

dti

the department for Enterprise

n.b.p.m.

BTP

27/6

The Rt. Hon. Nicholas Ridley MP  
Secretary of State for Trade and Industry

Ms S J Dent  
Private Secretary to  
the Home Secretary  
Home Office  
Queen Anne's Gate  
LONDON  
SW1H 9AT

Department of  
Trade and Industry

1-19 Victoria Street  
London SW1H 0ET

Enquiries  
071-215 5000

Telex 8811074/5 DTHQ G  
Fax 071-222 2629

Direct line 071-215 5622

Our ref PE2AXL

Your ref

Date 27 June 1990

See Sara

map

**BROADCASTING BILL: NETWORKING**

Your letter of 5 June to Barry Potter set out the revised approach, devised by Home Office officials with Professor Griffiths, to the Channel 3 networking arrangements.

We agree that the revised approach proposed appears reasonable, and DTI officials have, with Home Office and Office of Fair Trading (OFT) colleagues, worked up detailed proposals for the scrutiny of networking arrangements by the Director General of Fair Trading (DGFT) (and, if the parties disagree with his decision, the MMC) against a new competition test. If this new test (which anticipates the test in the new RTP legislation proposed in the White Paper "Opening Markets: New Policy on Restrictive Trade Practices", Cm 72, July 1989) is satisfied, the DGFT will be relieved of his duty to refer such arrangement to the Restrictive Practices Court. This would remove the uncertainty caused by the prospect of prolonged proceedings in the Court which would act as a significant disincentive to potential licensees. Although certain details remain to be agreed, this approach seems to offer a way forward.

I should however clarify two points in your letter (unfortunately repeated in the Home Office press release of 18 June which was not cleared with DTI or OFT):

- (a) While appreciating the concern about discrimination between large and small licensees, it is a fact of life that the bargaining strengths of the licensees will vary. While we would expect the DGFT to be concerned if there was for example suggestion of an abuse of a dominant position, it is not part of his duties to







the department for Enterprise

assess whether the interests of large and small licensees have been fairly balanced - this must be a matter for the commercial judgement of the parties.

- (b) The DGFT cannot be expected to ignore the "wider competition issues". It is in my Secretary of State's view important that these are examined and that any adverse competition effects stemming from the arrangements are weighed against the benefits of those arrangements. The competition test in our proposals provides for this.

The OFT is however meeting the IBA and the ITV companies later this week to discuss the draft arrangements which they propose to adopt in anticipation of the Channel 3 regime and which would provide a possible model for the Channel 3 licensees. Several aspects of the draft arrangements give OFT initial cause for concern, and if these points appear endemic in any form of networking arrangements we may need to reconsider urgently whether a narrower test (or one in which competition considerations are balanced against broadcasting policy objectives) is needed. It would not however be appropriate for the DGFT to retain the role of the arbiter if the nature of the test were change in this way, and that role would need to be taken on by Ministers. For policy reasons, our preference is, in any case, for a wide competition test if at all possible.

The DGFT has expressed concern to my Secretary of State about the lack of any statutory role for him in the preparation of the proposed ITC guidance to potential licensees on networking arrangements. We sympathise with this concern, and propose that the Bill, when providing for the DGFT's involvement in scrutinising networking arrangements, should also provide that the ITC, before issuing any guidance to licensees or potential licensees on networking arrangements, must consult the DGFT and modify such guidance to meet any competition concerns expressed by the DGFT. This could presumably be done without requiring the ITC to produce any such guidance, which we understand the policy intention is to avoid.

I am copying this letter to Barry Potter (No 10), the Private Secretary of members of MISC 128, to Jim Gallagher (Scottish Office), Stephen Leach (Northern Ireland Office), Sonia Phippard (Cabinet Office) and Martin Howe (OFT).

*W. S. S.*

*B. Sloccock*

BEN SLOCOCK  
Private Secretary

