

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The way in which the value as well as the volume of productions coming within the initiative is counted will also be important. To date the IBA has tended to count money raised from all sources, whether by ITV companies, independents, overseas pre-sales or co-producers found by independents or broadcasters, towards the total announced in each quarterly return. This can give a very misleading picture. In order that the initiative's intentions are met, it is important that only the money, or realistically priced resources, committed by a commissioning broadcaster towards a programme's production and acquisition of rights for its transmission in the UK by that broadcaster, are counted in assessing implementation of the 25% quota. If assessment is not done in this way, huge distortions of the real picture can occur. The monitoring authorities (whoever is appointed after 1993) might therefore be required, either through the Broadcasting Bill or secondary legislation relating to the Bill, to assess and report back on these matters.

The clear implication of these figures is that an 'across the board' news exclusion will undermine 'the spirit and the letter' of the initiative that the Prime Minister wishes to see observed. Its impact will be hugely blunted if not lost.



NUMBERS EMPLOYED BY MAJOR BROADCASTING COMPANIES

(In America, Australia, France, New Zealand and Italy staff numbers have reduced over the past year).

June 1990

AUSTRALIA	ABC	5,500 (TV + Radio)	
BELGIUM	BRT	2,800	
CANADA	CBC	11,600 (+ 2-3000 Freelance staff)	
FRANCE	Antenne 2	1,300	
W GERMANY	ZDF	4,500	
	WDR	4,500 1,200	Permanent employees. Freelancers.
	ARD	3,000	
IRELAND	RTE	2,093	
ITALY	RAI	14,000	
JAPAN	NHK	15,000	
NEW ZEALAND	NZ Broad- casting	650	
RUSSIA	Gostel	10-12,000	Moscow
	Radio	83,000	Nationwide
SPAIN	RTV	10,961	
USA	CBS	6,000	
	ABC	9,500	
	NBC	5,700	

BBC

circa 30,000

4.6.90

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## I Chairman's Foreword



BBC Chairman  
Marmaduke  
Hussey with a  
bronze bust of  
Lord Reith on  
the centenary of  
Reith's birth

This has been a year of significant change for the BBC and for the whole broadcasting industry. This might easily have been written in each of my three previous introductions to the BBC's Annual Report to Parliament. But, after so many predictions, much guesswork and some false starts, we have finally seen in the last 12 months the real transformation of the broadcasting landscape.

The BBC began its life as a government-protected monopoly and then, after the arrival of ITV, became part of a government-protected duopoly. Now that comfortable arrangement has gone once and for all, and the BBC is part, albeit the largest and most wide-ranging part, of a multi-national, highly competitive and increasingly market-directed industry. The passage of the

Broadcasting Bill this year and the growth of satellite television and commercial radio channels underscore this sea-change.

The BBC has welcomed this new broadcasting environment. Much has been achieved by everyone in the BBC over the past years and I believe that we are now a more confident and better-managed organisation. Our structures have been rationalised. The Board of Governors and Board of Management work harmoniously together. Our staff has a much clearer idea of the BBC's objectives and they are better equipped to face the Nineties. Last summer's dispute, though, focused our minds on the challenges which confront the BBC. The fundamental issue we face is to reconcile an adequate and competitive staff remuneration with the investment necessary to retain and continually to improve the quality of our programmes. The resolution of this equation, examined in the 'Funding the Future' report published at the beginning of the year, will inevitably affect the way the BBC is structured and staffed. The recommendations of that report are a start, but senior management will have to work hard to maintain the momentum.

The guiding principle of the BBC must be what it always has been – to provide the widest range of quality programmes right across the full range of licence-payers' tastes, interests and enthusiasms, or, as the Charter outlines, to inform, educate and entertain.

In the past year we celebrated an important anniversary – the centenary of the birth of Lord Reith. In 1924, when broadcasting technology was in its infancy, John Reith defined with remarkable prescience the objectives of the BBC in a deceptively simple but telling sentence:

'The BBC's role is to bring the best of

Chairman's Foreword *continued*

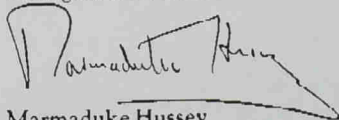
everything to the greatest number of homes'

I am proud to repeat Reith's words because I believe that BBC programmes in the past year have demonstrated beyond doubt our continuing commitment to his vision. The BBC reported the historic events in Eastern Europe on television, radio and the World Service with unrivalled authority and immediacy. There is still an enormous hunger for unbiased news and information in this country and across the world. The World Service's trusted role in disseminating truth in this year of European revolutions has been outstanding. The time has now come when the World Service should secure the appropriate funds to augment its radio broadcasting with television transmissions. At home we are all conscious of the impact that the successful introduction of cameras to the House of Commons has made to political coverage on television and we welcome it. The World Service equally should add cameras to their microphones.

What makes the BBC different from every other broadcaster is its method of funding. The licence fee is a unique contract between the broadcaster and the public, which listens to and watches BBC programmes for an average of nearly three hours a day, every single day of the year.

That represents extraordinary loyalty and affection for our programmes in all their diversity, nationally, regionally and locally and, equally, extraordinary value for money.

The licence fee, I believe, remains the best system available for ensuring that the BBC retains its courage, integrity and independence – independence from pressure from any source, political, commercial or propagandist. In return for this distinctive form of funding, the BBC must be ever conscious of the privilege and responsibility that goes with it. We must continue to offer licence-payers the highest quality programmes, enabling the nation to speak to itself in a fair and unbiased manner, in news and information, entertainment and the arts. Critical to that is not just quality but the objective and impartial presentation of public issues across our entire output. Every time we fall below those high standards we weaken the argument for the retention of the licence fee. It is the joint responsibility of the Board of Governors and the Board of Management to ensure that we do not.



Marmaduke Hussey  
Chairman

PES

I accept that we should not pre-empt the outcome of this year's PES round, and therefore that we should consider the consequences for ITC expenditure in 1991-92 and 1992-93 if my PES bid for a start-up loan is not successful. The worst case would involve the ITC having to make reductions in its planned expenditure of £1.5m in 1991-92 and £0.3m in 1992-93. Although the ITC's budgetary plans are still at a formative stage, we understand that the shadow ITC considers that R & D funding should have a high priority. It may be therefore that they would decide to maintain R & D expenditure at its planned level even if reductions had to be made in the overall budget. I nevertheless agree that it is right to test the robustness of the business plan on the assumption that some cuts had to be made in ITC funding. I can, however, see no basis for assuming, as your letter implicitly does, that 90% of the £1.5m reduction which the ITC might have to make in 1991 would fall on R & D expenditure. A more reasonable, though still cautious, assumption would be that any cuts would be broadly proportionate to R & D's share of the overall planned expenditure. Accordingly, my officials have asked Transcom management to prepare a revised P and L account (copy attached) on the assumption that the ITC funding will be £250K lower than planned in 1991 and £50K lower in 1992. You will see from the account that E & D remains profitable (though, naturally, less profitable than before) throughout the forecast period on the revised assumptions.

#### BSB contract

Nicholas Ridley's letter mentioned the BSB revenue. Transcom have secured a five year contract with BSB for the period April 1991 - March 1996 for research and development work to the value of approximately £0.5m pa, with the exact sum to be agreed six months before the beginning of each financial year. It is the existence of that contract which underpins the assumption in the business plan about the constant level of funding from BSB. BSB's commitment to Transcom reflects their reliance on E & D's niche expertise in MAC technology.

#### Other contracts

Since my earlier letter, Transcom's negotiations with other potential customers have tended to bear out the assumptions in the business plan. They have now agreed a contract with

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Scientific Atlanta worth £225K in 1991, with an option for further work worth up to £200K in future year(s). Transcom management consider that they have a better than even chance of securing two further contracts which they have been pursuing: one with BTS (Bosch) worth £1m over 2 years; and another with Thomson LGT worth £0.5-1m. The Scientific Atlanta contract fulfils the business plan assumption for 'other' contracts in 1991. Winning either of the other two contracts would exceed that assumption by at least £0.5m.

## Conclusion

In the light of this encouraging recent progress, and the fact that the revised P and L account shows that the viability of E & D is not dependent on the success of my PES bid, I hope that we can now agree the business plan as a basis for including E & D in the privatisation. The plan will, of course, need to be reviewed continuously in the light of changing circumstances; and I would therefore propose to ask Transcom's management for a report on progress in securing new contracts at the end of September.

I am copying this letter to the Prime Minister, to other members of MISC 128, and to Sir Robin Butler.

