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PRIME MINISTERCable Systems

At their meeting on 25th February (E(82)6th Meeting) the Ministerial Committee on Economic Strategy approved the publication of the report on Cable Systems by the Information Technology Advisory Panel (ITAP) and instructed officials, under Cabinet Office chairmanship, to examine the issues raised prior to substantive consideration by Ministers later in the year.

2. The necessary work is in hand in the Official Group on Cable Systems (MISC 73), in parallel with the enquiry under Lord Hunt into the broadcasting aspects. As part of their initial work the Official Group have produced for information the attached preliminary note on the legislative implications of the ITAP report which I thought it would be helpful for you and the other members of E Committee to see.

3. The essence of the note is that practically all the necessary powers for the establishment and control of cable systems are provided under existing regulation; but that a number of factors could make new legislation desirable at some stage, though not necessarily extensive in content or scope.

4. The paper does not call for any decisions now. But it will form a necessary background to the policy decisions which Ministers will wish to take later in the year.

5. I am copying this minute and the note on the legislative implications of cable systems to the other members of E Committee.



ROBERT ARMSTRONG

13th May 1982

LEGISLATIVE IMPLICATIONS OF CABLE SYSTEMS

Note by the Chairman of the Official Group on Cable Systems

1. At its meeting on 25 February the Ministerial Committee on Economic Strategy considered a memorandum by the Home Secretary and the Secretary of State for Industry (E(82) 14) on the potential benefits for the United Kingdom of an expansion of broadband cable systems and the questions that have to be considered.

2. The Committee supported the Home Secretary's proposal for a small inquiry into the broadcasting aspects of cable systems. This has now been established under the Chairmanship of Lord Hunt of Tanworth who has been asked to report by 30 September. The Cabinet Office were asked to co-ordinate the preparation of advice on cable systems, taking into account the conclusions of Lord Hunt's enquiry, with a view to a policy statement being made by the Government by the end of the year. The appropriate work is in hand in the Official Group on Cable Systems, MISC 73.

3. The Official Group have made an initial examination of the potential legislative implications of a decision to encourage the installation of cable systems. Although judgements must still be tentative at this stage, they thought it might be helpful to Ministers to outline, for information, their preliminary findings.

Existing Legislative Powers

4. The Group's first main conclusion is that existing legislation probably gives Ministers all the statutory powers necessary for the establishment and regulation of new cable systems. Legally cable systems are telecommunications systems and the British Telecommunications Act 1981 (the BT Act) not only empowers BT to run any kind of telecommunications system but also authorises the Secretary of State to grant licences to others to run similar systems. BT Act licences can be granted subject to conditions and for specified periods. They can be irrevocable (or subject to revocation as specified in the licence) and there is no power to vary licences once granted. BT Act licences must specify the details of the systems to be run and this provision would make it possible for the Secretary of

State either to licence different people to run different aspects (eg one person could be licensed to run only the cables, another (or several) to be responsible for the programmes provided over the cables).

5. However, any cable system that relays broadcast programmes at present requires a licence from the Home Secretary under the Wireless Telegraphy Act 1949; and the distribution by cable of programmes other than broadcast programmes is governed by Part IV of the Post Office Act 1969, which gives the Home Secretary wide powers to license such operations. These latter powers have been used to license the current pilot schemes of subscription television by cable. (Since Parliament has established this separate licensing system under the Post Office Acts for the distribution of programme services (other than broadcast programmes), there would be difficulties in using for this purpose the powers under the BT Act discussed above). Existing legislation therefore provides the powers necessary, through licensing, to impose conditions relating to programme content and advertising standards. It would also be possible by administrative means to establish some non-statutory body to advise the Secretary of State on the enforcement of such conditions; care would be needed, however, to ensure that the Secretary of State did not unreasonably fetter his discretion.

6. It should also be noted that because cable systems are telecommunications systems, the existing licensing powers could be used to enable those running cable systems to run 'switched interactive telecommunications systems', eg telephone systems, enabling any subscriber to a system to establish two-way communications with which his system is interconnected. This possibility raises difficulties because it would allow the creation of additional switched telephone networks in competition with BT and Mercury, contrary to the ? Government's policy. The licensing powers could be used, however, to prevent those running cable systems from offering switched interactive services and to require that BT and/or Mercury should run any such services on cable systems, thus preventing any breach of current telecommunications policy.

7. Existing legislation appears, therefore, to provide Ministers with adequate powers to establish and regulate new cable systems. However, wider considerations may make Ministers wish to consider whether new legislation would be desirable.

(i) The granting of licences under existing legislation would mean that the Home Secretary and Secretary of State for Industry would still bear some direct responsibility to Parliament for the programme and other services provided and for ensuring that conditions of the licences were observed. These conditions might, for example, relate to matters such as impartiality and good taste and decency which it has been thought inappropriate for a Government Department to have to police. Moreover, the resources are not at present available within Departments to undertake this task. A non-statutory advisory body could in practice be used to ensure that conditions in licences were observed and thereby provide some shield for Ministers (eg against PQs or other criticisms), but ultimate responsibility would still rest with Ministers and some of the above difficulties would still apply. If it were decided to establish a new independent body (or to invest an existing body, such as the Independent Broadcasting Authority (IBA), with such powers) new legislation would be required.

(ii) Although, as indicated above, new legislation does not appear necessary, some potential investors in cable systems may regard new legislation expressly devoted to the promotion of cable systems as desirable, if only as a demonstration of the Government's (or Parliament's) firm commitment to the policy.

(iii) Parliament, through its approval of broadcasting legislation, has been accustomed to having a significant voice in the setting of broadcasting policy and standards. Although cable systems are not broadcasting systems in the traditional sense, and there are major differences between the two, there are important similarities. The issue of licences under existing legislation for programme services distributed by cable might therefore be regarded by some as by-passing Parliament on an important policy issue which it would expect directly to influence, although this point might to some degree be met by the issue and debate of a suitable White Paper.

(iv) In the absence of new legislation to reform the Telegraph Acts (at present under consideration separately), there will also be a case for changes in the existing legislation governing wayleaves.

8. The Official Group's second main conclusion, therefore, is that, while no new legislation appears to be needed specifically to establish and regulate cable systems, and there may also be advantage in delaying any legislation since cable systems are in their infancy and the course of their future technological and other development is uncertain, there could also be advantages in new legislation for the considerations summarised above.

Scope of possible regulation

9. The regulatory regime for programme services distributed by cable will need to cover some or all the following subjects:

- (i) Programme content - rules relating to good taste and decency; avoidance of incitement to crime and disorder; the manner of portrayal of violence and programme content when children and young people are likely to be viewing; the showing of certain categories of feature film, accuracy in news programmes; due impartiality in the treatment of, and exclusion of the views of the cable operator/programme provider on, current affairs; party political programmes; religious propaganda; charitable appeals; programme prizes; subliminal techniques; and exclusive arrangements for the televising of events of national importance;
- (ii) Advertising - rules relating to the amount, content and placing of advertisements (if permitted);
- (iii) Powers of Government - for example, powers to veto programmes or classes of programme; to require the distribution of certain announcements and to regulate the hours of programme distribution;
- (iv) Criminal law - the application/disapplication of certain criminal law provisions to cable (eg the law on incitement to racial hatred, obscene publications and elections);
- (v) Complaints - the extension of the jurisdiction of the Broadcasting Complaints Commission to cable.

10. The regulatory regime for cable might also need to deal with:

(vii) Franchising - the arrangements for selecting companies to be licensed to install cable systems and/or provide programme services;

(viii) Composition of cable companies - the question of the participation of non-UK/EC companies, the ITV and independent local radio (ILR) companies and the press in cable operations; and

(ix) Public share in cable profits - the question of some form of levy (or royalties) on local monopoly profits (cf the ITV and ILR levy).

11. Though further detailed examination will be needed, all the above items, except (iv) and (v) seem capable of being dealt with through licensing arrangements under existing legislation. Items (iv) and (v) would require primary legislation. (In relation to independent broadcasting most of the above items are the subject of provisions in the Broadcasting Act 1981).

12. If it were decided to establish a new statutory authority responsible for the regulation of cable systems, the legislation would also need to define its functions and powers. This might imply a modification of the remit of the existing IBA or the creation of a new body with somewhat similar powers. But since cable systems have a strong local element, there may be a need also to establish some more local regulatory machinery.

13. Concern has also been expressed that the creation of new cable systems operating in a much freer regulatory regime than that which applies to independent television and local radio could damage the quality of the public services provided by the IBA. It is thus for consideration whether there would need to be some relaxation of the regulatory arrangements governing independent television and local radio to enable them to compete with cable on an equal footing. This would involve legislation; and legislation with this object would, of course, weaken the public service nature of ITV and ILR.

14. The eventual legislative needs may be much less than outlined above, particularly if the IBA played a major role in the regulation of cable systems. Ministers might wish to rely on the existing licensing provisions, introducing

new legislation only to deal with matters which can be dealt with in no other way (see paragraph 11 above). A number of intermediate options could be conceived. Ministers are also considering separately the prospect of a Telecommunications Bill next session which would change British Telecom into a Companies Act company and amend outdated legislation on wayleaves, and it is possible that new regulatory arrangements for cable systems could be added to this. However, if Ministers decided to introduce detailed and extensive cable legislation, this would not be a suitable vehicle. Moreover, it is arguable that a more appropriate vehicle might be the legislation that will be needed to authorise commercial direct broadcasting by satellite (DBS) services, which is unlikely to be ready for introduction next session.

Conclusions

15. In summary, therefore, our provisional assessment of the legislative position on cable systems is that:-

(i) Existing legislation could provide Ministers with practically all the necessary powers for the establishment and control of cable systems;

(ii) Some considerations, however, point to the desirability of new legislation. Depending on policy decisions, such legislation might need to be extensive, but options involving minimal changes are possible;

(iii) It will not be possible, however, to make firm judgements until Lord Hunt's Committee has completed its work and the Official Group have reported on the whole range of issues involved, taking account of the Hunt Committee's recommendations.

Cabinet Office

10 May 1982