

CONFIDENTIAL

PRIME MINISTER

BROADCASTING: IMPARTIALITY

You set out your views on the impartiality clause in the Broadcasting Bill at Cabinet. In particular, you argued for a way of ensuring that the code to be adopted by Independent Television should be made applicable to the BBC. The Home Secretary has argued that to extend the impartiality provisions to the BBC at this stage in the Bill would be to introduce a major new issue just as the Bill was reaching its final stages. I have told his office that he should minute you either to say how your wish that the Bill be extended to the BBC should be met, and if he does not think using the Bill is right, how else he thinks the BBC can be brought into line with ITV. He was planning to minute you tonight.

When Clause 6 was debated in the Lords, Lord Wyatt's attempt to insert provisions bearing on impartiality directly was defeated. Lord Chalfont, who, to a large degree, shares his viewpoint, argued that such matters were best left to the code which Clause 6 required the ITC to prepare. Summing up the debate, Lord Ferrers set out a compromise position under which the legislation would not attempt to draft the code directly but would list certain features that it should contain.

Earlier this week, Mr. Mellor published the proposed amendment to Clause 6 unexpectedly (flag B). This is still confined to Independent Television. ITN and ITC have this afternoon made clear their opposition to this amendment and have circulated some briefing notes for peers to use in Thursday's debate. George Russell (IBA) has sent Bernard a copy of these notes and Sir David Nicholas (ITN) has written to him (flag C).

The Home Secretary, rather than finding ways of extending the impartiality provisions to the BBC, finds himself defending what is already proposed. This has delayed his minute to you which is now promised for Monday.

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Bernard has suggested that the Government puts on record what it does and does not mean by the amendment. This does not obviate the need for getting the clause right, as the clause in future years, will take into account what is on the statute book not what was said in debates at the time.

AT

ANDREW TURNBULL

Tharbyou

5 October 1990

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C:\wpdocs\pps\impartiality (pmm)

A

PART I

(iii) if so, what steps would be required to be taken by or in relation to him in order for any such requirements to be complied with;

- (b) make the grant of a licence to any person conditional on the taking of any specified steps that appear to them to be required to be taken as mentioned in paragraph (a)(iii);
- (c) impose conditions in any licence enabling them to require the licence holder, if a body corporate, to give to them advance notice of proposals affecting—
- (i) shareholdings in the body, or
 - (ii) the directors of the body,

where such proposals are known to the body;

- (d) impose conditions in any licence enabling them to give the licence holder directions requiring him to take, or arrange for the taking of, any specified steps appearing to them to be required to be taken in order for any such requirements as are mentioned in subsection (1)(b) to be complied with.

(3) Every licence shall include such conditions as the Commission consider necessary or expedient to ensure that where—

- (a) the holder of the licence is a body corporate, and
- (b) any change affecting the nature or characteristics of the body, or any change in the persons having control over or interests in the body, takes place after the granting of the licence, and
- (c) the change is such that, if it fell to the Commission to determine whether to award the licence to the body in the new circumstances of the case, they would be induced by the change to refrain from awarding the licence to the body,

the Commission may revoke the licence by notice given to the holder of the licence and taking effect forthwith or on a date specified in the notice.

(4) Before revoking a licence under conditions imposed in pursuance of subsection (3) the Commission shall give the licence holder a reasonable opportunity of making representations to them about the matters complained of.

(5) In subsection (3) "control" has the same meaning as in Schedule 2.

General provisions about licensed services

6.—(1) The Commission shall do all that they can to secure that every licensed service complies with the following requirements, namely—

- (a) that nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling;
- (b) that any news given (in whatever form) in its programmes is presented with due accuracy and impartiality;
- (c) that due impartiality is preserved on the part of the person providing the service as respects matters of current political

General requirements as to licensed services.
[060]

PART I

or industrial controversy or relating to current public policy; and

- (d) that its programmes do not include any technical device which exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons watching the programmes without their being aware, or fully aware, of what has occurred.

(2) In applying subsection (1)(c) a series of programmes may be considered as a whole.

(3) The Commission shall—

- (a) draw up, and from time to time review, a code giving guidance—

(i) as to the rules to be observed in determining what constitutes a series of programmes for the purposes of subsection (2), and

(ii) as to the rules to be observed in other respects in connection with the application of subsection (1)(c) in relation to licensed services; and

- (b) do all that they can to secure that the provisions of the code are observed in the provision of licensed services.

(4) Without prejudice to the generality of subsection (1)(c), the Commission shall do all that they can to secure that there are excluded from the programmes included in a licensed service all expressions of the views and opinions of the person providing the service on matters (other than broadcasting, or the provision of cable services, of whatever nature) which are of current political or industrial controversy or relate to current public policy; and they shall also do all that they can to secure that there are excluded from those programmes all expressions of that person's views and opinions on religious matters.

General code for programmes.
[058]

7.—(1) The Commission shall draw up, and from time to time review, a code giving guidance—

- (a) as to the rules to be observed with respect to the showing of violence, or the inclusion of sounds suggestive of violence, in programmes included in licensed services, particularly when large numbers of children and young persons may be expected to be watching the programmes;
- (b) as to the rules to be observed with respect to the inclusion in such programmes of appeals for donations; and
- (c) as to such other matters concerning standards and practice for such programmes as the Commission may consider suitable for inclusion in the code;

and the Commission shall do all that they can to secure that the provisions of the code are observed in the provision of licensed services.

(2) In considering what other matters ought to be included in the code in pursuance of subsection (1)(c), the Commission shall have special regard to programmes included in licensed services in circumstances such that large numbers of children and young persons may be

Broadcasting Bill

B

Impartiality Amendments.

AMENDMENTS TO BE MOVED ON REPORT

Clause 6

BY THE EARL FERRERS

Page 6, line 45, leave out from beginning to second ("in") in line 1 on page 7 and insert ("as to the rules to be observed")

Page 7, line 5, at end insert—

("and the Commission may make different provision in the code for different cases or circumstances.")

Page 7, line 6, leave out ("(c)")

Page 7, line 11, at end insert—

("(4A) The rules specified in the code referred to in subsection (3) shall, in particular, make provision—

- (a) for due impartiality to be preserved on the part of the person providing a licensed service as respects individual issues which are matters falling within subsection (1)(c) (rather than as respects such matters taken as a whole);
- (b) as to what due impartiality does and does not require, either generally or in relation to particular circumstances;
- (c) as to the way in which due impartiality is to be achieved in connection with programmes of particular descriptions;
- (d) as to the period within which a programme must be included in a licensed service if its inclusion is intended to secure that due impartiality is achieved for the purposes of subsection (1)(c) in connection with that programme and any programme previously included in that service taken together;
- (e) for determining what constitutes a series of programmes for the purposes of subsection (2);
- (f) as to the prominence to be given, in the programmes comprised in any such series of programmes, to material which is intended to secure, or assist in securing, that due impartiality is achieved in connection with the series as a whole; and

Clause 6—continued

- (g) in relation to any inclusion in a licensed service of any such series of programmes which is of a description specified in the rules—
- (i) for the dates and times of the other programmes comprised in the series to be announced at the time when the first programme so comprised is included in that service, or
 - (ii) if that is not practicable, for advance notice to be given by other means of subsequent programmes so comprised which include material intended to secure, or assist in securing, that due impartiality is achieved in connection with the series as a whole.

(4B) The rules specified in pursuance of subsection (4A)(b) shall, in particular, indicate that due impartiality does not require absolute neutrality on every issue or detachment from fundamental democratic principles.”)

Clause 46

BY THE EARL FERRERS

Page 44, leave out lines 38 and 39 and insert—

- “(c) the following provisions shall be omitted, namely—
- (i) subsections (3) and (4A) to (5), and
 - (ii) in subsection (4), the words from the beginning to “subsection (1),”.

(5A) The Commission shall—

- (a) draw up, and from time to time review, a code giving guidance as to the rules to be observed in connection with the application of section 6(1)(c) (as substituted by subsection (5) above) in relation to a service in respect of which a determination under subsection (4) above is in force; and
- (b) do all that they can to secure that the provisions of the code are observed in the provision of any such service.

(5B) The Commission shall publish the code drawn up under subsection (5A), and every revision of it, in such manner as they consider appropriate.”)

Clause 58

BY THE EARL FERRERS

Page 55, line 19, leave out (“subsection (2) above and”)

Page 55, line 20, leave out (“section 6(2) and”)

Clause 89

BY THE EARL FERRERS

Page 77, line 11, after (“that”) insert (“(without prejudice to the generality of subsection (1)(b) or (2A)(a))”)

Clause 89—continued

Page 77, line 23, leave out (“(2)(a) to any licensed”) and insert (“(2A)(a) to a national service a series of programmes may be considered as a whole; and in applying subsection (2A)(b) to a local, satellite or licensable sound programme”)

Page 77, line 26, leave out from (“guidance”) to (“and”) in line 29 and insert—

(“i) as to the rules to be observed in determining what constitutes a series of programmes for the purposes of subsection (3),

(ii) as to the rules to be observed in other respects in connection with the application of subsection (2A)(a) in relation to a national service, and

(iii) as to the rules to be observed in connection with the application of subsection (2A)(b) in relation to a local, satellite or licensable sound programme service;”)

Page 77, line 31, at end insert—

(“and the Authority may make different provision in the code for different cases or circumstances.”)

- C
1. MR POWELL
 2. A. R.
 3. PRIME MINISTER

BROADCASTING - IMPARTIALITY

I have been the subject of a lobby by ITN (Sir David Nicholas) and IBA (George Russell) over the Government's impartiality amendment to the Broadcasting Bill.

As a layman, I think they have a point. We are in danger of endless litigation.

Sir David and George Russell have separately sent me respectively a letter (Annex I) and a briefing note to peers (Annex II).

Sir David's letter reflects my oral advice to him over the telephone: if you cannot kill the amendment then for heaven's sake make sure that the Government puts on record what it does and does not mean by the amendment.



BERNARD INGHAM
October 5, 1990

Independent Television News Limited

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FROM THE CHAIRMAN
& CHIEF EXECUTIVE

ANNEX I

4 October 1990

Private & Confidential

The Rt Hon Margaret Thatcher FRS MP
Prime Minister
10 Downing Street
London
SW1H

Dear Prime Minister,

Broadcasting Bill

I would like to draw your attention to certain misgivings we have at ITN about the effect of the Government amendment on impartiality, due to be discussed in the House of Lords next week during the Report Stage of the Broadcasting Bill.

The requirement for ITV to have a news service of due impartiality and balance has been in place since the 1954 Television Act.

Let me say at the outset that in ITN we have never looked upon this rule as what has sometimes been described as a dreary doctrine, which inhibits robust reporting. Rather we have taken the view that our country is not short of organs of opinion but is short of sources of good, hard, reliable information. The need to be balanced and impartial, therefore, has been a positive asset in our box office appeal to a public hungry for quality news.

Our concern is that the amendment, which requires balance on individual issues in the same programme, could be interpreted as too sweeping in its application and could lead to unworkable absurdities in regular news programmes.

.. / 2

Our legal advice is that a statutory definition of this kind opens the way for ill-intentioned people to smother news programmes under an avalanche of obligatory balancing statements from any quarter, which considers itself to have a say on a given issue, regardless of its standing. Any omission could be grounds for court action.

For instance, our advice is that if a party conference were debating a major issue, such as defence, we would be obliged that night to give balancing responses to all other parties on that issue. In our Parliament Programme on Channel 4, we frequently invite an MP on Friday to look back on the week's work in Parliament. We aim to balance the selection of MPs over a period of time. But under this amendment we could be expected to include MPs from all parties within the same programme: an unworkable formula.

We are assured that this is not the Government's intention and that it is for the ITC to draw up a code which clarifies definitions. Our legal advice persists, though, that the danger remains in the wording in the Bill.

From the perspective of news programmes, we feel that no new definitions of impartiality are called for. But if the amendment is to be accepted, it is of vital importance that it is made clear in debate what is in ministers' minds: that the amendment is not intended to dislodge what plain people would currently judge to be commonsense and fair play in reporting a given issue; that there is no automatic right of response by a roll-call of interested parties within a given news programme.

We are anxious that in any future legal action over interpretation of this provision, a judge could find guidance as to the Government's intentions as regards daily news.

I would be most grateful if you would give our concerns sympathetic consideration.

*Yours ever,
David*

Sir David Nicholas

ANNEX IIExtract from a background brief prepared by the Shadow Independent Television Commission for the House of Lords Report Stage of the Broadcasting BillImpartiality

1. The Shadow ITC wholeheartedly accepts the provisions in Clause 6 of the bill requiring due accuracy and impartiality in news programmes (clause 6 (i) (b)) and due impartiality on the part of persons providing a service as regards matters of political or industrial controversy or relating to current public policy (clause 6 (i) (c)). We support the proposal for an ITC Code of due impartiality (clause 6 (3)) in order to give clear and unequivocal guidance to licence holders and the programme-makers working for them and agree that the requirements of the Code must be effectively enforced (clause 6 (4)). The ITC believes that the due impartiality obligations in the 1981 Act have, with rare exceptions, been fully honoured in 35 years of Independent Television. We recognise the legitimate concern to see that due impartiality is upheld but it is important to frame rules which command widespread support and understanding.
2. The Shadow ITC has considered the Government's amendments to Clause 6 and has taken legal advice on them. It welcomes the Government's re-statement that the Code will be an ITC Code. Nevertheless, the detailed provisions regarding the content of the Code in the Government's amendments in Clause 6 (4A) go further than Government had previously indicated, appear to have effects which may not have been appreciated or intended, and

raise serious doubts about its workability in practice. By definition the Code is intended to deal with controversial matters where views are likely to be strongly held and there is the risk of litigation and possibly of vexatious litigation. It is in everyone's interest that such a risk should be avoided. A Code which is not workable will bring the law into disrepute and it is unfair to ask the ITC to administer it.

3. The Shadow ITC's concerns are principally with Clause 6(4A)(a) and (4A)(f). These deal with due impartiality in respect of 'individual issues' and the prominence to be given to certain issues intended to secure due impartiality in a debate.
4. As regards 6(4A)(a) the News Office has stated that its approach does not see due impartiality as a matter which can be reduced to any rigid mechanical formulae. However, the actual words of the statute are what will count in any legal proceedings and the Shadow ITC believes, that the wording does in this subsection could expose it and its licensees to serious risk of prior restraint through injunctions or subsequent judicial review.
5. The amendment's requirements on 'individual issues' (a term which is itself open to a variety of interpretations) could have serious effects on news programmes since it would appear to require that news events on a particular day, involving for example the Prime Minister or Leader of the Opposition, would have to be balanced by comments on the same issue from the opposing party. There are many single news programmes when such balance rightly takes place within a single news programme, but

to make it an invariable requirement on every issue would be an unrealistic constraint.

6. Moreover, in a series of interviews with party leaders in either news or current affairs programmes it could have the effect of limiting the agenda in terms of issues discussed to that set by the first interview. The same problem could arise in regional programmes where local MPs are interviewed over a series. The requirement could also have the effect of preventing the inclusion in programmes reporting Parliament of segments in which MPs drawn in series from different parties give their own assessment of the week in Westminster. In each case the issues addressed would be different because of the moving Parliamentary agenda.

7. Clause 6 (4A)(f) referring to prominence could be interpreted as meaning that specific percentages of time be given to differing points of view. We believe that this is not Government's intention, but rather that the Code should allow for judgements to be made about the relative importance of different points of view. We doubt whether a Code could give detailed practical guidance in advance on the prominence to be given to differing points of view in any particular series. Any series covered by the Code would need to assess the relative importance of different points of view but consideration of this is, in the Shadow ITC's view, adequately provided for in sub-sections (b) and (c). We therefore recommend that (f) should be deleted.

8. The IBA has supported Clause 6 throughout the passage of the Bill through both Houses of Parliament. We prefer to see the matters covered by the Government's amendments left to the ITC's judgement in drawing up the Code. The Shadow ITC has undertaken to consult widely about its contents. Should the Government amendments not be withdrawn we would wish to see them further amended as follows:-

- 6(4A) The Code referred to in sub section (3) shall give guidance on the rules:-
- (a) for due impartiality be preserved on the part of the person providing a licensed service on the matters falling within sub section (1) (c)
 - (b) as stated
 - (c) as stated
 - (d) as stated
 - (e) as stated
 - (f) delete
 - (g) as stated
- 4(B) as stated

IBA Pension Scheme

40. The IBA has a long established pension scheme and the Trustees are responsible for determining the arrangements for its continuation for staff of the ITC and the Radio Authority and for IBA pensioners. The Trustees are obliged to determine, with actuarial advice, appropriate sums to transfer into the new transmission company pension scheme.
41. A government amendment seeks to give the Secretary of State power to override the Trustees' decision and the Trustees feel that it is improper to use this legislation for this purpose.

Extract from background brief prepared by the Shadow Independent Television Commission for the House of Lords Report Stage of the Broadcasting Bill

Impartiality

1. The Shadow ITC wholeheartedly accepts the provisions of clause 6 of the bill regarding the impartiality of programmes (clause 6 (i) (b)) and due impartiality of persons providing a service as regards political or industrial controversy or religious or racial matters (clause 6 (i) (c)). We support the principle of due impartiality, clause 6 (i) (b) and (c), and the unequivocal guidance to licence holders and programme makers working for them and agree that the requirements of the Code must be effectively enforced (clause 6 (ii)). We believe that the due impartiality obligations must be, with rare exceptions, been fully honoured in the Independent Television. We recognise the legitimate need to see that due impartiality is upheld but it is important that rules which command widespread respect and are clear and

2. The Shadow ITC has considered the Government's amendments to Clause 6 and has taken legal advice on them. It welcomes the Government's re-statement that the Code will be applied. Nevertheless, the detailed provisions regarding the content of the Code in the Government's amendments in Clause 6 (4A) go further than Government had previously indicated, appear to have effects which may not have been appreciated or intended.

raise serious doubts about its workability in practice. By definition the Code is intended to deal with controverted matters where views are likely to be strongly held and the risk of litigation and its attendant costs are high. It is in everyone's interest that such a risk should be avoided. A Code which is not workable is not worth having and it is unfair to ask the ITC to administer it.

3. The Shadow ITC's code of practice is intended to deal with and (4A)(f). These deal with the 'individual issues' and the ITC is intended to resolve the legal issues.

4. As regards 6(4A)(b) the Home Office has stated that its approach does not see due observance as a matter which can be reduced to any rigid mechanical formula. However, the amendments to the statute are that will lead to a legal code. The Shadow ITC believes that the working code to take out such a code could expose it and if it is necessary to restrict the restraint through individual cases.

5. The amendment's requirements are intended to be which is itself open to a variety of interpretations. It has serious effects on news programmes since it would appear to require that news events on a particular day, involving for example the Prime Minister or Leader of the Opposition, would have to be balanced by comments on the same issue from the opposing party. There are many single news programmes when such balance rightly takes place within a single news programme, but

to make it an invariable requirement on every issue would be an unrealistic constraint.

6. Moreover, in a series of interviews with party leaders in the news or current affairs programmes it would have the effect of limiting the agenda in terms of issues discussed to those they the first interview. The fact that the programmes themselves have a requirement to discuss a wide range of issues and the inclusion of people who do not have a particular agenda which MPs do not wish to discuss would be a poor assessment of the work of the House. The issues addressed in the Shadow ITC's agenda would be a poor agenda.

7. Clause 6 (4A)(f) requires the Shadow ITC to be as meaningful as the Government's agenda. This is a different point to the Government's agenda being a poor agenda for judgement. The Shadow ITC's agenda would give different points of view on the same issues. The detailed practical points of view would be given to differing points of view. The series covered by the Shadow ITC's agenda is of importance of different points of view. It is, in the Shadow ITC's view, adequately covered in sections (b) and (c). We therefore recommend that it be deleted.

8. The IBA has supported Clause 6 throughout the passage of the Bill through both Houses of Parliament. We are not aware of any matters covered by the Bill which have been raised in the course of judgement in drawing up the Bill. The Shadow Director of the IBA has to consult widely about its contacts. It is not possible to list amendments which have been made or proposed. The Bill has been amended as follows:

6(4A)

(a)

(b)

(c)

(d)

(e)

(f)

4(5)

A Pension Scheme

The IRA has a long established pension scheme. The rules are set out in the IRA Act 1968. The scheme is a defined contribution scheme. Contributions are made by the IRA members and the IRA. The actual amount of contributions is determined by the IRA. The scheme is a defined contribution scheme. The actual amount of contributions is determined by the IRA.

A government has the power to... that it...



10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

1 October 1990

Dear John,

The way in which impartiality and balance are to be achieved in news and current affairs programmes is the subject of fierce debate at present and efforts are being made to create a statutory framework and to impose it on the BBC. The BBC is naturally resisting these pressures, arguing that the Charter already imposes such a duty and the Governors provide the mechanism for enforcing it.

Having heard the Opinion programme at 6.30 on Sunday evening, I do not think the BBC has really helped its case. This was a personal statement programme by Vivien Westwood about current policy on museums and galleries, and in particular on the use of entrance charges. It was a dreary, thirty minute, whinge telling a story of unrelieved underfunding and philistinism. Every conceivable criticism of the Government position was deployed and every critic given a platform.

It raises, however, an important question of how impartiality and balance are to be maintained. It was, I believe, one of a series of personal statement programmes. It can be argued that if, over the series, there is a range of presenters, some supporting and some criticising the Government, then the BBC's duty is fulfilled. But is this really enough? On the particular issue of museums and galleries, the listener is still left with an extremely biased presentation which will not be balanced by inviting someone from the Institute of Economic Affairs the following week to argue for education vouchers.

How are the many points which could be adduced against Vivien Westwood to be aired?

- (i) No mention was made of the belief of many of those in museums who have imposed charges that visitors are better treated and the staff more responsive. The latter no longer look upon visitors as a problem to be kept away from the exhibits, but as people with legitimate rights to information and assistance;
- (ii) There is a creditable record to be set out on the construction of new galleries, e.g. the Clore Gallery at the Tate, the Tate of the North, the move of the Courtauld Gallery to Somerset House and the National Gallery extension;

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- (iii) The case of the great experts at the V&A went unchallenged (these, after all, were the people who connived in closing the V&A on Fridays). No mention was made of their disregard for the general public, as opposed to fellow cognoscente, or their refusal to accept any corporate responsibility for the development of the museum;
- (iv) The experience of English Heritage, the National Trust and Museums Abroad is that entry charges are quite compatible with meeting growing interest in the heritage.

All of these points have gone by default and no mechanism seems to exist for allowing them to be made and for your listeners to draw their own conclusions on the balance of evidence and argument.

Although I have a professional interest in the impartiality issue, the above should be regarded as a personal observation from a member of the listening public rather than a formal representation from Government.

*Yours sincerely,
Andrew*

Andrew Turnbull

John Birt, Esq.

PERSONAL

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10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

1 October 1990

BBC LICENCE FEE

The Prime Minister has seen the revised terms of reference for the licence fee consultancy and was content.

ANDREW TURNBULL

Colin Walters, Esq.,
Home Office

867

CPK



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

27 September 1990

Dear Andrew

Yes ms

BBC LICENCE FEE

... Thank you for your letter of 26 September. I attach revised terms of reference in which we have tried to meet the Prime Minister's concerns.

I should be very grateful to know on Monday if possible whether the Prime Minister is content.

Prime Minister

X replaces the phrase "whether it is still feasible to set"

Y omits the reference to "taking account of the prospect for inflation in broadcasting industry"

Contact with revised version?

AT

28/9

C J WALTERS

Andrew Turnbull Esq
10 Downing Street
LONDON SW1

ANNEX C

LICENCE FEE CONSULTANCY

TERMS OF REFERENCE

X | 1. The White Paper "Broadcasting in the 1990s" said that "the
Y | 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". It is now clear that subscription will not
generate substantial income for the BBC in the immediate future.
The purpose of the study, therefore, is to assess how future
increases in the television licence fee can be set below the
level of RPI inflation, and the consequences of a range of
formulas for such increases. The study will take account of the
interests of the licence paying public and will investigate the
scope for further economies within the BBC, while maintaining
the policy set out in the White Paper that the BBC should:

"provide high quality programming across the full range of
public tastes and interests, including both programmes of
popular appeal and programmes of minority interest, and to
offer education, information and cultural material as well
as entertainment".

2. The study and recommendations should cover, but need not be
restricted to, the following issues:-

- (a) the rigour and effectiveness of the BBC's plans and
procedures for identifying economies through
efficiency measures, consistent with the obligations
described above;
- (b) the adequacy of controls over budget setting and

monitoring;

- (c) an assessment of the potential for income generation from subscription services;
- (d) an assessment of any additional revenue or reductions in expenditure likely from other existing or planned activities, including, for example, asset disposals, the management of working capital and research spending;
- (e) the extent to which the cost of programmes made by the BBC differs from those made by other broadcasters or independent producers;
- (f) a broad comparison, where possible, of the efficiency of the BBC with that of public service broadcasters providing similar services in other countries;
- (g) the potential for increase in the BBC's net income by reducing licence fee evasion or reducing the administrative costs of collecting the licence fee;
- (h) in the light of (a) to (g) above, what savings or additional income might reasonably be expected to accrue.

CONFIDENTIAL



File
do
cc: Policy Unit pps / BBC

10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

26 September 1990

BBC LICENCE FEE

The Prime Minister has seen the proposed terms of reference for the study into the efficiency of the BBC which were attached to your letter of 25 September to Barry Potter.

The Prime Minister was concerned at the way the first paragraph called into question ("whether it is still feasible") the objective of securing the increase in the licence fee below the general rate of inflation. She was also concerned at the implication that inflation in the BBC's costs should be accommodated ("will take account of the prospect of inflation in the broadcasting industry"). She has commented that if inflation is to be brought down, the BBC, in common with industry generally, will have to absorb much of the increase in costs through greater efficiency.

The Prime Minister also commented that she doubted whether the BBC had made a major effort to generate substantial income from subscription; that while seeking economy, the BBC had just added a new radio service; and that a comparison with other public service broadcasters was likely to be of limited value as there were none quite like the BBC.

The Prime Minister would be grateful, therefore, if the Home Secretary could consider drafting changes to paragraph 1 which meet her concerns.

I am sending copies of this letter to John Gieve (HM Treasury), and Sonia Phippard (Cabinet Office).

ANDREW TURNBULL

C.J. Walters, Esq.,
Home Office.

CONFIDENTIAL

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FROM: THE PRIVATE SECRETARY

Prime Minister

Content to approve the terms of reference for a consultancy study on efficiency of the BBC - to

scope for keeping licence fee increases below the RPI movement? HOME OFFICE QUEEN ANNES GATE LONDON SW1H 9AT



25 September 1990

RHP 2519

Dear Barry

BBC LICENCE FEE

Thank you for your letter of 6 July conveying the Prime Minister's agreement to the proposed study by consultants on the efficiency of the BBC. The Prime Minister asked that the No. 10 Policy Unit should be involved in setting in place the study and in drawing up the terms of reference.

The Home Secretary has now approved arrangements for the study and the enclosed terms of reference, which have been discussed and agreed in substance with the Policy Unit, the Treasury and the BBC. Time constraints preclude a first order efficiency review, and the study will accordingly focus primarily on the scope for discounting the licence fee below RPI as a result of further efficiency savings. It will need to draw heavily on evidence from other recent studies, along with some original research.

We need to take a decision on next year's licence fee by about the end of this year and it is therefore important that we set up the consultancy quickly. The Home Secretary would therefore be grateful if you could let me know by tomorrow morning if possible whether the Prime Minister is content with the terms of reference.

I am copying this letter and enclosure to the Private Secretaries to the Chancellor of the Exchequer and Sir Robin Butler.

C J WALTERS

No - it should not include 'prospects for' in the 'broadening' and would be clear that... We are in a period when RPI... We are in a period when RPI... We are in a period when RPI...

ANNEX C

LICENCE FEE CONSULTANCY

TERMS OF REFERENCE

1. The White Paper "Broadcasting in the 1990s" said that "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". It is now clear that subscription will not generate substantial income for the BBC in the immediate future. The purpose of this study, therefore, is to provide an independent assessment of whether it is still feasible to set future increases in the television licence fee below the level of RPI inflation and to assess the consequences of a range of formulas for such increases. The study will take account of the prospects for inflation in the broadcasting industry and the interests of the licence paying public and will, in particular, investigate the scope for further economies within the BBC, having regard to the policy set out in the White Paper that the BBC should:

"provide high quality programming across the full range of public tastes and interests, including both programmes of popular appeal and programmes of minority interest, and to offer education, information and cultural material as well as entertainment".

2. The study and recommendations should cover, but need not be restricted to, the following issues:-

- (a) the rigour and effectiveness of the BBC's plans and procedures for identifying economies through efficiency measures, consistent with the obligations

Became
the P.B.C.
I am not sure
to do it

Yes

No

They have
just added a
new radio service

described above;

- (b) the adequacy of controls over budget setting and monitoring; *at what level?*
- (c) an assessment of the potential for income generation from subscription services;
- (d) an assessment of any additional revenue or reductions in expenditure likely from other existing or planned activities, including, for example, asset disposals, the management of working capital and research spending;
- (e) the extent to which the cost of programmes made by the BBC differs from those made by other broadcasters or independent producers;
- (f) a broad comparison, where possible, of the efficiency of the BBC with that of public service broadcasters providing similar services in other countries;
- (g) the potential for increase in the BBC's net income by reducing licence fee evasion or reducing the administrative costs of collecting the licence fee;
- (h) in the light of (a) to (g) above, what savings or additional income might reasonably be expected to accrue.

There aren't any like the BBC.

BROADCASTING: POLICE PRIC



FROM THE PRIVATE SECRETARY TO THE LEADER OF THE HOUSE
AND THE CHIEF WHIP

ce/p
n.b. P.M.

BHP

17/9

17 September 1990

Jean Peter,

BROADCASTING BILL: QUALITY THRESHOLD

Thank you for your letter of 7 September. Both the Lord Privy Seal and the Chief Whip are most concerned about the way in which this decision has been announced. They fear that it may have serious implications for the future of the Bill, though they will obviously work to minimise that.

As a general rule, the announcement of the Government's intentions regarding a defeat in the House of Lords should not be made whilst the Bill is still in the House. It creates bad blood if an announcement is made outside Parliament, particularly by a Commons Minister. It is very possible that the Leader of the Opposition will make a formal protest about this on the floor of the House, thereby getting the Report Stage of the Bill off to an exceptionally bad start in the spill-over.

Secondly, from the point of view of handling Government defeats in the Lords, the Chief Whip always argues strongly that all hostile amendments that might be sent back from the Lords to the Commons should be considered as a package, after the Bill has completed its Lords stages, so as to ensure that the handling of reversals is as smooth as possible. To make premature announcements relating to individual defeats runs counter to this. This may not seem to matter in the present case, granted that this very large and controversial Bill has so far suffered only one defeat in the House of Lords. That is, however, all the more reason for avoiding creating bad feeling at Report.

There is probably nothing that can be done in the light of Mr Mellor's announcement of 4 September to rectify events in the present case. The Lord Privy Seal and Chief Whip would however be grateful if proposals for any similar announcements could in future be cleared with them in advance.

I am copying this to the Private Secretaries to members of MISC 128, to Gillian Kirton (Lord Privy Seal's Office), and to Sonia Phippard (Cabinet Office).

Yours etc
Jean Peter

D F SLATER

P Storr Esq
Home Office

17.01
1971
1190

n.b.P.M.
BHP 10/9

CC 79



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

7 September 1990

Dear Douglas,

BROADCASTING BILL: QUALITY THRESHOLD

Thank you for your letter of 3 September ^{kap} conveying the Lord Privy Seal's advice on the handling of possible further amendments to the Broadcasting Bill following the defeat suffered by the Government in Committee on the group of amendments introduced by Baroness David.

Following the recent exchange of correspondence between the Home Office, No 10 and DTI, we agreed that the cleanest solution was for the Government to seek at Commons Consideration to reverse all the amendments in question. Consequently the question of reformulating those sections of the amendments which we had originally suggested might be accepted does not now arise. As you will no doubt now have seen, Mr Mellor announced the Government's decision to seek to delete these amendments at a speech to the Royal Television Society on 4 September.

I am copying this letter to the Private Secretaries to members of MISC 128 and to Sonia Phippard (Cabinet Office).

Yours ever,

P R C STORR

D F Slater Esq
Private Secretary to
Leader of the House of Lords
House of Lords
LONDON SW1A 0PW

100-10121
1955
FEB 10



FROM THE PRIVATE SECRETARY TO THE LEADER OF THE HOUSE
AND THE CHIEF WHIP

3 September 1990

CPD
n.5.P.M.
BTP
G/R

Jas Sara,

BROADCASTING BILL: QUALITY THRESHOLD

The Lord Privy Seal has seen your letter of 2 August to Barry Potter. *flap*

He believes that it would be much stronger to leave the "reformulation" of those sections of the amendments to which we are intending to agree until the House of Commons. He would have thought that there were business management advantages in the Commons in any case; but in the House of Lords, it would give the Government much ammunition in securing the agreement of the House to the reversal of that part of the original set of proposals to which we cannot agree.

If the "reformulation" is to be done in the House of Lords, it will have to be done with the agreement of all the movers of the amendments. This may present difficulties in itself.

I am copying this to Barry Potter, to the Private Secretaries to other members of Misc 128, and to Sonia Phippard (Cabinet Office).

Yours ever
Joyas Ralls

D F SLATER

Ms Sara Dent
APS/The Rt Hon David Waddington MP

Broadcasting

Policy

8412



n.b.p.m.
RHP
JA
CSP

QUEEN ANNE'S GATE LONDON SW1H 9AT

31 August 1990

IBA TRANSMISSION PRIVATISATION: ECONOMIC REGULATION

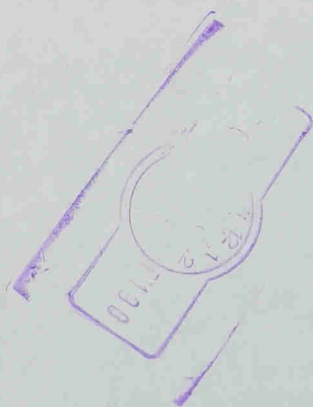
at frap
Thank you for your letter of 17 August in response to mine of 1 August. I have also seen Francis Maude's letter of 8 August.

I am glad that we are agreed on the general approach set out in my previous letter. I also agree that our officials will need to give further consideration with Oftel to the position in relation to Channel 5 when they receive more information, as well as to the detailed mechanics of implementing the cross-subsidy arrangements for Channel 3 companies.

I am copying this letter as before.

The Rt Hon Peter Lilley Esq MP
Secretary of State for
Trade and Industry
1-19 Victoria Street
LONDON SW1H 0ET

BROADCASTING: Policy Pt 12





QUEEN ANNE'S GATE LONDON SW1H 9AT

29 August 1990

n. b. P.M.
BHP
30/8

Francis

Plan

Thank you for your letter of 8 August. I am grateful for your agreement that ED Department should be included in the privatisation. My officials will monitor the position carefully to check that it remains viable.

I do not accept your comments about my PES bids for start-up loans for the ITC in 1991-92 and 1992-93. The fact that the viability of ED Department does not depend on the success of my PES bids does not imply that the ITC will not need a start-up loan. This inference would be valid only if, as Peter Lilley appeared to assume in his letter of 6 July, the sole or predominant purpose of the loan was to finance the ITC's R&D expenditure. But as I explained in my letter of 8 August, and as you now accept, this is not the case. The main purpose of the loan is to help finance other aspects of the ITC's expenditure too.

The fact that I acknowledged in my letter of 26 July that non-R&D expenditure would have to be cut if my PES bid was unsuccessful does not imply that I would regard such cuts as acceptable. They would not be. During 1991 and 1992 the ITC will have two roles: it will have transitional responsibilities for the contracts and licences inherited from the IBA and the Cable Authority; and it will be preparing for the award of the new Channels 3 and 5 and local delivery licences. The former role will be financed from inherited contract rentals and licence fees. The costs of the latter will in due course be recovered from the new licensees. But interim financing will be needed until revenue is available from that source. Hence the need for a start-up loan. I cannot therefore agree to withdraw my PES bid.

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

Francis

The Hon Francis Maude MP
Treasury Chambers
Parliament Street
LONDON SW1P 3AG



BOERGAARDING
July 12

dti

the department for Enterprise

NISPVY
CIB
SCPS

The Rt. Hon. Peter Lilley MP
Secretary of State for Trade and Industry

Rt Hon. David Waddington QC MP
Secretary of State for the
Home Department
Queen Anne's Gate
LONDON
SW1H 9AT

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Enquiries
071-215 5000

Telex 8811074/5 DTHQ G
Fax 071-222 2629

Direct line 071-215 5623

Our ref PE1ASR

Your ref

Date 17 August 1990

Dear David,

map

IBA TRANSMISSION PRIVATISATION: ECONOMIC REGULATION

Thank you for your letter of 1 August about the economic regulation of the privatised IBA transmission network, and the attached paper.

I welcome the paper's overall conclusion that price regulation should only be used when more market - oriented measures do not exist. This is clearly desirable and should, I hope, lead to a gradually lighter regime as genuine competition enters into the market. I accept, however, that for the time being it is necessary to impose price regulation on site and mast rental and operation and maintenance charges for Channels 3, 4 and S4C.

Such regulation may also be necessary for site and mast rental for Channel 5. Since the decision not to allow the BBC to compete to provide Channel 5 sites in cases where there is a genuine choice, the Channel 5 licensee is likely to find no choice in its selection of sites. It may be possible to rely on the "non-discrimination" clause in the licence but to be effective, that will require OFTEL to have (or calculate) an accurate figure for a similar service to Channels 3 or 4. The peculiar characteristics of Channel 5, such as its use only of a small number of major transmitters and the likelihood that several existing masts will need to be strengthened to accommodate the new aerials, may make such comparisons difficult. I understand that our officials will consider this when they receive more detailed information on costs from the IBA. Whilst it might also be possible to make use of the BBC/IBA site sharing agreement, that will need to be used with great caution since it



Recycled Paper



the department for Enterprise

is in the interests of both the BBC and the IBA to increase the rental charges they levy on one another, as they broadly balance, and the higher they are the more either broadcaster can charge other users of their masts.

The paper refers to the cross-subsidy arrangements for Channel 3 licensees to pay for their transmission services on the basis of revenues rather than costs. Whilst I accept this is a necessary interim measure, it is essentially uncompetitive and I would be unhappy to see it enforced through the Telecommunications Act licence as may be inferred from your letter. It would also be helpful for future consideration of the cross-subsidy and in assessing the barriers to entry of new competitors for it to be administered transparently so that the size of the cross-subsidies was made clear. May I suggest that our officials, along with those from OFTEL, consider how this might be done.

Apart from these particular points I am content to endorse the approach you have outlined. I look forward to considering your more detailed proposals for price regulation in due course.

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

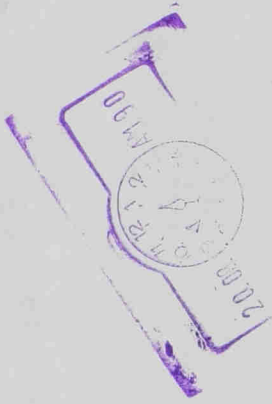
Yours ever

Peter



Recycled Paper

BROADCASTING - Policy p 12



dti

the department for Enterprise

CCPM

The Rt. Hon. Peter Lilley MP
Secretary of State for Trade and Industry

W

Ms Sara Dent
Private Secretary to
Rt Hon David Waddington QC MP
Queen Anne's Gate
LONDON
SW1H 9AT

Department of
Trade and Industry

1-19 Victoria Street
London SW1H 0ET

Enquiries
071-215 5000

Telex 8811074/5 DTHQ G
Fax 071-222 2629

Direct line 071 215 5623

Our ref

Your ref

Date

17 August 1990

Dear Sara

BROADCASTING BILL: QUALITY THRESHOLD

at least

Thank you for copying us your letter of 2 August to Barry Potter about the Government's reverse in the House of Lords on the Channel 3 quality threshold.

My Secretary of State fully supports the Home Secretary's proposal to reverse the amendment requiring the listed programme types to be shown at appropriate times. This would inevitably bring the ITC into scheduling, something which Ministers have all along been keen to avoid.

The Home Secretary's other proposal does cause my Secretary of State some concern. Albeit for good Parliamentary reasons, the Government was forced earlier this year to make a number of concessions on the quality threshold, in particular by spelling out the "exceptional circumstances" provision and adding childrens and religious programmes to the requirement for news, current affairs and regional programmes. At the time the Home Secretary said that he did not think that such concessions would weaken the Government's ability to hold out against demands for a more extensive "shopping list".



Recycled Paper

Your letter reports that the Home Secretary is proposing to put forward a more general form of words in place of the specific requirements contained in the amendment, but that those words would retain the essential comments of the extended list. Mr Lilley is concerned that this could not be done without returning more or less to the requirement in the present Broadcasting Act of a service "for disseminating information, education and entertainment", the very concept that Ministers found so unsatisfactory at the beginning of this debate.

We do, however, have some time before any amendment needs to be tabled. Mr Lilley would like to suggest that officials should discuss his concerns on the basis of a draft from Parliamentary Counsel with a view to returning the question to Ministers next month. I hope this can be arranged.

I am copying this letter to the recipients of yours.

Yours
Rosalind Cole

ROSALIND COLE
PRIVATE SECRETARY

ING3967

BROADCASTING: POLY
A 12



CONFIDENTIAL



KC

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

8 August 1990

Dear Sara,

BROADCASTING BILL: QUALITY THRESHOLD

Thank you for your letter of 2 August to Barry Potter which the Prime Minister has seen. This describes the amendments put down by Baroness David to the Broadcasting Bill and sets out the Home Secretary's proposals to deal with them. The Prime Minister had only one comment. She would prefer to minimise the additions to the list of programme types which must be included in Channel 3 services. In particular, she would wish to resist strongly the inclusion of "social action" programmes in this list.

I am copying this letter to the Private Secretaries to other members of MISC 128, to Gillian Kirton (Lord Privy Seal's Office) and Sonia Phippard (Cabinet Office).

Yours sincerely,

Caroline

(CAROLINE SLOCOCK)

Ms. Sara Dent,
Home Office.

15

CONFIDENTIAL

cf. H.



NBPM

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon David Waddington QC MP
Secretary of State for the Home Department
Queen Anne's Gate
LONDON
SW1H 9AT

8 August 1990

Dear Home Secretary,

AKC with PP

IBA TRANSMISSION PRIVATISATION: ECONOMIC REGULATION

Your letter of 1 August proposed a broad regulatory framework for the privatised transmission company and suggested further work for officials.

I am content with the approach you propose. However we will need to check that OFTEL can ensure Channel 5 is not charged more than Channels 3 and 4 for site and mast rentals; otherwise these charges may also need to be regulated.

Remaining work by officials needs to be completed by December to keep open the option of a sale in the first month or two of 1991. We can then decide on our preferred timing for the sale.

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

Yours sincerely,

PP FRANCIS MAUDE
(approved by the
Financial Secretary
and signed in his
absence)



COMMERCIAL-IN-CONFIDENCE



NBPM

AS

ccp

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon David Waddington QC MP
Secretary of State for the Home Department
Queen Anne's Gate
LONDON
SW1H 9AT

8 August 1990

Dear David,

FUTURE OF IBA EXPERIMENTAL AND DEVELOPMENT DEPARTMENT

Your letter of 26 July covered a revised Business Plan for the Experimental and Development (E&D) Department of the IBA.

Since the viability of E&D Department is not dependent on the success of your PES bids I am content for it to be included in the privatisation. As you suggest, the business plan will now need to be continuously updated. If there is any suspicion in future that the department may not be viable we will need immediately to consider what corrective action to take.

However, your letter suggests the benefits to be gained from your PES bids for ITC start-up loans of £1.5 million in 1991-92 and £0.3 million in 1992-93 are not clear. If this is correct, it would seem sensible to withdraw them.

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

A handwritten signature in dark ink, appearing to be "Francis Maude".

FRANCIS MAUDE

COMMERCIAL-IN-CONFIDENCE



CEPH



*Prime Minister
Content to proceed in
this way?*

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

AT 618

2 August 1990

*I should prefer to
reinsert the additional -*

*Dear Barry The idea of "social action" programmes
being compulsory will give us a load of hassle.*

BROADCASTING BILL : QUALITY THRESHOLD

The Broadcasting Bill successfully completed its Committee Stage in the House of Lords on 26 July. Although pressed hard by the Opposition parties on a number of issues, the Government in the event suffered only one reverse. This was on a group of amendments, put forward by Baroness David with all-party support, which were designed to strengthen the quality threshold for Channel 3. The Home Secretary has been considering what response the Government should make.

The amendments have two essential purposes. First, they add to the list of programme types which must be included in Channel 3 services three further categories: documentaries, educational programmes, and "social action" programmes (i.e. programmes encouraging active citizenship and promoting community initiatives and charity fundraising). Second, they require all the stipulated programme types to be shown at appropriate times of the day and week, having regard to the potential viewers for programmes of each type.

The Home Secretary is clear that the second of these amendments must be reversed. As it stands it is inconsistent with the Government's clear view that scheduling should be left entirely to licensees to determine; and it would inevitably draw the ITC into scheduling policies in a way that he and other colleagues have been very anxious to avoid.

The first of the amendments raises greater difficulties. In principle it is undesirable to place more and more required categories of programming on the face of the Bill, since this risks imposing an excessive degree of regulatory control. On the other hand the Bill already contains a general requirement for a diversity of programming appealing to a wide range of tastes and interests, and Ministers have argued in both Houses that in practice this is likely to mean that most if not all of the existing programming strands offered by ITV will continue to form part of the Channel 3 output. Against this background it would not be easy to justify seeking to reverse the addition to the Bill of the further categories specified in the amendments.

The Home Secretary is inclined, therefore, not to seek to reverse these amendments, but instead to come forward on Lords Report with a more general form of words, which retains the essential components of the extended list but avoids the presentational unattractiveness of the "laundry list" approach now embodied in the Bill. This tactic should make it easier to resist demands for yet further additions to the list of prescribed programme types, while at the same time making it easier to secure agreement in both Houses to the reversal of the scheduling provision in the other amendment.

We understand that it would not be acceptable to the House of Lords to seek to reverse the scheduling amendment on Lords Report. What we therefore envisage is to deal then only with the reformulation of the list of programme types; and to vote down the scheduling amendment when the Bill returns to the Commons at the end of the spillover.

The Home Secretary would be grateful to know whether colleagues are content for us to proceed accordingly.

I am copying this to the Private Secretaries to other members of MISC 128 and to the Lord Privy Seal, and to Sonia Phippard (Cabinet Office).

*y
Jans,
Saz.*

MS S J DENT

Barry Potter, Esq.,
No 10 Downing Street
LONDON, S.W.1.

02.02

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4	5	6
7	8	9
10	11	12

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3



NDPM
AT 6/8
CFO

QUEEN ANNE'S GATE LONDON SW1H 9AT

1 August 1990

Peter

IBA TRANSMISSION PRIVATISATION: ECONOMIC REGULATION

In June last year, MISC 128 discussed the privatisation of the IBA's transmission system, and we agreed that the new company would initially need to be regulated by OFTEL, because of its dominant market position. We also agreed that there should be a uniform tariff for Channel 3 companies, based on their share of the total Channel 3 income, and that this arrangement should be reviewed following decisions to be taken on the future of the BBC transmission system after 1996. This we announced on 4 July last year, as part of our statement on the privatisation of transmission.

Early this year, we appointed National Economic Research Associates (NERA) to undertake a study of the economic regulation of the new company. The study, which was carried out with guidance from your officials, OFTEL, and the Treasury, has now been completed. Officials have discussed the report of the study, and agreed the attached paper.

The paper suggests the broad regulatory framework which OFTEL should operate through the new company's Telecommunications Act licence. Its main features will be:

- i) price regulation of site and mast rental, and operation and maintenance charges, for Channel 3 and 4 and S4C;

The Rt Hon Peter Lilley MP
Secretary of State for Trade
and Industry
1 Victoria Street
LONDON SW1H 0ET

/over

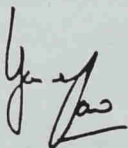
- ii) the use of a price formula, with no provision for passing through to the customer unanticipated changes in supply costs;
- iii) no price regulation of other Transcom services (eg radio, distribution, local services);
- iv) powers for OFTEL to prevent unfair discrimination between customers if market forces are not operating effectively;
- v) a review of the regulatory regime in 1996, to coincide with consideration of the privatisation of the BBC's transmission operation.

I believe that this framework strikes the right balance between excessive regulation on the one hand, and on the other the danger of allowing the new company to exploit its monopoly position before other transmission operators have a chance to establish themselves. Staff of the nascent company have some reservations about a number of detailed aspects which we shall be discussing further with them. There is, however, broad agreement to the main principles.

A great deal more work needs to be done to establish the correct initial prices for the new company; to set an X factor sufficient to give the company efficiency incentives without unduly threatening its profitability; to consider how far the BBC will require similar regulation. I propose that officials from our two Departments, OFTEL, Treasury and the Cabinet Office should supervise further work in order that the full regulatory regime may be ready for the New Year.

I should be grateful for your agreement to the proposals in the attached paper, and the proposed course of action.

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

A handwritten signature in dark ink, appearing to be 'G. J. ...' or similar, written in a cursive style.

E.O.A.
ECONOMIC REGULATION OF TERRESTRIAL BROADCASTING

1. In June last year, Ministers agreed to the need for economic regulation of the private transmission company which is to inherit the IBA's transmission functions. Home Office and DTI engaged National Economic Research Associates (NERA) to undertake this task, which was completed in May.

2. This paper summarises and comments upon the main conclusions of the study.

Mechanisms for economic regulation

3. The economic regulation of the transmission company (National Transcom) will be effected through a Telecommunications Act (T Act) licence policed by Oftel. The principal aims of the licensing regime will be to prevent Transcom from abusing its monopoly position by obliging it:

- i) to grant transmission facilities to Channels 3, 4 and 5 so that they can fulfil their broadcasting obligations;
- ii) to do the same for the BBC;
- iii) to grant access to its masts to other transmission operators;
- iv) not to discriminate unfairly between customers (ie. arbitrarily subsidising one at the expense of another (but see paragraph 4 below));
- v) to charge certain captive customers prices regulated by a price formula (see paragraph 5 below).

4. Transcom will also be obliged to charge Channel 3 customers according to a special tariff which will charge each Channel 3 company on the basis of its revenues rather than

E.R.

actual transmission costs. This will protect the fringe companies (like Channel TV, Grampian and Ulster) whose transmission costs would otherwise be prohibitively high.

Main conclusions of the NERA Report: scope of price regulation

5. On the scope of regulation, NERA have proceeded on the principle that price regulation (throughout this paper, "price regulation" means the regulation of prices by a formula) should be used only where there are neither real competitors nor comparative prices to enable Oftel to check whether Transcom is abusing a quasi-monopoly position.

* Ministers are invited to endorse this principle

6. Using this principle, and dividing the transmission services offered by Transcom into the three categories of mast and site rental, operation and maintenance, and distribution, NERA conclude that price regulation will be required for the following services for the foreseeable future:

- Channel 3 mast and site rental
- Channel 4¹ mast and site rental
- Channel 3 operation and maintenance
- Channel 4 operation and maintenance

* Ministers are invited to endorse this conclusion.

7. NERA also conclude that Channels 3 and 4 distribution (ie. the delivery of programmes between studios and transmitters by fixed or microwave links) will require price regulation until the end of 1994 (the expiry of Transcom's contract with

¹Throughout this paper, "Channel 4" includes S4C

British Telecom for distribution links); and that Channel 3 distribution will need price regulation beyond that date if the Channel 3 companies continue to be required (in order to preserve the cross-subsidy arrangements for Channel 3 transmission charges) to use Transcom for distribution (a question being considered by the Home and DTI at the moment).

8. In the period up to 1993, the ITV companies and Channel 4 will have contracts with Transcom for transmission services including distribution, and these can be used to regulate the price for that period. From 1993, Channel 4 will be able to make alternative distribution arrangements. It may also be possible to allow the Channel 3 companies to make alternative arrangements for distribution. While it is true that Transcom's very favourable contract with BT makes it unlikely that the Channel 3 and 4 companies will seek to make their own distribution arrangements, that is not an argument for regulation. Officials have therefore concluded that no price regulation for Channel 4 distribution will be necessary, and that price regulation of Channel 3 distribution will be required only if the Channel 3 companies are locked into Transcom as a result of the cross subsidy arrangements.

* Ministers are invited to endorse this conclusion

9. On Channel 5, NERA conclude that it will be realistic for other transmission operators (using Transcom and BBC sites) to undertake the operation and maintenance of Channel 5; and that Channel 5 will have a choice of distribution suppliers. NERA also provisionally concluded against regulation for Channel 5 site and most rentals. With sufficient data, Oftel believe that the non-discrimination clause in Transcom's T Act licence will be sufficient protection for Channel 5. Subject to sufficient information being available, we think avoiding formal price regulation is the most attractive option.

* Ministers are invited to endorse this conclusion

E.R.

10. NERA conclude that independent local radio transmission and all independent radio distribution will be subject to real competition, and price regulation will therefore be unnecessary.

* Ministers are invited to endorse this conclusion

11. The extent to which independent radio companies will have a genuine choice over sites and masts is debatable. The national AM companies will have no effective choice of sites, and price regulation of the BBC for this function seems unavoidable. In the case of the national VHF and all local radio, there is in theory more choice of sites, though planning permission and coverage problems mean that in practice changing sites may be restricted. However, there are analogous site and mast services offered to cellular and other operators: NERA conclude that the existence of these analogous service, coupled with a prohibition on price discrimination, and the fact that for about two to three of the five years of the first regulatory period the independent radio companies will have fixed price contracts with Transcom, means that formal price regulation of site and mast rentals is unnecessary.

* Ministers are invited to endorse this conclusion

A table showing the proposed scope of price regulation is
... attached at Annex A.

Main conclusions: mechanics of regulation

12. There are two main types of price regulation. Tariff basket regulation controls the total price of a specified list of services; revenue yield regulation controls the price per unit of output. The former is easier to apply, but in some circumstances can lead suppliers to tamper with prices for individual services. NERA conclude that in this case tariff

basket regulation is preferable to revenue yield, because:

- revenue yield requires the selection of a suitable supply unit, which in this case is not available;
- tariff basket is easier to apply, and appears to offer no significant disadvantages in this case.
- * Ministers are invited to endorse this conclusion

13. For administrative simplicity, and because there appear to be no significant disadvantages, the Report suggests that the price formula should be based upon historic (rather than forecast) RPI; and that, given the likely regulatory and contractual arrangements governing distribution and power costs during the period up to 1996, it seems unlikely, at present, that a separate allowance for cost pass-through is necessary or desirable.

- * Ministers are invited to endorse this conclusion

14. In order to balance the need for some medium-term certainty for the regulated company with the need to reconsider the price formula after the system has had time to settle down, NERA recommend a six year initial period for price regulation at the end of which Oftel would review the formula. This would allow the first review to coincide with the review of the BBC's Charter, at which time the BBC's transmission system may be privatised, so reducing the need for price regulation.

- * Ministers are invited to endorse this conclusion

15. The Report considers the extent to which the price formula for Channels 3 and 4 should be applied separately to the three main service components - site and mast rental, operation and maintenance, and distribution. If distribution is not to be included in the price formula, the price formula will cover

E.R.

two service elements for each of the three channels (3, 4, S4C), making six potential tariffs in all.

16. The question is, to what extent do these six tariffs need to be individually specified and controlled?

17. It is clear that the price formula should be applied separately to the three Channels: if it were not, Transcom might start to increase charges to Channel 3 companies (which will be captive customers) in order to cut charges to Channel 4 and 5 companies (who will have the option to go elsewhere). Less clear is the extent to which the charges for the two regulated service components should be separately identified and controlled.

18. Channel 3 will effectively be obliged to procure both site and mast rental, and operation and maintenance, from Transcom for some time (so the separation of its charges into component services would, from the Channel 3 companies' point of view, be academic). However, Channel 4 may wish to consider using alternative operators for operations and maintenance from 1993; and Channel 5 may choose to use Transcom sites and masts but not Transcom operation and maintenance.

19. This suggests that it will be necessary for the Regulator to be able to check the true costs of each service category, rather than simply control the increase in total prices. However, this does not necessarily mean that each category of service has to be separately capped. It may be enough for the Regulator to be able to require Transcom to specify the prices of each category of service within the overall price caps of Channels 3 and 4.

20. Another way of regulating site and mast rental would be to use the site sharing agreement being developed by the BBC and IBA as a means of setting the rates they charge each other. We understand that this agreement will break down costs for individual classes of site, and thus could prove a

useful yardstick for Oftel to monitor whether new transmission operators (eg. the Channel 5 operators) were being charged a fair rental for site and mast use. We shall need to look closely at this.

21. NERA set considerable store by this agreement as a means of avoiding formal price regulation.

- * Ministers are invited to agree that Channels 3 and 4 transmission should each be subject to price regulation by a price cap, with each service category price unbundled but not separately capped; and that officials should explore the use of the BBC/IBA site sharing agreement to facilitate this.

Outstanding questions: Mechanics of regulation

22. The main outstanding question on the mechanics of regulation is the way in which costs should be allocated between customers and reflected in regulated prices. The NERA report recommends that, in some circumstances, the price cap could be of the form RPI-X.. The difficulty arises when additional customers necessitate new sunk costs, or reduce unit costs. For example, if the advent of a Channel 5 transmitter on a mast means additional strengthening of the mast, how should these costs be apportioned? Similarly, if no new capital costs are incurred, the addition of a Channel 5 transmitter is likely to reduce the unit costs of maintenance and operation. Should Channels 3 and 4 share in this reduction? The NERA Report does not answer this question, except to say that the additional costs should be allocated equally when contracts come up for renewal.

23. Channel 5 is the only new entrant to the market which is likely to throw up the problem of cost allocation in a significant way. Whether Transcom secures Channel 5 business will have a major effect upon its cost profiles. It seems likely to be necessary to include in the licensing regime an

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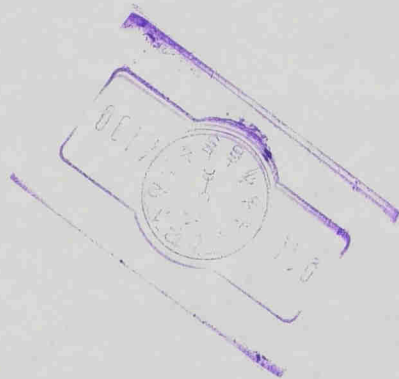
assumption about Channel 5 business, and an ability to alter the price regulation formula if the assumption proves wrong.

- * Ministers are invited to agree that the price formula should be capable of adjustment to allow for changes caused by the advent of Channel 5 business.

PROPOSED SCOPE OF PRICE REGULATION

<u>Programme co.</u>	<u>Site and mast</u>	<u>Op. & Maint.</u>	<u>Distrib.</u>
Channel 3	Yes	Yes	No
Channel 4	Yes	Yes	No
Channel 5	No *	No *	No
All other cos.	No	No	No

* Subject to Oftel having sufficient data to enforce the non-discrimination clause in Transom's licence.



CONFIDENTIAL



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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

1 August 1990

Dear Colin

BBC LICENCE FEE EVASION

The Prime Minister has seen the Home Secretary's minute of 31 July. The Prime Minister remains strongly opposed to criminal sanctions and unpersuaded by the arguments advanced in favour of retaining the sanctions. She will want to return to the subject with the Home Secretary when both are back from the August break.

I am sending copies of this letter to the Private Secretaries to members of MISC 128, to Tim Sutton (Lord President's Office), Gillian Kirton (Lord Privy Seal's Office), Paul Stockton (Lord Chancellor's Office), Jeremy Heywood (Chief Secretary's Office, HM Treasury) and to Sonia Phippard (Cabinet Office).

Yours ever

Dominic

Dominic Morris

Colin Walters, Esq.,
Home Office.

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He will return to report your work
not



Prime Minister

cefr

PRIME MINISTER

① Almost identical arguments to those made last year (though the measures on p 3 are an improvement). Whether the Home Office now

DECriminalISATION OF TELEVISION LICENCE FEE EVASION say these arguments will continue to be deployed until or unless the licence fee is abolished / there is a technical solution (eg. decoders) to its enforcement.

② Consider to accept the Home Secretary's judgement? or Do you want a meeting with him before drafting on the Criminal Justice Bill is finished?

You will recall that last year we considered a recommendation of the Home Affairs Select Committee that the offence of television licence fee evasion should be decriminalised and treated as a civil debt, in the same way as water and other public utility charges. We concluded that although there were no objections in principle, the practical difficulties in adopting such a procedure were substantial. In the absence of any means for the BBC to disconnect supply to non-payers, evasion and late payment could be expected to increase, putting pressure on us to allow a compensatory increase in the licence fee. At our bilateral on 17 November we therefore agreed to leave things as they were for the time being, but to keep the matter under review in the context of next session's Criminal Justice Bill.

(Minute attached)

DM
31/7

2. Since then we have carried out more work on the issue, which has included further discussions with the public utilities and further discussion with the Lord Chancellor's Department on the possible impact on the civil courts. We have also been conscious that the Public Accounts Committee are likely to report shortly that levels of evasion and revenue loss are already too high and that greater efforts must be made to reduce them.

3. The utilities' view remains firmly that the threat of disconnection is an essential sanction - far more effective than court proceedings, which they regard as expensive, time-consuming and frequently unproductive. Research into the TV licensing arrangements suggests that it is largely the threat of criminal prosecution and public perception of the likely size of the fine - compared to the cost of a licence - which persuades the potential evader to obtain a licence. There is another problem. A criminal fine relates to a single act, whereas a civil debt relates to the period of evasion which can be proven; and it might be difficult to prove use over a long time. The sum

awarded by the court would frequently, therefore, be no more - or even less - than the cost of one annual licence. A fine, on the other hand, can be over five times as much as the licence fee. Many more licence payers would take the risk of evading or deferring payment. Furthermore, in many cases it would be uneconomic for the TV Licensing Organisation to pursue court action. They would have to write cases off, further reducing the deterrent effect.

4. There would also be greater problems for the civil courts than we previously identified. LCD have looked carefully at the practicalities of applying a civil debt regime to licence evaders. As a result of various recent initiatives and Parliamentary measures, a great deal of extra work is already expected to fall on the county courts. TV licence evaders are not quick to pay fines imposed by the criminal courts, and they would not provide an easy enforcement task for the civil courts. In the circumstances, LCD could not support decriminalisation.

5. For all these various reasons, therefore, I do not believe that for so long as the BBC depend so heavily on the licence fee income, and while they do not have the ability to withhold the service from particular viewers, we can take the risk of removing the key sanction against non-payers and late payers.

6. I should add that even if the policy presented no problems, use of the Criminal Justice Bill would. The pressures on the Parliamentary timetable for 1990/91 are already severe, and I am conscious of Geoffrey Howe's strictures about the need to limit the scope of that Bill. Decriminalisation provisions would open up the Bill to amendments on a range of other civil law matters; and they would also be contentious in their own right - provoking wide ranging debate about the future of the BBC well before the Charter review is due. I can accordingly foresee severe business management problems if we were to try to include measures on decriminalisation in the Bill.

7. I accept, of course, that we should not rule out removal of the criminal sanction in the longer term; and the issue must be properly aired in the run-up to the renewal of the BBC's Charter in 1996. In the meantime, we are making every effort to

limit the resentment some people feel about criminal liability for non-payment of sums of this kind. In particular, we are doing our best to make payment easier for the less well off. In addition to existing saving stamps and credit card payment arrangements, we are now promoting our new budget payment scheme hard. This enables viewers to obtain a licence on payment of the first of four quarterly instalments; it is no longer necessary to pay for a full year's licence in advance. The scheme is proving very popular. Half a million people have already joined, and over one million are expected to have signed up by the end of the year. We are also in practice using prosecution as a measure of last resort. Most evaders now first receive three written warnings; action against first time offenders is withdrawn provided they buy a (short dated) licence; and the decision to prosecute has now been vested in more senior management in the Television Licensing Organisation to ensure better and more consistent decision-taking. In addition, we are working on schemes to encourage dealers and manufacturers to remind people buying TV sets of the need for a licence.

Copies of this minute go to members of MISC 128 and to Geoffrey Howe, John Belstead, James Mackay, Norman Lamont and Sir Robin Butler.



31 July 1990



CONFIDENTIAL

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c/pps/Dent

10 DOWNING STREET

From the Principal Private Secretary

30 July 1990

**SALARIES OF BBC GOVERNORS AND
IBA/ITC RADIO AUTHORITY MEMBERS**

The Prime Minister has reflected further on the Home Secretary's proposals as set out in his minutes of 12 January and 23 July. She has approved the proposed increase in salary from £5,000 to £6,000 a year on a one day a week basis.

(ANDREW TURNBULL)

Ms. S.J. Dent,
Home Office.

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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

The Production Centre, 5th floor, Threeways House,
40/44 Clipstone Street, London W1P 7EA
Tel: 01-323 3220 Telex: 266075 Prodco - G Fax: 01-637 2590

Professor Brian Griffiths
Head of Policy Unit
10 Downing Street
London SW1

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.

..../..



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.

..5

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%.

..../..

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

*File With broadsheets
importantly papers*

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*

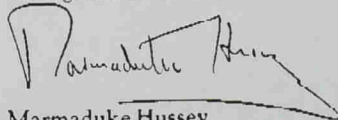
everything to the greatest number of homes'

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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BROADCASTING

Policy

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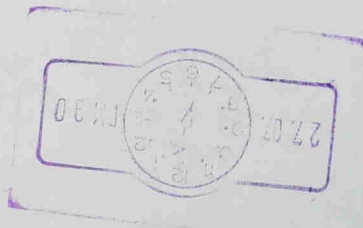
Scientific Atlanta worth £225K in 1991, with an option for further work worth up to £200K in future year(s). Transcom management consider that they have a better than even chance of securing two further contracts which they have been pursuing: one with BTS (Bosch) worth £1m over 2 years; and another 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.

John G. ...





n.b.P.M.
BMP
3117

cap. U.
(BP content)

QUEEN ANNE'S GATE LONDON SW1H 9AT

COMMERCIAL IN CONFIDENCE

26 July 1990

de Peter

FUTURE OF IBA EXPERIMENTAL AND DEVELOPMENT (E & D) DEPARTMENT

Thank you for your letter of 6 July as Financial Secretary. I am replying also to Nicholas Ridley's letter of 9 July. *ATE with A?*

We share the concern, expressed in Nicholas Ridley's letter, that over-optimistic assumptions should not be made about E & D's business prospects. Against that concern, however, must be weighed others:

- (i) the need to maximise the sale price of the new transmission company;
- (ii) the need to preserve the skills base of the company for future ventures;
- (iii) the need to give the emerging management of the new company a firm basis upon which to plan as soon as possible.

None of the courses of action open to us is risk-free. If we take too pessimistic a view of the new company's potential

The Rt Hon Peter Lilley MP
Secretary of State for Industry
1-19 Victoria Street
LONDON SW1H 0ET

/over

E & D business, the sale price may suffer and the company will lose potentially lucrative contracts and staff with valuable skills. On the other hand, we must avoid loading the new company with E & D overheads which cannot be supported by contracts.

We and Price Waterhouse have reviewed the E & D business plan in the light of Nicholas Ridley's and your concerns; and we have reviewed the assumptions in consultation with Transcom management.

ITC funded research

We accept that an increasing proportion of ITC research contracts is likely to go to companies or organisations other than Transcom, as the ITC puts new projects out to competitive tender. (The IBA fully accepts that the ITC will be expected to do this.) The business plan reflects this. However, as your letter of 6 July recognises, the programme planned for 1991 and 1992 consists of on-going projects which could not be placed elsewhere without considerable disruption.

Your letter referred to two projects in particular: enhancements to PAL; and additional uses of the UHF spectrum. Both projects flow from the ITC's statutory duties under Clause 64 of the Bill. In the case of the PAL research (which is proceeding in tandem with privately funded research) a delay would hamper the development of the use of the VBI for additional services under the Bill. The UHF research is concerned with finding a way, through the use of digital techniques, to fit additional television channels into the UHF spectrum currently used for the four terrestrial channels. If successful, this research would open up interesting new options for us (ie the possible introduction of several new near-universal channels), which would further our general broadcasting policy objectives, as well as being conducive to efficient spectrum management. I think that it is very unlikely that this important project would be funded by the private sector: any commercial spin-off would be long term; contingent upon subsequent Government policy decisions (and, probably, primary legislation); and would not necessarily accrue to those who had funded the research.

/cont

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JT

Acpts?

10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

25 July 1990

Dear Colin.

SALARIES OF BBC GOVERNORS AND IBA/ITC AND RADIO
AUTHORITY MEMBERS

The Prime Minister has seen your letter to me of 23 July. She is still unwilling to agree that the salaries of board members should be increased by 20 per cent. She doubts whether the increase from £5000 to £6000 for one day a week would make any difference to a calibre of members willing to serve. She commented that £5000 seems adequate in relation to the demands of the job.

*Yours sincerely
Andrew Turnbull*

A TURNBULL

Colin J. Walters, Esq.,
Home Office

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KW

PRIME MINISTER

SALARIES OF BBC GOVERNORS AND IBA/ITC AND RADIO AUTHORITY MEMBERS

The Home Secretary wrote to you in January arguing that the salaries of BBC Governors and IBA board members had got out of line and were too low to attract people of the right calibre. It was important to rectify this given the major developments in broadcasting which are now underway. He proposed (Flag A) that there should be a 20 per cent increase in members salaries. In most cases this would represent an increase from £5000 to £6000 for one day a week. You expressed concern that this proposal would have difficult repercussions for the then forthcoming Pay Review Body reports.

The pay of the staff (as opposed to the board members) of the BBC and IBA is not formally linked to TSRB rates but Home Office and Treasury use it as a guideline. They have now agreed that the staff of the broadcasting bodies should receive the same increases as other TSRB groups i.e. 6 per cent from 1 April 1990 and 1 per cent from 1 January 1991. The Home Secretary believes that announcing a 20 per cent increase for board members would not now have serious repercussions. The pay awards for other review body groups such as teachers, nurses and doctors are now sufficiently in the past.

(Flag B)

Agree the TSRB increases should be announced for the staff with a 20 per cent increase in the salaries of members of broadcasting bodies?

AT

I don't think the increase would make any difference to the calibre of members willing to serve

(ANDREW TURNBULL)
24 July 1990

c:\wpdocs\pps\salaries (srw)

£5,000 for one day a week
was more than adequate
for that not very exciting job



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DCCFJ
cc: [unclear]

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

23 July 1990

Dear Andrew

SALARIES OF BBC GOVERNORS AND IBA/ITC RADIO
AUTHORITY MEMBERS

When I wrote to Paul ^{Asap P70} Gray at the beginning of this year about a proposed 20% general increase in the salaries of members of the BBC and IBA, he replied on 16 January to say that the Prime Minister thought that the handling of any announcement about such an increase would need to be considered further in the light of Ministerial consideration of the reports from the Pay Review Bodies.

This consideration has now taken place with the result that the TSRB increases for the broadcasting bodies will be 6% from 1 April 1990 and 1% from 1 January 1991. The Home Secretary does not believe that the scale of these increases should inhibit a simultaneous announcement about a general 20% increase in the salaries of members of the BBC and IBA.

We have also had to consider, however, the position of the Independent Television Commission and the Radio Authority as successor bodies to the IBA. These bodies were set up in shadow form on 1 January this year and will be formally established on 1 January 1991, subject to Parliament's approval of the Broadcasting Bill. As a result, the IBA will not exist beyond the end of this year. Some of their members are already serving on the shadow ITC and shadow Radio Authority.

In the Home Secretary's view, we could not apply the 20% increase to IBA members without also applying it to the ITC and RA, a view which is shared by the Treasury. Those bodies are taking over many of the IBA's responsibilities and a few additional regulatory functions. They will be very busy during the rest of this year, and subsequently, in formulating their strategic objectives and ensuring that the necessary regulatory systems are in place and operate satisfactorily. The weight of responsibility they will carry will be no less than that of IBA members.

The Home Secretary therefore considers that the time has now come to announce the TSRB increases for the various broadcasting bodies along with a general increase of 20% in the salaries of members of the BBC, IBA, shadow ITC and shadow Radio Authority, already negotiated with the Treasury. As intimated in my letter of 12 January to Paul Gray, he will then open up

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discussions with the Chief Secretary about the best way to make further progress in linking the salaries concerned to analogous grades in the Civil Service. He would be grateful for the Prime Minister's approval of this approach.

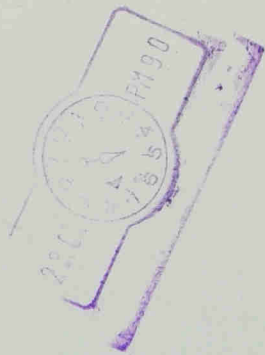
Yours sincerely
Sara Dent

MS S J DENT

Andrew Turnbull, Esq.,
No 10 Downing Street
LONDON, S.W.1.

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BROADCASTING: POLYAN ATTL





10 DOWNING STREET
LONDON SW1A 2AA

From the Principal Private Secretary

12 July 1990

RELIGIOUS BROADCASTING

The Prime Minister has seen and noted Mr. Mellor's letter of 3 July which you sent me under cover of your letter of 4 July.

ANDREW TURNBULL

Miss Jane Harrison
Home Office

hwe
JR

A handwritten signature in blue ink, possibly reading 'JR' or similar, located in the bottom right corner of the page.

clj



*B.F.
of P. U.
ack'd
further
re-written.*

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

10 July 1990

*RHH
10/7*

Dear Ben

BROADCASTING BILL : NETWORKING

Thank you for your letter of 27 June.

*AAP
2/11*

The Home Secretary was grateful for the views of the Secretary of State for Trade and Industry. He notes that officials of our two Departments are currently discussing with OFT the details of the networking provisions to be included in the Broadcasting Bill, and the concerns which OFT have in relation to the current proposals of the ITV Association for a new networking arrangement designed to run for the remainder of the present franchise period, which might also be capable of being rolled forward into the new licence round. The Home Secretary is confident that the various concerns expressed in your letter about the role of OFT in relation to networking will be satisfactorily resolved as a result of these discussions.

As to the particular points you raise about the nature of the competition test to be applied by OFT, I confirm that we now envisage a wider test of the kind currently being discussed between officials. Our concern hitherto, which was reflected in the terms of the Home Office press release to which you refer, and the Home Secretary's letter of 27 June to Sir Gordon Borrie, has simply been that OFT should not be required to consider whether networking per se was a fair or competitive practice, or whether the existence of a Channel 3 network in itself raised competition issues as regards the Channel's position vis a vis other broadcasters. But subject

Ben Slocock Esq
Private Secretary
Department of Trade and Industry
1-19 Victoria Street
LONDON SW1 0ET

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to these points we accept that OFT should not be required to adopt any artificially constrained approach to their consideration of competition issues in relation to networking.

As regards the point in your final paragraph, the Home Secretary agrees that if the ITC were to decide to issue guidance to licensees about networking, they should be required first to consult the Director General of Fair Trading, and take into account any views which he might express. There would of course be no statutory requirement for the ITC to issue such guidance, but they might wish to do so on a purely illustrative basis, in which case the consultation requirement would be triggered.

I am copying this letter to Barry Potter (No 10), the Private Secretaries of other members of MISC 128, Jim Gallagher (Scottish Office), Steven Leach (NIO), Sonia Phippard (Cabinet Office) and Martin Howe (OFT).

Jaw,
Saw

MS S J DENT



dti

the department for Enterprise

ccgs

nb PM

JTP

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The Rt. Hon. Nicholas Ridley MP
Secretary of State for Trade and Industry

COMMERCIAL IN CONFIDENCE

The Rt Hon David Waddington, MP
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Our ref PB4APK
Your ref
Date 9 July 1990

David Bain

into BP

FUTURE OF IBA EXPERIMENTAL AND DEVELOPMENT (E&D) DEPARTMENT

Thank you for your letter of ^{Pres PTH} 22 June enclosing a copy of the plan for the IBA's E&D Department prepared by the future management of the private transmission company which is to inherit the IBA's transmission operation at the beginning of next year. In agreeing earlier this year that we should give the IBA the opportunity to make a case for retaining more than a minimal technical development unit, I emphasised the importance of such a case being a robust one. I am doubtful of the extent to which this has been achieved.

In assessing the plan, much depends on the expectation of future income. I found it less than convincing on this, for three reasons. First, we do not have any firm assurance over the future of the contracts which the ITC may wish to place with the E&D Department. Much of their projected future income will depend on this. In the first 2 years it is more than one half, declining to about one third after 5 years. As the plan explains, no commitment can be made at this stage on behalf of the ITC. Thus the IBA has been able to do no more than agree that the ITC should endorse the assumptions in the plan and place high priority on confirming the proposed levels of expenditure. Moreover, your letter notes that some trimming of ITC budgets may be necessary if you are not entirely successful in your bid in



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