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PRIME MINISTER

MEETING OF MISC 128: 11 MAY

The next meeting of your Broadcasting Committee, MISC 128, is next Thursday. You may like to glance over the weekend at some of the papers; there is also the membership issue on which I should be grateful for your guidance.

Papers for 11 May Meeting

The papers enclosed are:

- Flag A - A very helpful summary note by Anthony Langdon setting out the issues the Group will need to settle and the timetable.
- Flag B - The main paper by Douglas Hurd for the meeting, concerning the presentation by Mr. George Russell. The plan is for Mr. Russell to attend the first part of the meeting, and then to withdraw.
- Flag C - Cabinet Office brief on that paper. Mr. Hurd seems reluctant for the Group to have a substantive discussion on 11 May after Mr. Russell has withdrawn; he would prefer to put in a further paper later. But this brief provides material you could draw on if you would prefer to use the time available on 11 May to reach provisional conclusions (we have earmarked one and a half hours in total for the meeting).
- Flag D - A further paper by Douglas Hurd on the regional and time divisions by which Channels 3 and 5 franchises should be divided (the "map and the clock").
- Flag E - Cabinet Office brief on the "map and the clock".

I will let you have briefing from Brian Griffiths before the meeting. I also hope on the same time scale to let you have the papers following up discussions at the last meeting on Broadcasting Ownership.

Membership

The core membership of MISC 128 is the Home Secretary, the Chancellor and Secretaries of State for Trade and Industry and Wales. You may recall that when you discussed the issue with the Home Secretary a few weeks back you decided to add Mr. Rifkind as a full member of the Committee. It was decided that three others - the Foreign Secretary and Messrs. Baker and King - would receive papers but only attend meetings if they expressed a strong wish to do so on a particular occasion.

The position of the three "half members" is causing some difficulty. Mr. Baker turned up unannounced at the last meeting of the Committee, without his office having consulted the Cabinet Office or me in advance. And now the Foreign Secretary, apparently following conversations with the Home Secretary, is pressing to be made a full member of the Group (we have heard nothing, however, from Mr. King).

I should be grateful for advice please on how we should handle the three "half members":

- i - Are you content for any or all of them to attend meetings when they wish - in effect to become de facto members of the Committee?
- ii - Do you wish us to resist their attending except where the agenda includes an item of particular departmental interest to them?

PLCC

P. GRAY
5 MAY 1989

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Note
Discussed with P.M.
She said she favoured
option (ii). I told Anthony
Langdon (Cabinet Office) and
asked him to advise Deparments
accordingly. PLCC 9/15

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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES

PRESENTATION BY THE CHAIRMAN-ELECT OF THE INDEPENDENT
TELEVISION COMMISSION (MISC 128(89) 6) - *ult/s*

OBJECTIVES AND DECISIONS

1. At the Group's previous meeting the Home Secretary made it clear that, in the light of the response to the White Paper, he saw adequate guarantees of quality as lying at the heart of the prospects for next Session's Broadcasting Bill, although he acknowledged that concern about quality would be exploited by those who simply wish to preserve the status quo.
2. The question of quality arises at various points across broadcasting policy, and in various ways. The perception of the BBC's role, and Channel 4's ability to discharge its distinctive remit are clearly crucial. In relation to the ITC's operations, however, the main points are the scope of any positive broadcasting requirements that are imposed on Channels 3 and 5; and the process of competitive tendering for allocating franchises on these channels. Although these are intellectually distinguishable issues, they have become entwined in consultation on the White Paper, since much of the debate has been about the ITC's ability to satisfy itself on the likelihood that applicants would fulfil whatever positive programming requirements might be imposed by statute. (The White Paper's use of the phrase "quality threshold" in this context may, in

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fact, have helped to confuse the issues.) At the Group's previous meeting you were strongly of the view that the ITC should operate in a very different way from the IBA, and that it should not be given discretionary powers unless this was unavoidable.

3. The second way in which the competitive tender procedures impact on perceptions of quality is in their possible effect in driving some of the existing ITV contractors out of the market. In particular, the bigger lump sum payment that is required at the beginning of the franchise, the more serious is the likely effect on the smaller contractors.

4. Against that background, you will doubtless wish Mr Russell's presentation to concentrate on competitive tendering, and not to stray into other issues (although, as paragraph 9 of the Home Secretary's Memorandum points out, there are a number of topics of less political importance on which the ITC will have a perfectly legitimate interest).

5. The main points on which you may wish to probe Mr Russell's thinking are

(i) the operation of the quality threshold. How will the ITC satisfy itself about an applicant's future fulfilment of any positive programming requirements?

(ii) the IBA's proposal that the ITC should assess applicants' business plans and the quality of their money. Does this idea simply amount to second-guessing the market?

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(iii) the IBA's proposal that the ITC should award the franchise to the applicant whose bid in terms of the percentage of net advertising revenue (NAR) was expected to generate the highest revenue for the Exchequer. Is not this proposal a licence for discretion and subjective judgement?.

6. After Mr Russell has withdrawn from the meeting you may wish the discussion to continue to focus on these three issues. The Home Secretary will wish to bring forward a considered set of proposals in the light of the discussion and you may wish to consider how firm a steer to give him both on these specific competitive tendering issues and on the ITC's more general role and character.

BACKGROUND

7. The White Paper proposed (at paragraph 6.17) a two stage procedure for awarding licences for Channels 3 and 5 (and for Channel 4, if it were decided to privatise that channel). First, applicants would be required to pass a fairly rudimentary quality threshold. This would comprise

(i) consumer protection requirements (eg. that news should be impartial and accurate; and that nothing should be included in programmes which offended against taste and decency).

Plus the following positive programming requirements;

(ii) to show regional programming;

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(iii) to show high quality news and current affairs dealing with national and international matters, and to include news coverage (and possibly also current affairs) in main viewing periods;

(iv) to provide a diverse programme service calculated to appeal to a variety of tastes and interests;

(v) to provide a minimum of 25 per cent of original programming from independent producers;

(vi) to ensure that a proper proportion of programme material is of EC origin.

In addition, the White Paper indicated that the ITC should be required to ensure that there was an adequate provision of schools broadcasting by the independent sector as a whole.

8. The White Paper proposed that applicants which satisfied the quality threshold would put forward financial tenders, which would take the form of a lump sum payable at the outset, with the ITC being required to select the highest bidder. Each licence holder would also be required to pay an annual levy in the form of a percentage of advertising revenue at progressive rates. (This would replace the present levy, which until recently has been based on profits, and is now based on a mix of profits and revenue.)

9. In their response to the White Paper, the IBA argued that there was a risk that the highest bidder might not have the capabilities and resources to provide a viable service and

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proposed that the ITC should accordingly have some discretion in choosing between the various applicants.

10. Under the IBA's proposals, the ITC, after consultation with City advisers, would prescribe a cash bond which all applicants for a particular franchise would be required to pay in advance as a token of serious intent. This would be refundable to all except the successful applicant. Applicants would be required to submit bids expressed not as a lump sum but as a percentage of NAR. There would be no separate levy.

11. We understand that Mr Russell is himself the architect of the IBA's proposals. It is not clear to what extent the Home Secretary supports them.

MAIN ISSUES

12. The White Paper indicated that the Government intended that the BBC should provide the cornerstone of public sector broadcasting and that the Channel 4 remit would be preserved. As to Channels 3 and 5, it said that

"As viewers exercise greater choice there is no longer the same need for quality of service to be prescribed by legislation or regulatory fiat... When there was only one television channel it was natural and right for the BBC to take great care about the balance between different types of programmes on that channel. When there are 10 or more channels within the reach of the average viewer he or she can increasingly sort this out for themselves provide that the choice before them is sufficiently varied." (paragraph 6.9)

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13. Much of the debate on the White Paper has nevertheless centred on the need to preserve quality programming. New television services, including the various satellite channels, will draw viewers away from the present independent television sector and the White Paper's critics argue that this will inevitably apply a squeeze on advertising revenue and create a risk that licence holders will go down market. Many of the respondents to the White Paper have accordingly suggested that further positive programme requirements should be imposed (eg. that licence holders should be required to provide educational, religious or children's programmes); and that the ITC should be given discretion to choose other than the highest bidder.

14. The question of positive programme requirements and the ITC's discretion in the tendering process are, in fact, different questions. Any positive requirement for programmes of a particular character must imply some standard of quality, or else it could be vitiated by a contractor showing programmes that ostensibly were concerned with the prescribed subject area but were no more than rubbish. This implied quality criterion is indeed made explicit in the White Paper requirement for a high quality news service on Channel 3. But the exercise of judgement that the ITC will have to make in policing contractors' performance in fulfilling any positive programme requirements does not necessarily mean that the ITC should be given an extensive discretion to refuse franchises simply on the grounds that it distrusts the promises that applicants make about their future intentions. It is quite possible to envisage a franchise-letting machinery that did not try to make too many guesses about quality, followed by vigorous policing of the franchise-holders' performance in practice.

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15. Your starting point is likely to be that the White Paper model set out at paragraph 12 above is conceptually right, and that it would be wrong to load further quality requirements on to Channels 3 and 5. Even if it should prove necessary to allow something further on that front, however, you will doubtless be most reluctant to concede any increased discretion for the ITC in letting contracts. One of the attractions of the White Paper proposals was that franchises would be awarded on a clear and open basis. You will no doubt be reluctant to return to arrangements under which the ITC would effectively be given the discretion to choose between rival bids, like a reincarnated IBA.

16. In questioning Mr Russell on his proposals, and in the subsequent discussion, you may wish to concentrate on the three main areas discussed below.

Quality threshold

17. The quality threshold described in paragraphs 6.10-6.12 of the White Paper was intended to provide basic consumer safeguards and to provide some minimum positive requirements in terms of regional programming, high quality news and current affairs programmes, diversity, and independent productions. Before the White Paper was finalised, the Group considered whether the quality threshold should also include requirements to show religious, educational etc programmes, but specifically decided that it would not be right to fetter Channels 3 and 5 companies in this way, especially since no such obligations would apply to satellite services. The Home Secretary may say that it will be difficult to hold the line on this when the Bill comes before Parliament, and you may well wish to seek the Business Managers' assessment of this nearer the time. But any requirements which

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cause companies to include programming against their commercial judgement will inevitable reduce their expected profitability and hence their tender bids.

18. The IBA's response to the White Paper states (at paragraph 4.29 which is not attached to the Home Secretary's paper) that they regard the positive programme requirements in the White Paper "as a minimum" and (at paragraph 4.30) that

"We assume that the ITC will consider including requirements for other kinds of programming, for instance children's programming or religious or arts programming in the licences it will advertise for Channels 3 and 5".

This seems totally misconceived. The Group do not intend that the ITC should be able to interpret the diversity requirement in this way, and the legislation should certainly not permit the ITC to lay down conditions of this nature.

19. However, the IBA's comments do expose a genuine dilemma. It seems inevitable that some guidance will need to be given on what is meant, for example, by an adequate supply of regional programming and by a diverse programme service or companies will not know how to shape their bids. The question is whether such guidance should be laid down by Parliament (possibly in the form of secondary legislation) which might seem rather heavy-handed or whether this should be left entirely to the ITC (which might give them an unwelcome amount of discretion). You will wish to probe with Mr Russell how he envisages that the ITC would interpret and apply the quality threshold, and you may wish to return to this issue after Mr Russell has withdrawn from the meeting.

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Quality of an applicant's money

20. The IBA are worried that the highest bidder would not necessarily be able to deliver the services which it had undertaken to provide and they propose that the ITC should accordingly be required to form a judgement of the relative soundness and durability of applicants' financial plans (ie their "quality of money"). They envisage that the ITC would be assisted in this task by merchant bankers and by three independent professional advisers. Notwithstanding the involvement of independent advisers, any assessment by the ITC of an applicant's quality of money is bound to be subjective. The ITC's merchant bankers would in effect be second-guessing the applicants' own financial advisers and the Chancellor of the Exchequer may well feel that this would represent an unwelcome distortion of market disciplines. Any selection process based on this criterion would clearly place a great deal of discretion in the hands of the ITC but you may nevertheless wish to ask Mr Russell whether he believes that such an assessment could be made in an objective manner.

21. The Chancellor may however accept that the ITC should have a much more limited reserve power to disqualify applicants who appeared to have misrepresented the extent of their financial backing.

(iii) The financial tender

22. The IBA propose that successful applicants should be required to forfeit a cash bond, the magnitude of which the ITC would prescribe in advance, and that applicants' bids should be expressed not as a lump sum but as a percentage of NAR. They further propose that the ITC should not necessarily select the

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applicant who had made the highest bid in terms of the percentage of NAR but instead the applicant who in their view would generate the highest revenue for the Exchequer. Again, it would seem difficult for such an assessment to be carried out in an objective manner, and you will wish to probe this with Mr Russell.

23. A possible halfway-house between the White Paper proposals and the IBA's proposals would be to require applicants to offer bids in terms of a percentage of NAR but to oblige the ITC to select the applicant who had put in the highest bid. We understand that Treasury officials think that such an arrangement might be acceptable and, after Mr Russell has left the room, you may wish to ask the Chancellor of the Exchequer for any preliminary views on this.

HANDLING

24. You may wish to open by explaining the arrangements for the meeting. Mr Russell has been invited to attend in order to give a presentation on his approach to the work of the Independent Television Commission. After Mr Russell's opening remarks, the Group will have an opportunity to question him on his proposals. Mr Russell will then be asked to withdraw from the meeting so that the Group can resume their deliberations. In inviting MR RUSSELL to speak, you may wish to say that the Group would find it helpful if he could concentrate in particular on his proposals for the operation of the competitive tender.

25. After Mr Russell has given his presentation, you may wish to ask the HOME SECRETARY if he has anything to add at that stage. You may then wish to raise some of the points identified in the Main Issues section of this brief. Other members of the Group

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will have questions to raise with Mr Russell.

26. After Mr Russell has left the meeting, you may wish to invite the HOME SECRETARY to comment. The CHANCELLOR OF THE EXCHEQUER, in particular, will also have points to make.

AJL

A J LANGDON

5 May 1989

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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES (MISC 128)

^{with Co}
MEETING ON 11 MAY

At the last meeting, on 24 April, the Group took decisions on the restrictions that should be applied to the ownership of independent broadcasting franchises under the new legislation. There was also an initial discussion on Channel 4, on which the Home Secretary will need to put in a further paper.

2. The remaining issues that the Group will need to settle before the Bill can be drafted are

(i) the arrangements for competitive tendering for franchises;

(ii) the regional and time divisions by which Channel 3 and Channel 5 franchises should be defined (ie the "map and the clock");

(iii) whether the BBC should retain night hours on both of its Channels;

(iv) the timetable and structure for privatising the transmission system.

3. Most of these issues interact with each other and you will probably not wish to reach final decisions on any of them until you and the Group can see the whole package in the round. That will not be possible until the end of June, which is the earliest date for the Group to consider the privatisation of the

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transmission system, on which officials need to do more work in the light of the recent Price Waterhouse report. It is, however, important that decisions should not slip much beyond the end of June, so that instructions to Parliamentary Counsel can be prepared before the Summer Recess, and you may therefore wish to encourage the Group at least to take provisional decisions wherever they can. The following meeting of the Group is arranged for 6 June, which is the earliest practicable date.

4. For the meeting on 11 May the Home Secretary is bringing Mr George Russell to make a presentation of his views, and he has also circulated a short paper on the "map and the clock". The Home Secretary rightly seeks no more than provisional decisions on the "map and the clock" at this stage, and that issue should not prove too difficult. Mr Hurd is also very keen, however, that the Group should not take immediate decisions on anything arising from Mr Russell's presentation - especially on the question of competitive tendering - and that he should put in a further paper. Given the timetable for decisions described above, however, you will presumably wish the meeting to have some substantive discussion of Mr Russell's suggestions after he has withdrawn from the meeting. The main handling issue you will wish to consider, therefore, is how long to allow Mr Russell and how firm a steer to give the Home Secretary in the ensuing discussion.

5. I attach separate briefs for the two items on the agenda.

A.J.L.

A J LANGDON

5 May 1989

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MINISTERIAL GROUP ON BROADCASTING SERVICES
CHANNELS 3 AND 5: THE MAP AND THE CLOCK
(MISC 128(89)5) *with 10*

DECISIONS

The Home Secretary is seeking decisions in principle that:

- (i) the Independent Television Commission (ITC) should be responsible for the division of Channel 3 into regions, but that the Government should endorse the IBA's view that there would be advantage in keeping to the present ITV regional structure;
- (ii) there would be a strong case for a national licence which embraced Channel 3's night and breakfast hours, rather than for Channel 3's night hours to be licensed separately as the White Paper had proposed; and
- (iii) the IBA should be permitted to divide Channel 5 by day of the week as well as time of the day.

2. The Home Secretary accepts that the Group will need to review any decisions in principle which they take at this meeting once decisions have been taken on related matters, including the competitive tender and transmission arrangements. However, he hopes that the Group will be prepared to reach provisional decisions so that work can proceed on the preparation of Instructions to Counsel.

BACKGROUND

3. Under the present law, the IBA are responsible for the division of the ITV system by regions and by time slots. The IBA

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made only minor adjustments to regional boundaries during the last franchise round in 1980, but prior to that they had sometimes made some quite substantial alterations.

4. The White Paper (paragraph 6.16) said that the ITC would be responsible for the geographical division of Channel 3 into regions. It proposed that there should be a separate night hours licence, or licences, for Channel 3, and that the ITC should determine the exact boundaries and should decide on possible additional licences covering other times of the day (eg for a breakfast time service). As to Channel 5, the White Paper said that the Government believed that this should be a national service which should be split into two or more different licences covering different parts of the day and night, with the ITC being responsible for deciding on the boundaries between the time-slots.

MAIN ISSUES

(i) Channel 3 regions

5. The White Paper proposal that the ITC should be responsible for the division of Channel 3 into regions has been generally welcomed. Viewers appear to have a good deal of attachment to their local regional service (a point which Mr Rifkind emphasised in relation to the Scottish ITV services at the Group's previous meeting) and this is clearly a politically sensitive issue.

6. The IBA's response to the White Paper states (at paragraph 4.8) that

"we would see advantage to both viewers and advertisers in keeping the present well-established ITV areas post-1992".

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But they qualify this in the following sentence:

"However, the regional map on Channel 3 in the 1990s would depend to a large extent on decisions taken about night-hours, networking, transmission arrangements, negative tenders and S4C".

So the IBA have certainly not given any firm assurances about the future of the existing ITV regions.

7. The Home Secretary suggests that the Government should itself make clear that it sees advantage in retaining the existing regional structure. The Chancellor of the Exchequer, however, may argue that no such statement should be made until the Group has had an opportunity to review the matter in the light of the decisions they reach on transmission arrangements. The point here is that, at present, the regions with high population densities effectively subsidise the transmission costs of those with low population densities. Cross-subsidies between the regions may need to be abolished once the transmission system is privatised, and the Chancellor may suggest that one possible way of achieving this might be to amalgamate some of the smaller regions into larger regions. This is one of the most sensitive issues for Scotland, in particular.

8. Even if the Group are prepared to take a decision in principle at this meeting that there would be advantage in preserving the existing regions, they may have reservations about leaving decisions about the geographical division of Channel 3 entirely at the discretion of the ITC. If so, there are a number of possible options that the Home Secretary could be asked to explore. One possibility would be for the Act to spell out the

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criteria for regionalisation in a fair degree of detail. Another possibility might be to introduce an arrangement under which the Secretary of State would be required to seek advice from the ITC and then to put forward proposals for approval by Parliament (perhaps under the affirmative resolution procedure). This would guard against the risk of the ITC implementing unattractive arrangements, though one drawback would be that the Government, rather than the ITC could be the focus of criticism from viewers aggrieved about the division of the Channel 3 map.

(ii) Channel 3 night hours

9. A number of independent analysts (as well as ITV interests) have criticised as commercially unrealistic the White Paper proposal that there should be a separate Channel 3 night hours licence. The Home Secretary is concerned that unless the night hours are packaged with some more lucrative part of the day, there may be no serious bids at all for the night hours licence and that these hours might accordingly remain fallow. He accordingly suggests that the night hours should be linked with breakfast time and that these hours should be advertised as a single national licence.

10. Before considering the Home Secretary's proposal, you may wish to seek the Trade and Industry Secretary's views on whether or not a separate night hours licence would be viable. If the Group were not convinced that the White Paper proposal for a separate night hours licence should be discarded, one possible compromise would be to advertise the night hours and breakfast hours as separate licences but enable a single company to hold both franchises if it were to put in the highest bid for each of them.

11. The Trade and Industry Secretary may suggest that the ITC should be given discretion to divide Channel 3 night hours and

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breakfast time into three or four large regions, rather than for these time slots to be allocated on a national basis. While it seems unlikely that night hours programming, in particular, would have any significant regional component, there seems no reason why the legislation should preclude the division of night hours and breakfast time on a super-regional basis.

12. The division of the Channel 3 clock is a much less sensitive issue than the division of the map, and there is therefore a less strong case for suggesting Ministerial or Parliamentary approval. Nevertheless, the Group may feel that it might be prudent to include some such provision to guard against the risk of the ITC reaching perverse decisions.

(iii) Channel 5

13. No-one has seriously questioned the White Paper proposal that Channel 5 (which is expected to be receivable by only around 65 per cent of the population, with most viewers requiring a new or additional aerial) should be licensed on a national basis. The White Paper suggested that there should be two or more licences for Channel 5, divided according to time of day. The Home Secretary is now proposing, as the ITC recommended in their response to the White Paper, that the ITC should also have the option of making a division by day of the week (eg a week-day/weekend split). This seems sensible.

14. If it were decided to impose Ministerial and Parliamentary approval on the ITC's proposals for the Channel 3 clock, then the same arrangements would probably need to apply to Channel 5.

HANDLING

15. You will wish to invite the HOME SECRETARY to introduce his Memorandum. The CHANCELLOR OF THE EXCHEQUER will have comments, in particular, on the arrangements for dividing Channel 3 into

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regions. The WELSH SECRETARY and the SCOTTISH SECRETARY will also have comments on this issue. The TRADE AND INDUSTRY SECRETARY will have general comments, and you may wish to ask in particular for his assessment of the viability of a separate night hours licence on Channel 3.

A.J.L.

5 May 1989

A J LANGDON

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