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Dear David

BROADCASTING BILL: PERFORMANCE BONDS

Thank you for copying to me your letter of ~~6~~ Mar February to John Major about performance bonds.

MISC 128 decided that performance bonds should be used:

(i) to ensure the payment of fines by licensees not adhering to their programming promises;

(ii) to provide a significant "exit barrier" for any licensee who might otherwise wish to walk away from his franchise or had his licence withdrawn; and

(iii) to pay for the expenses and lost Exchequer revenue involved in any interregnum.

It is obviously important to make clear to prospective franchisees that they will not be able lightly to avoid the promises they made at the time of their application. The need for a large performance bond may act, however, as a barrier to entry which will hit the smaller applicants. This could include, in particular, those who plan to offer a commissioning house model with programmes provided by independent producers. Conversely it could be expected to favour existing franchisees, at least in the larger, more remunerative, franchises.

I therefore have some doubt over your proposal to fix the bond at 7% of annual turnover or £2 million, whichever is the

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greater. In the case of a large franchise this would seem to imply a bond of more than £10 million. I would be interested to know whether you have made any estimates as to how much such a bond would in practice cost a licensee to maintain. I would however agree with you that there is merit in fixing the level in advance rather than leaving it to the ITC's discretion.

You propose not to use the bond to underwrite any fines imposed by the ITC. I can agree to this. The link between the ITC's subjective judgement and specific sums of money has always seemed to me doubtful. I would however note that such a move weakens the case for your apparent wish to rely increasingly on the "quality hurdle". I am also content with your proposal over the life of the bond which should enable greater flexibility over its size.

Finally, I am unclear as to exactly which costs to the ITC the bond is intended to cover, beyond those directly attributable to choosing the provider of the interim service. The costs of actually providing that service will surely fall to the provider since he will also receive all the advertising income from the service.

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

Yours ever

Nicholas

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