

*CP*PRIME MINISTER

## MISC 128: BROADCASTING OWNERSHIP

At its meeting on 24 April 1989 MISC 128 invited me to circulate revised proposals on ownership taking account of points by the Group in discussing MISC 128(89)2.

2. I attach a draft announcement of our broad conclusions on ownership in the light of the consultative process on the White Paper. It reflects all the conclusions reached by MISC 128, and in particular makes clear that:

- (a) the ITC and Radio Authority would not be given discretionary powers for dealing with ownership questions;
- (b) national newspaper proprietors would be debarred from holding more than 20% of a UHF TV or national radio franchise;
- (c) we see a strong case for limiting still further any investment by a national newspaper proprietor in more than one franchise of this sort;
- (d) a company or group would not be allowed to hold two large or contiguous regional Channel 3 franchises;
- (e) broadcasting cross-interests would be clearly limited on the same basis as newspaper/broadcasting cross-interests;

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- (f) the rule would be abolished which has precluded non-EC ownership of cable operators;
- (g) advertising agencies would be precluded from holding commercial television or radio licences;
- (h) the ITC and Radio Authority would not have discretion to block takeovers which satisfied the ownership rules and programming requirements.

3. In addition, the terms of the draft announcement would not

- (i) imply any restriction other than general competition legislation on newspaper holdings in non-terrestrial broadcasting. As the Group recognized, there is a strong case for having a level playing field in this respect between DBS services and other satellite services such as those from Astra;
- (j) apply the proposed disqualification of advertising agencies to record manufacturers, music publishers, record promoters or artists' agents. If the ITC and Radio Authority are not to have a discretion here, a rigid disqualification could hold back desirable and innovative ventures. The programme and advertising content controls proposed in the White and Green Papers should provide some safeguard against any abuse.

4. On takeovers, the draft announcement reflects the Group's conclusion that there should be no moratorium of the sort proposed by George Russell. (In paragraph 6 below I propose that the announcement should not be made until after George Russell's presentation to MISC 128 on 11 May). This disposes of the

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problem of the ailing company which seeks to protect itself against takeover by acquiring a broadcasting franchise. Mergers which were not precluded by the proposed ownership rules would continue to be subject to existing provisions in fair trading and competition legislation.

5. The White Paper's proposal to continue the restriction on non-EC control of broadcasting licences other than local delivery franchises would not preclude substantial US and Australian investment in British broadcasting which did not amount to control. As regards reciprocity, the main concerns expressed recently about restrictions encountered by British broadcasters seeking to invest abroad have related to France and Spain rather than the USA and Australia. My officials will consider further with those of the Secretary of State for Trade and Industry how these instances, and wider questions of reciprocity of investment opportunity, might best be pursued.

6. If you and colleagues are content with the terms of the draft announcement I hope that a further MISC 128 discussion on ownership will not be necessary. It will be for my Department to work up our broad conclusions into draft legislation, consulting other Departments on the detail as necessary. My preference would be to make an early announcement, bearing in mind the prominence with which arguments about ownership featured in the Parliamentary Debates on the White Paper, and the need to clarify our intentions to those intending to bid for franchises. I propose that we should await George Russell's presentation to MISC 128 on 11 May, but I would like to announce our conclusions as quickly as possible after that.

7. I am copying this minute and enclosure to MISC 128 colleagues and to Sir Robin Butler.

*D. G. → A. W.*

5 May 1989

**DRAFT ARRANGED PQ ON OWNERSHIP**

To ask the Secretary of State for the Home Department, if he will make a statement about the proposals in the broadcasting White Paper on ownership.

DRAFT REPLY

The White Paper made clear our determination that ownership in the independent broadcasting sector should remain widely spread, and that unhealthy concentrations of ownership and excessive cross-media ownership should be prevented. We are grateful to those who responded to the invitation to comment on the scope and formulation of the rules needed to achieve this objective.

The White Paper envisaged (paragraph 6.51) that the same group would be permitted to hold two, but not more than two, regional Channel 3 licences. Many of those commenting thought it would be undesirable if the same group could control two large or contiguous Channel 3 regions. It has also been argued that some flexibility is needed to take account of the ways in which independent terrestrial television might develop.

In the light of these responses we propose to strengthen the rules envisaged in the White Paper in the following way. Power would be taken to prescribe in subordinate legislation limits on the number of Independent Television Commission or Radio Authority licences within each main licence category which any one body or group would be permitted to hold or control. In the case of regional Channel 3 licences the initial limit would be set at two, as envisaged in the White Paper. But these limits would be capable of further restriction by reference to audience share and contiguity of licence area. The Government

does not envisage that the same group should be allowed to own two large franchises or two franchises for contiguous areas.

Paragraph 6.53 of the White Paper proposed clear reciprocal limits on broadcasting and newspaper cross-holdings. Taking account of comments on the White Paper, we propose that no proprietor of a national newspaper should be allowed to have an interest exceeding 20% in any UHF TV (including regional Channel 3) or national radio franchise. We also see a strong case for debarring national newspaper proprietors from having a significant financial interest in more than one such franchise. These limits would be reciprocal. No regional or local newspaper would be allowed to have more than a 20% interest in any regional or local ITC or Radio Authority licensee with whose area it substantially overlapped, and vice versa.

Paragraph 6.53 of the White Paper proposed, following a recommendation by the Home Affairs Committee, that ownership of satellite channels not using UK broadcasting frequencies but receivable in the UK (whether based here or abroad) should be capable of being taken into account by the ITC and the Radio Authority in operating their controls. We propose that no operator of such a service should be permitted to have more than a 20% interest in a DBS, UHF TV (including regional Channel 3) or national radio licensee, and that cross-interests exceeding 20% between DBS, UHF TV and national radio licensees should not be permitted. Similarly, cross-interests exceeding 20% would not be permitted between regional Channel 3, local delivery operator and local radio licensees whose areas substantially overlapped. These limits would be expressed in subordinate legislation and would be capable of variation. We envisage that legislation would also leave open the possibility of limiting other forms of cross-holding.

Paragraph 6.48 of the White Paper envisaged that takeovers would not be restricted provided they satisfied the qualifying criteria, such as the ownership rules and programming requirements. The Government considers that, subject to these

criteria, takeovers can be a useful way of bringing new ideas and talent into broadcasting and of re-inforcing pressures for efficiency. The broadcasting ownership rules would not preclude the operation of existing provisions in fair trading and competition legislation. We envisage that the ITC and Radio Authority would liaise closely with the Office of Fair Trading and the Monopolies and Mergers Commission.

In line with paragraph 6.49 of the White Paper, local authorities and bodies whose objectives are wholly or mainly of a political or religious nature (and also bodies which are affiliated to or controlled by such bodies) would be disqualified from holding any ITC licence. Local authorities and political authorities would similarly be disqualified from holding any Radio Authority licence : as envisaged in paragraph 7.10 of the radio Green Paper, religious bodies would be allowed to have a financial interest in radio stations provided this did not lead to bias or editorialising on religious or controversial matters.

We propose that no ITC or Radio Authority licence may be held or controlled by a non-EC company or individual not ordinarily resident in the EC, with the exception of local delivery licences and any operators licensed under the Cable and Broadcasting Act 1984. In the case of these exceptions, concerns about editorial and cultural influence, which are less applicable to local service delivery, are outweighed by the advantages for investment which the possibility of non-EC control would bring about.

While the Government does not envisage that the ITC or Radio Authority would have a wide discretion in dealing with ownership questions, it does propose that they should be given the enforcement powers needed to police the rules effectively. These would include the ability to include licence conditions requiring licensees to give advance notice of, and seek prior consent for, changes in shareholdings. The ITC and Radio Authority would also be able, for the purposes of enforcing the

ownership rules, to require changes in a company or group as a condition of its being awarded, or retaining, a licence, and to withdraw licences if declarations to them proved false.

Transitional account will be taken, in framing the rules, of the position of shareholders in franchises awarded under existing legislation.

# Broadcasting Policy

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