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ccp

Note Discussed with Brian Giffiths and agreed there were technical points which the PM need not be troubled with.
28 February 1990
∴ Action at his stage.

Norman

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BROADCASTING BILL: PERFORMANCE BONDS

FIG WITH RE

Thank you for your letter of 14 February. I am also grateful to Nicholas Ridley for his letter of 12 February.

In my letter of 6 February I proposed that performance bonds should be capable of being used for three purposes:

- (a) to enable the ITC to acquire a regional service for the vacant licence area, if practicable;
- (b) to cover any additional ITC costs associated with the termination of the licence;
- (c) to pay to the Treasury the competitive tender revenue which would have been paid if the licence had not been revoked.

You indicated that you could not agree to the first two of these proposals. On the first, I had in mind that if a licence were revoked the ITC would in the normal course invite another licensee to transmit his own programme service in the vacant area. As you say, the ITC should have little difficulty achieving this, since almost certainly the marginal additional costs associated with the transmission of a service in another area would be more than compensated for by the additional advertising revenue which would accrue. But the neighbouring licensee could not be required to provide separate regional programming for the vacant area. He would simply transmit his own regional programmes as part of his overall service. I therefore envisaged that the ITC might be permitted to use some of the proceeds of the performance bond to acquire a regional service for the vacant area on a temporary basis, if practicable. On the second point, there is a possibility that the ITC could become involved in major litigation as a consequence of revoking a licence and could thereby incur heavy costs. It would seem rather perverse if the ITC had to recover those costs from the other remaining licensees.

The Rt Hon Norman Lamont, MP.
Chief Secretary
Treasury Chambers
PARLIAMENT STREET, S.W.1.

/over....

I am not, however, inclined to press either of these two points if you see difficulty with them. In the first case, it is possible that the licensee providing the temporary service might choose to provide some measure of regional programming for the vacant area if he judged this to be in his own commercial interests. In the second case, it is reasonable to suppose that if the ITC were to enter into major litigation and to win their case, costs would be awarded to them. If on the other hand they were to lose, they would have no right to call on the bond.

I therefore propose that the performance bond should be used only to indemnify the Treasury for the loss of revenue incurred as a result of the withdrawal of the licence. I think that we must leave open the possibility that if by the time a new licensee began broadcasting the amount available under the performance bond was greater than the unpaid tender revenues, any surplus should be returned to the bond provider (not the failed licensee). That would be consistent with the concept of indemnity, to which the financial institutions we have consulted attach great importance. In practice, the possibility of such a refund is extremely unlikely, since it may well be the best part of a year before a new licensee is ready to begin broadcasting and the bond would by then generally be exhausted anyway. But, presentationally, it would be preferable to be able to say that the Treasury would take from the bond no more than the amount of the tender revenue foregone.

Nicholas Ridley commented on the likely size of a bond calculated on the basis of 7% of the annual turnover of the licensee which I proposed. On this basis, a licensee for a large area would have to put up a bond in excess of £10 million. This is in fact no more than we had envisaged all along. It is, of course, a very substantial sum, but the whole purpose of the bond is to prevent a licensee from walking away from his licence obligations. Even at that level, the bond would equal only about five weeks' turnover for the licensee. Anything much less than this would not have the deterrent effect we intend.

I acknowledge that the performance bond will represent a particular burden for a licensee wishing to offer himself as a publisher contractor. But we cannot have it both ways. A sum which is easy to acquire cannot at the same time be expected to act as a disincentive to a licensee from abandoning the licence. I see the performance bond as a major element of the competitive tender arrangements, acting as a sword of Damocles which holds licensees to their licence commitments.

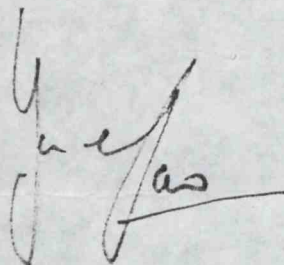
Nicholas asked about the cost of maintaining the bond. Clearly the cost will depend on the associated security which the licensee can offer. I understand that if a company could deposit the value of the bond or had readily realisable assets, the banks might charge a fee in the region of a quarter to one and a quarter percent of the value of the bond per annum to maintain the bond. On the other hand, an insurance arrangement might cost

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between 2% and 8% of the value of the bond per annum. These figures are, of course, only illustrative. The financial institutions make clear that each case would naturally be considered on its merits.

Nicholas also commented that if the bond were not used to underwrite fines, this could weaken our position in relation to the quality hurdle. I do not agree. I think that the performance bond will still have a role to play. Suppose a company were to fail to live up to its programme promises and were to incur a fine. If it did not pay that fine, it would be in further breach of its licence conditions and vulnerable to having the licence revoked. If that were the case, the company would lose the entire amount of the performance bond. I would imagine that the risk of losing the whole bond in this way would motivate the company to pay the fine.

I am copying this letter to MISC 128 colleagues and to Sir Robin Butler.

A handwritten signature in dark ink, appearing to read "Nicholas", with a horizontal line extending from the end of the signature.

BROADCASTING : POLICE PTO

