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QUEEN ANNE'S GATE LONDON SW1H 9AT

25 January 1990

Dear Nick,

CROSS-OWNERSHIP RESTRICTIONS INVOLVING SATELLITE SERVICES NOT USING UK FREQUENCIES

Thank you for your letter of 16 January on this subject.

You rightly recognise that this will be a sensitive issue when it comes up shortly in the Commons Standing Committee on the Broadcasting Bill. For this reason I should prefer not to respond on the substance of your proposal until we have had a chance to gauge the strength of opinion in Committee.

As you may know, Simon Coombs, possibly briefed by W H Smith, has tabled an amendment which would simply delete the proposed 20% limit on interests by satellite services not using UK frequencies in Channel 3, Channel 5, DBS and national radio services. As I have said before, I do not think it would be sustainable to dispense with some such rule altogether. The Home Affairs Committee regarded it as "imperative" to have one (paragraph 43 of their report of 22 June 1988). I doubt whether the Committee would have framed their recommendations in the terms they did if they had thought it acceptable to rely on general competition legislation. Several of the Conservative Members who served on that inquiry are also on the Standing Committee. The particular rule included in the Bill was widely welcomed, and as far as we are aware has been opposed only by W H Smith. You summarise the W H Smith case in your letter: it is worth noting that their arguments tend to play down the fact that any European competitor who, like them, controlled satellite channels intended for reception in the United Kingdom would also be caught by the proposed 20% limit, and that it would alternatively be open to W H Smith, under our proposals, to own a large and a small Channel 3 franchise while retaining substantial non-DBS satellite TV investments provided these did not amount to control. Predictably enough, there is also an Opposition Front Bench amendment which would strengthen the proposed rule by changing the limit from 20% to 10%. I expect this to be vigorously pressed and it may attract some support from our own side.

These arguments will, of course, have a bearing not just on whether we could get a discretionary rule through Parliament, but also on whether it would be sustainable for some of the broadcasting ownership rules to be discretionary and others fixed (as seems to follow from your proposal) and if so, on where this line should be drawn. I am not attracted to the idea that

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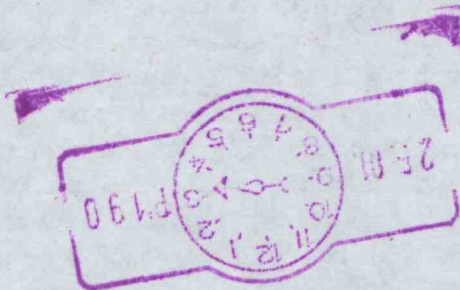
any discretionary rule would be operated by the ITC at the licensing stage and the OFT/MMC at the takeover stage. This seems to me a recipe for anomaly and confusion. If we were to have a special broadcasting ownership rule which was discretionary it would seem preferable for this to be enforced by the ITC, on the lines of those operated by the Cable Authority under the 1984 Act. But I would prefer not to prejudge the question of what the rule should be until we have heard the arguments in Committee.

I am copying this letter to the recipients of yours.

Yours ever
Nigel



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