

PRIME MINISTER

ALLOCATION OF ITV FRANCHISES

You asked me to look into the points Michael Green raised with you at the industrialists' lunch about the latest proposals for considering the quality threshold and financial bids in determining who will get the ITV franchises. I have talked to the Home Office, and had the opportunity to discuss it further with Michael Green, who I sat next to at today's Training Seminar lunch.

You are seeing the Home Secretary on Monday, and you may want to discuss the matter with him then.

It may be helpful if I set out the sequence of events in the original consideration of the policy:

- In the 1988 discussions in Misc 128 it was clear that a two-stage procedure was envisaged. The quality threshold came first, and then the financial assessment. This was set out in paragraph 6.17 of the November 1988 Broadcasting White Paper - see Flag A.
- As part of the post-White Paper consultation, the IBA put forward revised proposals. These were set out in a Misc 128 paper (Flag B). George Russell argued that the two stages should be handled simultaneously - see in particular paragraph 7 and the Annex to paragraph 5.16 of Flag B.
- You then had a Misc 128 meeting with George Russell present. Most of the discussion of the proposed financial assessment focussed on George Russell's proposals for a "quality of money" test. But I don't recall much of any discussion of whether it should be a two-stage or single stage assessment process. The minutes of that discussion (Flag C) bear this out.
- Misc 128 then met again without George Russell. They



considered a further paper from the then Home Secretary - see Flag D. This argued against the proposed "quality of money" discretion (see paragraph 9), but supported various other aspects of the Russell package. Paragraph 11 said that "While rejecting the quality of money argument, I would nonetheless endorse the broad shape of the rest of Mr. Russell's proposal .....". No explicit mention was made of whether this endorsement should include the move to a single stage assessment process, but I suppose that could be regarded as implicit.

- The minutes of that Misc 128 discussion - Flag E - are again silent on the issue of whether the move to a single stage process was being accepted. I don't recall any discussion of it. But again it could be regarded as implicit.
- there were then no further discussions until the publication of the Broadcasting Bill. This is at Flag F. I suggest you read clauses 15-17. It is clear that what is involved is a single stage process, and that the ITC will be fully aware of the cash bids at the time they consider the quality threshold.
- The David Mellor letter in Wednesday's Times (Flag G) seems accurately to reflect the position in the Bill.

You will want to consider how to handle this with the Home Secretary. As indicated above, I do not recall any explicit discussion in Misc 128 of whether we were moving from a two-stage to a single stage process; on that basis it would not be surprising if you thought we were still on the two-stage approach. On the other hand, it is arguable that the papers Misc 128 considered last year did implicitly accept the shift to a single stage process.

What is beyond doubt is that the position in the Bill is crystal clear, and if you did want to get back to a two-stage process, it would be necessary to amend the Bill.

PG

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in exchange would have the opportunity to own shares in it. However, whereas at present all ITN shares are held by ITV contractors, under the new provision some shares would be held externally, by bodies without licences on any television channel. Eventually a majority of shares should be held by non-licensees. The detailed arrangements need further study and consultation, but one approach would be as follows. Initially the Channel 3 licensees might hold the majority, or all, of the shares in the news organisation or organisations. The supply of news to Channel 3 would be governed by a service contract which would, unlike the funding for ITN at present, include a profit element to establish the organisation's commercial value. The ITC would be under a duty, at the right time, to ensure that some, perhaps the majority, of shares were sold to non-licensees. No external investor should hold more than 5 per cent of the shares.

6.14 Although not having general control of scheduling, the ITC would have powers to ensure that the news service provided by one or more of the news organisations was shown by Channel 3 stations and, as already indicated, that this should include exposure during peak viewing times. As a necessary safeguard, the ITC would have power to withdraw, after adequate notice, its approval of a news organisation established under the arrangements discussed in the previous paragraph which failed to deliver an acceptable service.

*Other responsibilities of licensees*

6.15 The Government envisages that the Channel 3 programme service should be provided with the same universal coverage as at present, but by the companies rather than being provided, as now, by a broadcasting authority. It follows from this that, subject to what is said above about news coverage, the ITC would not have the IBA's responsibility for detailed approval of scheduling or prior clearance of particular programmes. It should be for the operators to decide what to show and when to show it, subject to the general law and the regulatory requirements described in paragraphs 6.10–6.11. It would also be their responsibility to decide on commercial grounds on any arrangements for networking or syndicating programmes among themselves. This means that much of the detailed supervisory work now done by the IBA would come to an end. The operators will also be free to decide their own mix between advertising and subscription.

*Division of Channel 3 licences*

6.16 In order to create more opportunities for entry to the broadcasting market and competition within it the Government proposes that there should be a separate night hours licence, or licences, for Channel 3. It will be for the ITC to determine the exact boundaries, and to decide on possible additional licences covering other times of day—eg for a breakfast time service. The ITC will also be responsible for the geographical division of Channel 3 into regions, whose particular interests licensees will need to cater for, as envisaged in paragraph 6.11 above. The Government envisages that the extent to which the regional and any schools programming obligations apply to any night time or breakfast time licensees would be determined by the ITC taking account of the basis on which the Channel 3 licences were being divided up.

*Allocation of licences*

6.17 The present arrangements for awarding ITV contracts have been conscientiously applied, and in some respects reformed, by the IBA. But they have been widely criticised as arbitrary and opaque. The Home Affairs Committee saw advantage in introducing a more commercial element into the allocation of ITV franchises, and recommended that a suitably regulated tendering process should be introduced (paragraph 134). The Government agrees and proposes that the ITC should operate a two-stage procedure. In the first stage applicants for licences would have to pass a quality threshold. They would have to satisfy the ITC that they would meet the programming requirements set out in paragraphs 6.10 and 6.11 above—in other words that they were qualified to take on a Channel 3 licence. They would also have to meet whatever ownership tests are eventually imposed: this subject is discussed in paragraphs 6.48–6.53. All applicants passing this threshold would go on to the second stage in which they would



offer financial tenders for the licence. The ITC would be required to select the applicant for each licence who had submitted the highest tender. Both stages of the procedure will be open to public scrutiny. This two stage procedure will provide a more objective method of licence allocation which will be fairer to all applicants, and will at the same time secure a proper return for the taxpayer for the use of a public resource. In order to ensure that the tender procedure meets the latter objective and that there is a fair sharing of risks between Channel 3 operators the Government envisages that each licensee will also be required to pay levy in the form of a percentage of advertising revenue at progressive rates, the initial level of which will be prescribed when licences are advertised. This will replace the present ITV levy.

*Takeovers* 6.18 The ITC will not have or need the IBA's present powers to block takeovers, which reflect the discretionary nature of the present contract allocation process. But those buying into companies will have to satisfy the proposed programming tests and the ownership rules discussed in paragraphs 6.48–6.53 below. Subject to these tests and rules, takeovers can be a useful way of bringing new ideas and talent into television and re-inforcing pressures for efficiency.

*Performance reviews* 6.19 The quality tests set out in paragraphs 6.10 and 6.11, which would be reflected in licence conditions, would not cease to apply when operators had been selected. They would continue throughout the licence period. The ITC would be responsible for monitoring performance and following up complaints by the public. The ITC would undertake formal reviews of the performance of licensees at intervals or as needed. As recommended by Peacock (paragraph 657), the ITC will have power, after a review, to issue a formal warning (a yellow card) and to remove a licensee (a red card) one year later if performance remains unsatisfactory—for example in failing to deliver a sufficiently diverse programme service. The Government is considering whether, as an additional sanction, the ITC should be able to impose financial penalties. This enforcement machinery will be designed for effective use if necessary.

*Licence terms* 6.20 The Government has carefully considered the arguments for and against fixed term or unlimited licences for UHF independent television services. It could be argued that the new flexibility as regards takeovers (paragraph 6.18 above) will ensure against the inefficiency or rigidity which an indefinite licence might otherwise produce, and that an indefinite licence would avoid the risk of failing interest or involvement towards the end of a fixed term. Against this, under an entirely open-ended system competitive tender would benefit the Exchequer only once. It might also be difficult for the ITC to secure agreement to any necessary future structural changes either in licence conditions or in the system more widely, such as changes to the geographical framework of Channel 3. Taking account of these considerations, the Government proposes that the licences for UHF independent television services should be for a fixed term of ten years (as recommended in paragraph 658 of the Peacock Report), but that it should be open to licensees, during the final years (perhaps the last four) of their licences, to apply for licence renewal for further 10 year terms. The licensee would have to satisfy the ITC that he was continuing to meet his programming obligations and otherwise sustaining a satisfactory performance, and the ITC would retain the ability to make structural changes in the system. The licensee would also have to pay a licence renewal fee to the ITC, which would be calculated on a formula based on the licensee's advertising, subscription and sponsorship revenue. Where the ITC was not satisfied that the licence should be renewed it would be open to it to proceed to competitive tender on the basis proposed in paragraph 6.17, or else to invite the licensee to re-apply for renewal after a further period during the currency of the existing licence.

(ii) *Channels 5 and 6* 6.21 The Government proposes that, subject to what is said below, the same regulatory regime (although without the regional programming obligations) and the same licence allocation and review arrangements should apply equally to Channel 5. The Government proposes that Channel 5 should come on stream



## CHAPTER II

## PART I

## TELEVISION BROADCASTING ON CHANNELS 3, 4 AND 5

## Channel 3

14.—(1) The Commission shall do all that they can to secure the provision, in accordance with this Chapter, of a nationwide system of television broadcasting services to be known as Channel 3.

Establishment of  
Channel 3.

(2) Subject to subsection (4), Channel 3 shall be structured on a regional basis, with each of the services comprised within it ("Channel 3 services") being provided for such area in the United Kingdom as the Commission may determine in the case of that service.

(3) If the Commission so determine in the case of a particular Channel 3 service, that service shall be provided for a particular area only between such times of the day or on such days of the week (or both) as the Commission may determine.

(4) If the Commission so determine, a Channel 3 service may be provided for two or more areas for which regional Channel 3 services are provided, but any such service may only be so provided between particular times of the day.

(5) In this Part—

"regional Channel 3 service" means a Channel 3 service provided for a particular area determined under subsection (2); and

"national Channel 3 service" means a Channel 3 service provided as mentioned in subsection (4).

(6) Any reference in this section to an area in the United Kingdom does not include an area which comprises or includes the whole of England.

15.—(1) Where the Commission propose to grant a licence to provide a Channel 3 service they shall publish, in such manner as they consider appropriate, a notice—

Applications for  
Channel 3  
licences.

(a) stating that they propose to grant such a licence;

(b) specifying—

(i) if the service is to be a regional Channel 3 service, the area in the United Kingdom for which the service is to be provided,

(ii) if the service is to be provided as mentioned in section 14(3), the times of the day or the days of the week (or both) between or on which it is to be provided, and

(iii) if the service is to be a national Channel 3 service, the areas in the United Kingdom for which it is to be provided and the times of the day between which it is to be provided;

(c) inviting applications for the licence; and

(d) specifying—

(i) the fee payable on any application made in pursuance of the notice,

(ii) the amount of the deposit payable in connection with any such application,



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(iii) the amount of any security that would be required to be given by an applicant in accordance with section 18 if he were awarded the licence, and

(iv) the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 19(1)(b) if he were granted the licence.

(2) Any application made in pursuance of a notice under this section must be in writing and accompanied by—

(a) the fee and the deposit specified in the notice under subsection (1)(d)(i) and (ii);

(b) the applicant's proposals for providing a service that would comply with the requirements specified in section 16(2) or (3) (as the case may be);

(c) the applicant's cash bid in respect of the licence; and

(d) such information as the Commission may reasonably require as to the applicant's present financial position and his projected financial position during the period for which the licence would be in force.

(3) At any time after receiving such an application and before determining it the Commission may require the applicant to furnish additional information under subsection (2)(b) or (d).

(4) Any information to be furnished to the Commission under this section shall, if they so require, be in such form or verified in such manner as they may specify.

(5) The amount of the deposit specified in any notice under subsection (1)(d)(ii) shall be an amount which the Commission consider to be adequate to deter the making of frivolous applications under this section.

(6) Subject to section 18(3) and (4), any deposits paid to the Commission under subsection (2)(a) shall be held by them pending the coming into force of the licence in question, and on its coming into force—

(a) the deposit paid by the successful applicant shall be retained by the Commission and applied by them—

(i) in the first instance, in or towards discharging any liability of that person arising by virtue of section 19(1)(b) in respect of so much of any accounting period or periods of his as falls within the period of 12 months beginning with the date of the grant of the licence, and

(ii) (subject to that) in or towards discharging any liability of his arising by virtue of section 19(1)(a) in respect of that period of 12 months; and

(b) any deposit paid by an unsuccessful applicant shall be returned to him;

but the Commission shall not be liable to account to any person for any interest in respect of a deposit paid to them under subsection (2)(a).

(7) If the Commission determine that none of the applications for a particular Channel 3 licence should succeed, all of the deposits so paid shall be returned by them to the applicants.



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(8) The Commission shall, in connection with each notice published by them under subsection (1), publish in such manner as they consider appropriate—

- (a) the name of every person who has made an application to them in pursuance of the notice; and
- (b) the proposals submitted by him under subsection (2)(b).

(9) In this Part "cash bid", in relation to a licence, means an offer to pay to the Commission, in respect of the grant of the licence, a specified amount which is to be so payable by equal annual instalments throughout the period for which the licence is in force.

16.—(1) Where a person has made an application for a Channel 3 licence in accordance with section 15, the Commission shall not proceed to consider whether to award him the licence on the basis of his cash bid in accordance with section 17 unless it appears to them—

- (a) that his proposed service would comply with the requirements specified in subsection (2) or (3) below (as the case may be), and
- (b) that, having regard to the information supplied by him to the Commission under section 15, he would be able to maintain that service throughout the period for which the licence would be in force, and
- (c) that, if awarded the licence, he would be in a position to give to the Commission such a security as is mentioned in section 18(1);

and any reference to an applicant in section 17 (except in section 17(11)(b)) is accordingly a reference to an applicant in whose case it appears to the Commission that the requirements of paragraphs (a) to (c) above are satisfied.

(2) Where the proposed service is a regional Channel 3 service, the requirements referred to in subsection (1)(a) are—

- (a) that a sufficient amount of time is given in the programmes included in the service to news programmes and current affairs programmes which (in each case) are of high quality and deal with both national and international matters, and that any such news programmes are, in particular, shown at peak viewing times;
- (b) that a sufficient amount of time is given in the programmes included in the service to programmes (other than news and current affairs programmes) which are of high quality;
- (c) that a sufficient amount of time is given in the programmes so included to a suitable range of regional programmes (that is to say, programmes of particular interest to persons living within the area for which the service is provided, including news programmes dealing with matters relating to that area) and that a suitable proportion of the regional programmes so included are made within that area;
- (d) that (taken as a whole) the programmes so included are calculated to appeal to a wide variety of tastes and interests;
- (e) that a proper proportion of the matter included in those programmes is of European origin; and

Procedure to be followed by Commission in connection with consideration of applications for licences.



## PART I

(f) that in each year not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes in the service is allocated to the broadcasting of independent productions.

(3) Where the proposed service is a national Channel 3 service, the requirements referred to in subsection (1)(a) are such (if any) of the requirements specified in subsection (2) as the Commission may determine to be appropriate having regard to the nature of that service.

(4) In applying subsection (2)(e) the Commission shall have regard to such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this subsection.

(5) In subsection (2)(f) "qualifying programmes" and "independent productions" mean, in each case, programmes of such description as the Secretary of State may by order specify for the purpose; and he may by order amend that provision by substituting a different percentage for the percentage for the time being specified there.

(6) Before making an order under subsection (5) the Secretary of State shall consult the Commission; and any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section "programme" does not include an advertisement.

Award of licence  
to person  
submitting  
highest cash bid.

17.—(1) Subject to the following provisions of this section, the Commission shall, after considering all the cash bids submitted by the applicants for a Channel 3 licence, award the licence to the applicant who submitted the highest bid.

(2) Where the amounts specified in the cash bids submitted by two or more applicants for a particular licence are the same, the Commission shall invite those applicants to submit further cash bids in respect of that licence; and, in relation to any person who has submitted a further cash bid in pursuance of this subsection, any reference in this Part to his cash bid is a reference to that further bid.

(3) The Commission may award the licence to an applicant other than the one who submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to do so.

(4) If it appears to the Commission, in the case of the applicant who submitted the highest bid, that there are grounds for suspecting that any relevant source of funds is such that it would not be in the public interest for the licence to be granted to him—

(a) they shall refer his application to the Secretary of State, together with—

(i) a copy of all documents submitted to them by the applicant, and

(ii) a summary of their deliberations on the application; and

(b) they shall not award the licence to him unless the Secretary of State has given his approval.

(5) On such a reference the Secretary of State may only refuse to give his approval to the licence being awarded to the applicant in question if he is satisfied that any relevant source of funds is such that it would not be in the public interest for the licence to be so awarded.



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(6) In subsections (4) and (5) "relevant source of funds", in relation to an applicant, means any source of funds to which he might (directly or indirectly) have recourse for the purpose of—

- (a) paying instalments of the amount specified in his cash bid, or
- (b) otherwise financing the provision of his proposed service.

(7) In a case where any requirement such as is mentioned in section 5(1)(b) operates to preclude the Commission from awarding a licence to the person who submitted the highest bid, they shall award the licence in accordance with rules made by them for regulating the awarding of licences in such cases.

(8) Any such rules shall be published by the Commission in such manner as they consider appropriate, but shall not come into force unless they have been approved by the Secretary of State.

(9) Where the Commission are, by virtue of subsection (4), precluded from awarding the licence to the applicant who submitted the highest bid, the preceding provisions of this section shall have effect as if references to that applicant were references to the applicant (if any) who submitted the next highest bid; and where the Commission are so precluded from awarding the licence to him those provisions shall have effect as if those references were references to the applicant (if any) who after him submitted the next highest bid, and so on.

(10) Where the Commission have awarded a Channel 3 licence to any person in accordance with this section, they shall—

- (a) publish the matters specified in subsection (11) in such manner as they consider appropriate; and
- (b) (subject to section 18) grant the licence to that person as soon as is reasonably practicable.

(11) The matters referred to in subsection (10)(a) are—

- (a) the name of the person to whom the licence has been awarded and the amount of his cash bid;
- (b) the name of every other applicant in whose case it appeared to the Commission that his proposed service would comply with the requirements specified in section 16(2) or (3) (as the case may be); and
- (c) where the licence has, by virtue of subsection (3) above, been awarded to an applicant other than the one who submitted the highest cash bid, the Commission's reasons for the licence having been so awarded.

18.—(1) A person to whom a Channel 3 licence has been awarded shall, within such period as the Commission may notify to him, give to the Commission such security as they may determine against any failure during the period for which the licence is in force to comply with such conditions as the Commission may impose for the purpose of securing that the service provided under the licence accords with the proposals submitted by the licence holder under section 15(2)(b) (whether as originally so imposed or as varied by the Commission).

Holder of Channel 3 licence to give security against failure to maintain proposed service.