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MAY

PART II, ITC MINUTES 75(97)

26 June 1997

Minutes of Part II of the Seventy-Fifth Meeting of the Commission
Held at 6.00 pm on Wednesday, 21 May 1997
in the Hampshire Room, Lainston House Hotel,
and at 9.00 am on Thursday, 22 May at the ITC,
Kings Worthy Court, Winchester

PRESENT ON 22 MAY:

Chairman:
Deputy Chairman:

Sir Robin Biggam
The Earl of Dalkeith

Members:

Dr John Beynon
Mr Roy Goddard
Ms Jude Goffe
Mrs Eleri Jones
Dr Maria Moloney
Mr John Ranelagh
Dr Michael Shea

ALSO PRESENT ON 22 MAY:

[REDACTED]

[REDACTED]

BY INVITATION:

[REDACTED]

[REDACTED]

PART II: MEETING HELD AT 9.00 AM ON THURSDAY, 22 MAY 1997 AT KINGS WORTHY COURT, WINCHESTER

Preliminary Matters

1. The Chairman welcomed to the meeting [REDACTED] of [REDACTED] and [REDACTED] of [REDACTED]. He said that this was the first formal meeting of the Commission to consider the four applications received for Multiplex licences. The papers before Members contained the staff's assessment of the various aspects of each application. Staff had proceeded with their assessment in accordance with the procedure set out in ITC Paper 15(97) and agreed by Members at the meeting of the Commission in February. The papers took account of comments arising from the public consultation exercise, which were summarised in ITC Paper 39(97), and of information provided by the applicants in response to further questions by the Commission. In preparing their assessments, staff had worked closely with the Members who had specialised in particular aspects.

2. The Chairman said that the decisions to be taken on the applications were a matter for Members collectively. In arriving at a final judgment on awarding the licences, Members would need to keep in mind the requirement of the 1996 Act that they should have regard to the extent to which, taking into account specific matters referred to in the statute, together with the public comment and other matters judged to be relevant, the award of each licence would be calculated to promote the development of digital television broadcasting otherwise than by satellite in the United Kingdom.

Overview - ITC Paper 72(97)

3. Following discussion of issues raised in Part I of ITC Paper 72(97), it was AGREED to begin by considering the applications from BDB and DTN for Licences B,C and D, dealing on the basis of the procedure set out in the paper with the issues by topic in the following order: programme services, engineering issues and financial matters. Members specialising in each of the topics would start the discussion off. Consideration would then be given to ownership and to competition matters.

4. Referring to paragraph 10 of ITC Paper 72 (97), Members considered whether attention should be concentrated on awarding all three licences to one or other of the two applicants or whether alternative possibilities for splitting the awards should also be taken into account. Members considered staff's view that the better course was to award all three licences to a single applicant, and noted that this accorded with the preference of the applicants. It was AGREED following discussion that for the purpose of the analysis, a working assumption would be made that all three licences were awarded to one applicant; but that the possibility of splitting awards between the applicants should be examined after the initial assessment was completed and before a final decision on awarding the licences was made.

5. Members also considered the issue of enhancements to applications raised in paragraph 4 and paragraphs 12-17 of the paper. It was AGREED following discussion to consider the matter as part of the assessment of the applications.

Assessment of the applications for Licences B,C and D

Programme Service Issues - ITC Paper 73(97)

6. Members considered the programme service proposals of BDB and DTN in the light of the matter specified in section 8(2)(d) and the timetable matter referred to in section 8(2)(b). It was NOTED in the course of the discussion that both applicants, although more particularly BDB, would also be likely to transmit on other delivery systems the programme services they were proposing to provide on digital terrestrial television; and that each applicant had approached in different although equally valid ways the requirement to provide services appealing to a variety of tastes and interests. The view was expressed that on balance DTN's proposals better addressed the matters specified in the statute, bearing in mind the greater range of interests to be served by their proposals and certain new ideas in their programme offering. However some reservations were expressed that the programme service proposals in DTN's application were unlikely to attract the revenue required under the business plan. Account should also be taken of doubts about the supply of some of their programming when compared with greater certainty in terms of supply offered by the services proposed by BDB.

Engineering issues - ITC Paper 74(97)

7. On engineering matters, it was NOTED that both applicants had exceeded the minimum requirements set by the ITC in the Invitation to Apply in relation to section 8(2)(a) and the timetable matter in 8(2)(b). The different plans of the applicants were unlikely to result in significant differences in the roll-out of the services. It was NOTED that DTN were proposing the use of a greater degree of digital compression than BDB, and that failure to achieve this would affect DTN's capability to deliver certain of its programme service proposals. However it could not be said that technical quality requirements were unachievable at the levels of compression proposed.

Financial issues - ITC Paper 75(97)

8. The view was expressed that both applicants satisfied the minimum requirements set out in the Invitation to Apply in relation to section 7(4)(f) (guidance as to proposals for receiving equipment, to be considered under section 8(2)(e)). BDB's application appeared to be acceptable on financial grounds, having regard to section 8(2)(c). DTN's application provided less assurance as to financial sustainability throughout the licence term. Although DTN's initial funding would appear to be available, [REDACTED]

[REDACTED] Element of conditionality in the proposed funding arrangements were NOTED. Concern was also expressed about the degree of risk and uncertainty which attached to the business plan. [REDACTED]

██████████ It was AGREED that in terms of the financial assessment, BDB's application offered significantly more reassurance, ██████████ than the application by DTN. Competition matters were considered separately (see below).

Ownership issues - ITC Paper 76(97)

9. On ownership matters, it was AGREED as a result of discussion that there were no matters for consideration such as would prevent the award of multiplex service licences either to BDB or to DTN.

Competition Matters - ITC Paper 77(97)

10. On competition matters, it was NOTED that there were no concerns arising from DTN's applications, either under section 8(2)(f) or by reference to the ITC's competition duties under section 2(2) of the 1990 Act. Consideration was given to the implications ██████████. Members considered the contents of letters tabled for the meeting from the Competition Directorate of the European Commission in Brussels and from the Office of Fair Trading ██████████

11. Members carefully considered the views expressed in ITC Paper 77(97) as to the effectiveness of possible behavioural conditions, ██████████. They doubted whether these remedies would be sufficient to overcome their concerns about competition were BDB to be awarded the licence. It was AGREED as a result of full discussion that competition concerns raised serious doubts as to whether licences should be awarded to BDB as at present constituted. Mr ██████████ said that it would be important in the event that Members were contemplating the possibility that BDB might be ruled out on competition grounds, and bearing in mind the third party advice which the ITC had received on the matter, that BDB should be informed of their concerns before a final decision was taken. The advice was NOTED, and it was AGREED that further legal advice should be sought on the point.

Conclusions

12. Summarising the discussion, the Chairman said that two major areas of concern had been identified in relation to Multiplexes B,C,and D as a result of the initial discussion. In the case of BDB, severe doubts had been expressed ██████████, whilst in DTN's case the concern related to ██████████.

13. He said that staff would consider these points further. The outcome of meetings planned with the OFT and DGIV in Brussels, together with the legal advice referred to in paragraph 11 would be reported to Members at the extra meeting set for 12 June. The results of this further work would need to be considered before final consideration was given to the matters discussed at the meeting.

14. It was AGREED that staff should provide for the next meeting papers on the possibility of splitting the award of the licences between the applicants; and that consideration of the assessment of the applications for the guaranteed place and Licence A Multiplexes should be deferred until the extra meeting on 12 June.

MGR

26 June 1997