

The Future of Public Service Media

Response from the Association for Commercial Broadcasters and On-Demand Services to Ofcom

March 2021

Introduction

1. COBA is the Association for Commercial Broadcasters and On-Demand Services. It represents multichannel broadcasters in the digital, cable and satellite television sector and on-demand services.
2. COBA members operate a wide variety of services, offering news, factual, children's, drama, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay-TV platforms, as well as on-demand.
3. COBA members are arguably the fastest growing part of the UK television industry, and are increasing their investment in jobs, UK content and infrastructure. They make this investment without support from the licence fee or indirect support from statutory prominence.
 - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, and has helped establish the UK as a leading global television hub.¹
 - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.²
 - UK production: In addition, the sector has increased investment in UK television content to a record £1.1 billion per annum, up nearly 75% on 2011 levels.³
4. For further information please contact Adam Minns, COBA's Executive Director, at adam@coba.org.uk or 0203 327 4101.

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2019 Content Report, Oliver & Ohlbaum Associates for COBA

Response

- 1) COBA welcomes Ofcom's analysis of investment by non PSBs and their contribution to public service content, as outlined in the consultation paper. As Ofcom sets out, investment by non PSBs, including multichannel broadcasters and SVoDs amongst other sources, now accounts for nearly half of all spending on first-run UK content.
- 2) As well as an economic benefit, much of the content has strong UK cultural values. For example, A+E Networks WW2 Treasure Hunters explores deeply personal stories from the Second World War, bringing history to life for audiences. Discovery's Born Mucky: Life On A Farm is an insightful picture of rural life in the UK, while Sky Arts offers an unrivalled arts channel that is also free to air. In addition, according to Ofcom, non PSBs now account for more than half of all investment in PSB's own drama, thanks to co-productions and other forms of joint financing. Our own independent research shows the co-funding trend for drama going from strength to strength.⁴ Meanwhile, Sky News is provided free to air and is recognised as one of the cornerstones of news plurality in the UK. Its funding and independence has been guaranteed for ten years, until 2028, in undertakings to the Secretary of State, while Ofcom's research shows the channels is highly regarded by the public in terms of trust and accuracy.
- 3) In addition, non PSBs offer strengths that PSBs may struggle to provide. Their niche channels can give far more time and detail to subjects, adding to choice for audiences, while they consistently commission a high proportion of shows from small indies (under £25m turnover) and new programmes, as opposed to returning series. They typically out perform PSBs in both of these regards.⁵
- 4) This makes the UK ecology all the stronger, with multiple, meaningful sources of investment, maximising the potential for growth and for minimising the risk of contraction.
- 5) This is an exceptional success story, particularly as this investment is made without support from the licence fee or statutory prominence. Such services depend entirely on generating a commercial return on their investment from advertising or subscription. As Ofcom highlights in the consultation paper, COBA has consistently argued that it is imperative that any intervention in this area does not damage this investment.

⁴ UK drama trends: Ben Keen for COBA, copy available on request

⁵ Pact annual census

- 6) In terms of the PSB framework, any desire to increase flexibility in the system should not lead to a watering down of public service content. As Ofcom is aware, PSBs' on-demand services carry non PSB content such as Love Island and Made in Chelsea and, unchecked, will inevitably seek to maximise commercial returns by carrying the most commercially lucrative content most prominently. We are concerned that PSBs are seeking loose obligations that would allow them to do this.

- 7) This risks repeating the demise of children's content on PSBs in other genres. As Ofcom will be aware, in the run up to the 2003 Communications Act, commercial PSBs called for more flexibility in their PSB obligations. As a result children's was removed from tier 2 obligations, meaning that instead of an obligation on a particular broadcaster to show a precise volume of content in the genre, there was only a broader requirement that took into account delivery across multiple services. At the time, Ofcom explained:

[O]utside these Tier 2 programme genres the regulator no longer has the power to ensure that an individual commercial PSB fulfils a set number of hours of a particular programme genre. Effectively this means that children's programming – along with the other 'Tier 3' genres, such as drama and religion – are subject to a form of self-regulation by the commercial PSBs. Instead, the Act requires Ofcom to look at the provision of children's programming across all the PSBs and consider whether the PSB services, taken together, include what appears to Ofcom to be a "*suitable quantity and range of high-quality and original programmes for children and young people*".⁶

- 8) When ITV cut and eventually dropped children's, Ofcom wrote to the broadcaster expressing concerns, but had no ability to require it to show kids content. The regulator stated at the time (our emphasis):

'Ofcom concluded that ITV had, in legal terms, 'taken account' of its opinions, and therefore met its responsibilities under the Act. Nevertheless, this still involves a reduction of 36 per cent in the children's output. **Ofcom remains of the view that ITV should not further reduce its children's output at all, pending completion of Ofcom's PSB review currently underway. Ofcom is, however, unable to take any further action.**⁷

⁶ <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/ofcom-statement-on-reduction-in-itv-childrens-programmes-2008>

⁷ Ibid

- 9) The result was a decline in the kids' genre from which it has arguably never recovered.
- 10) This time, Ofcom must ensure it has powers to hold PSBs properly to account. If Ofcom wishes for UK children's content and news content, as well as PSB content in less commercial genres, to be readily available on PSBs' on-demand services on a guaranteed basis, it will need the regulatory ability to monitor and, if necessary, require this to be so.
- 11) It is important to bear in mind that this will also have a potential impact on competition, and the competitive mixed ecology which we have outlined. Our main concern is not to damage the ability of non PSBs to invest or innovate, which may potentially occur through unfair competition if PSBs are awarded competitive advantages such as on-demand prominence or advantageous carriage arrangements without commensurate obligations or payments, as is the case today through, for example, quotas, Terms of Trade or other requirements. We stress that on-demand prominence and carriage deals are hugely important for all players, not just PSBs, and many non PSBs will pay significant sums to secure the arrangements they require as part of commercial negotiations. If these are to be given to PSBs, there must be commensurate – and enforceable – obligations or payments. Failure to do this risks damaging competition, innovation, audience choice and investment in UK content from non PSBs.
- 12) Similarly, if must carry terms are awarded to PSBs in relation to on-demand platforms, these must come with must offer terms on a fair, reasonable and non-discriminatory basis. PSBs will generate an increasing amount of revenue from these platforms and this should be reflected in the nature of any arrangements. We are deeply concerned that PSBs are, we understand, seeking must carry obligation on platforms for their uncommercial, core public service content, potentially coupled with a mandated payment, but wish to negotiate commercial terms on their commercial content. This is in stark contrast to their calls for prominence for all their content, regardless of its public service value. In our view it is important that there is a fair, level playing field.
- 13) We also note the long term inter dependencies between the proposals on prominence and carriage and the DCMS's recent consultation on the future of the DTT platform. We call on Ofcom and Government to work together with industry to clarify how changes to regulatory arrangements on IP services interact with the timetable on which DTT remains viable.
- 14) Finally on this point, we ask Ofcom to consider the cross-promotional value for PSBs in having a linear PSB channel that can drive audiences to their on-

demand services. Ofcom already considers this in terms of cross promotion between PSB's main linear channels and their non PSB portfolio channels. Cross promotion between linear and on-demand is increasingly important for PSBs and the value of this needs to be reflected in the PSB compact in order to ensure fair competition and to maximise the value of their statutory benefits.

- 15) In terms of how to actively stimulate investment from non PSBs, prominence is undoubtedly a valuable support and many non PSBs would greatly value it. However, it could come with obligations that may not suit the existing business model of that service, so careful thought is required. We are also unclear how prominence could work from year to year, potentially creating uncertainty for the sector if it were awarded for individual programmes. Rather than a general intervention for suitable content, we find the idea of a contestable provision in very discrete areas more compelling. This might be for an additional, PSB-like remit to serve a distinct audience group that is underserved, or provide a particular genre that is underserved. It would be particularly relevant as a way to deliver additional public service content to audiences over and above current delivery. The specialist nature of many multichannel services, for example, means they can provide in-depth niche content to distinct audiences, in contrast to PSBs that require wider, mainstream audiences. Cultural and ethnic minority audiences are, for example, stronger in the multichannel sector than for PSBs.⁸
- 16) We envisage such contestable provision as a multi-year arrangement, such as when long-running programmes such as Question Time are put out to tender to the independent production sector. We are strong supporters of the benefits that flow from creative competition, and, for example, believe the move from in-house to external production has shown the value of introducing an element of competition.
- 17) However, we do not support a more widespread, open system of extending public service benefits and duties across the sector. This could potentially crowd out competition and dampen innovation and choice, as well as diluting the value of prominence amongst existing providers.
- 18) Nor are we wedded to how this contestable provision would work in terms of benefits, be they prominence or something else, and obligations, which would presumably involve a commitment to deliver a certain amount of a particular type of content.

⁸ Ofcom reports that viewing amongst some minority groups to non PSB channels is 50% of total viewing, compared to an average of 30%.

- 19) In addition, we ask Ofcom to consider the case for production tax breaks for all Out of London commissions (from PSBs and non PSBs alike). These would be modelled after, but separate to, the highly successful high end TV production tax credits, which have driven a huge increase in investment. COBA members already commission shows from independent producers outside London, such as Discovery and National Geographic's commissioning of factual producers in the southwest, and A+E's commissioning programmes in the north of England. COBA members are clear that tax breaks for Out of London commissions would encourage them to increase this investment.

- 20) In addition, policymakers should revisit the terms of the young audience fund run by the BFI. This has successfully brought PSBs and their portfolio services back to the children's genre, but commissions from non PSBs have been nearly non-existent. This is due to the two year holdback that is required before a programme that is supported by the fund can appear on pay TV or an SVoD in the UK. While policymakers may wish for the majority of shows to premier on free-to-air services, allowing pay services to premiere *some* shows, at the discretion of the fund managers, or in other cases reducing the length of the holdback, would stimulate investment in the genre from other players and increase the range of content on offer.

- 21) Finally, we have already submitted to Ofcom detailed proposals for clarifying guidance on product placement and sponsor content. Currently, there exists a disjunct between what Ofcom says is permitted informally and what the guidelines appear to say. This uncertainty has had a chilling effect on investment compared to other countries, e.g. the Netherlands. We ask Ofcom to review and clarify what is possible in terms of product placement and sponsorship. This would enable greater investment in content creation, for non PSBs and PSBs alike. It should be noted that broadcasters would remain subject to far tougher rules than online services.