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PRIME MINISTER

BROADCASTING BILL

I have just received your letter of 20 February following your meeting with a deputation from the National Council of Women at your constituency surgery about violent films on television and video. I will write to you separately about the various points you have raised, but I can assure you at once that, so far as television is concerned, the Broadcasting Bill should fully meet your understandable concern. The safeguards set out in clauses 6 and 7 of the Bill, which apply to all television services, include specific provision ensuring that nothing is shown which offends against good taste or decency or is likely to be offensive to public feeling, and require the ITC to draw up and review a code giving guidance as to the rules to be observed with respect to the showing of violence, particularly at times when children are watching, and to do everything possible to secure that the provisions of this code are observed.

Perhaps I could take this opportunity of reporting to you on how we stand with the Bill. Good progress is being made. David Mellor has been very successful in keeping down the political temperature and there has been much less hostility towards the Bill than might have been expected as a result of David's handling of the Committee and his willingness to concede minor drafting amendments where this can be safely done without damage to our essential objectives.

Yes
No
A recent press report suggested that the changes which we have said we are willing to consider would serve to provide an inside track for the existing ITV companies. Such suggestions are without foundation and certainly do not represent the views of ITV itself. The proposals in the Bill guarantee the establishment of a new competitive framework for commercial television on exactly the basis envisaged by MISC 128. We have not in any way changed our position on the key elements of that framework. On, for example, multiple bidding, dual ownership of franchises, and liability of the new licensees to the normal market discipline of takeover, we have stood completely firm, despite the vigorous lobbying of the ITV interests.

The Committee debates have however shown concern among our own backbenchers as to whether the Bill does enough to safeguard quality. I have come to the conclusion that the best way to meet their concerns and keep their support is to make one or two amendments designed to clarify and enlarge upon what is already implicit in the Bill. This minute sets out what I propose.

*we haven't
got quality
to safeguard*

The approach which the Bill embodies is, as you know, that applicants for Channel 3 licences must first satisfy the ITC of their ability to pass a quality threshold; the winner is then selected from amongst those who get through this first stage on the basis of the highest financial bid, but with a discretion in the hands of the ITC to prefer a lower bid in "exceptional circumstances".

The object of the quality threshold is to ensure that all those who enter the bidding process are qualified to offer an acceptable level of service. But there will always remain the possibility of a situation arising where the quality of programming offered by one of the applicants qualified to bid is manifestly higher than that of another. MISC 128 recognised this problem and agreed that it was necessary to have some mechanism whereby quality could still be taken into account at

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applicants
this late stage, in circumstances where it would be perverse to ignore the overwhelming quality differences between applicants. It was acknowledged in MISC 128 that there was potentially a wide range of circumstances, of which quality might be one, where it was desirable to have an exceptional discretion to override the highest bid.

We need however to convince critics of the Bill that the "exceptional circumstances" provision can indeed be used in this way and the best way to do that is to make clear on the face of the Bill that this is the case. The problem is to know what precise words to use. I have considered words such as "clearly and substantially" better but that might appear to give too wide a discretion to the ITC. A test based on exceptional quality difference would not however add anything to the discretion the Bill already gives the ITC. Its inclusion would therefore serve entirely for purposes of clarification and presentation, and it would commend itself to a wide range of individuals and groups, inside and outside Parliament, who are concerned on this point. A formula on these lines would be immeasurably stronger than the wide discretion favoured by the Peacock Committee; and it would certainly not allow the ITC to make fine judgements about relatively small differences in quality. But it would demonstrate the ability of the ITC in these narrowly defined circumstances to take account of quality at the second stage of the allocation process.

I also think it would be desirable to make one or two other relatively minor amendments aimed at strengthening the quality threshold itself.

First I would like the Bill to specify that Channel 3 licensees must include a suitable amount of children's programmes and religious programmes in their schedules. Both these programme types have given rise to powerful lobbies arguing the case for

specific guarantees, and there is a lot of support for this from our own backbenchers. In practice I do not think that by making such a change we would be imposing any significant additional burdens on licensees. It is inconceivable that a Channel 3 licence could be awarded to somebody who was not offering children's programmes, since the requirement in the Bill to cater for a wide variety of tastes and interests must on any analysis include children who comprise such a significant proportion of the viewing audience.

It is also unlikely that the exclusion of religious programmes could be considered to be consistent with the diversity requirement, but there is in any case the separate argument that by its very nature religion has a special claim for protection which does not depend on particular levels of audience demand.

It is clear from the debates in Committee that specific concessions on children and religion would be extremely popular in their own right, and would also go a long way towards meeting the more general demands for a strengthening of the quality threshold. The religious concession, coupled with the exceptional discretion which we have already agreed for the ITC to allow religious ownership of channels like the Vision Channel not using UK broadcasting frequencies, should also enable us to satisfy the growing lobby - which will no doubt attract considerable support in the Lords - seeking amendments in the Bill in relation to religion.

There is obviously a strong argument against providing a long list of specific statutory guarantees for individual programme types, since it may be difficult to know where to draw the line. But the Bill already contains certain requirements of this kind - news, current affairs, regional programmes, schools programmes - and I do not think that to add children and religion to this list will weaken our ability to hold out, as of course we must,

against unacceptable demands for a more extensive shopping list.

Secondly, I think we should permit the ITC to apply the existing requirement in the Bill that a suitable proportion of programmes must be of high quality across the range of main programme types. This is essentially no more than a drafting amendment. As the Bill stands, it would theoretically be possible for a licensee to argue that all his game shows and soaps were of high quality, and that he was not therefore required to offer any other high quality programmes. This is obviously not what we intended when deciding to introduce the requirement, and I do not believe it at all likely that anybody would try to maintain such a position. But presentationally there would be considerable attraction in putting the matter beyond doubt in the way I propose.

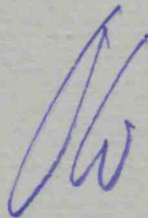
Finally I think there would be advantage in slightly strengthening the requirements for regional programming. David Mellor was pressed hard in Committee to accept amendments designed to enhance the regional identity of Channel 3. Although he managed to resist these, there continues to be a good deal of concern on both sides of the Committee that our proposals do not satisfactorily safeguard regional programming. Some movement on our part here would I am sure be widely welcomed, and I think that an attractive way of responding to the concern, without in practice imposing any significant further obligations on licensees, would be to require that regional news coverage must be of high quality. We are already requiring high quality national and international news, and the absence of a similar requirement for regional news has attracted adverse comment. I very much doubt whether adding the words "high quality" in the context of regional news would make any practical difference to licensees in programming terms, but, as with my other proposals, it would be seen as an important strengthening of the existing requirements, for which we could take credit.

whether
high
quality
in news?

I believe that this limited package of amendments is essential if we are successfully to carry the Bill in Parliament, particularly in the Lords where we are of course especially vulnerable. The changes I propose represent the kind of flexibility which is always necessary to achieve the passage of a major Bill of this kind. They are the outcome of a long series of discussions which David Mellor and I have had with the various interests and lobbies concerned. They would in my judgement be sufficient to defuse the main opposition to the Bill, and, since they do not involve any departure from our basic principles, they would enable us to proceed with our proposals wholly intact. That would be a substantial prize, and would represent far more than we would have dared to hope only a few months ago.

I very much hope therefore that you and colleagues will be able to agree that we should introduce amendments on these lines when the Bill comes back to the House on Report.

I am copying this to other members of MISC 128, to Kenneth Baker, Malcom Rifkind and Peter Brooke, and to Sir Robin Butler.



22 February 1990

