

Guardian Media Group Response to Ofcom Consultation: PSB Review Phase 1 – The Digital Opportunity

Overview

GMG welcomes Ofcom's invitation to comment on the first phase of the PSB review. We think Ofcom's well-researched paper provides a strong basis for further debate. As a commercial organisation with public service aims at our heart we believe we are well placed to comment on the complexities of this debate.

In summary, we believe that the BBC and Channel 4 are the correct agencies to provide a remedy to the under-provision of certain genres of public service *broadcast* content. However, we do not believe that this argument applies to all genres or to all platforms. We recommend that the debate evolves from one of generic PSB content to a debate that clearly separates the needs of different content genres and the challenges of different delivery platforms.

Specifically, we would seek to highlight three points made in our submission below.

1: Intervention is only required in certain Public Service Broadcasting genres, where market failure is evident; the BBC and Channel 4 are the best agencies to deliver a broadcast remedy for the majority of genres

Plurality of funding through the commercial and public sectors is critical to ensuring the continued quality and breadth of public service broadcasting and to maintaining the health and success of the UK's creative economy. In many broadcast genres, we believe commercially funded players are already producing and broadcasting substantial amounts of high quality public service content (eg Sky News and Arts, Discovery Channel) and that a commercial market should be encouraged where it can provide the quality and quantity of public service content required by citizens and consumers. As such, we believe that there is only evidence of market failure (defined here as a lower level of provision than is required by citizens or consumers) in certain PSB genres such as Children's, Regional / Local News and Non-News.

Where there is broadcast market failure, and pluralism is required, we believe that Channel 4 is the right agency to deliver a broadcast remedy for the majority of genres, driven by its public ownership, its history of delivering high quality, innovative programming and its desire to remain at the heart of public service broadcasting in the UK. Aside from the BBC and Channel 4, we believe direct funding of other organisations should be avoided.

2: Market failure in Regional / Local broadcasting genres could be partially remedied through regulatory action to encourage the development of commercial Local TV

The market's failure to deliver certain genres of broadcast content, and in particular Regional / Local News and Non-News, is resulting in under-provision of broadcast content. Action is required to address this, especially in light of ITV's proposed changes to its regional model. As Ofcom suggests, Channel 4 may not be the best agency to provide a solution for Regional / Local programming, as it is not configured to deliver content regionally today.

We highlight the potential for commercial operators such as GMG, in our case based on experience of operating Channel M, our Local TV station in Greater Manchester, to meet Regional / Local News and Non-News PSB objectives for a selected number of UK regions without direct public funding. We suggest that gifting a limited quantity of low-opportunity cost local interleaved spectrum in selected cities could help develop the Local TV model as a means to address systemic market failure.

We also argue that Ofcom's ability to use Local TV as a partial remedy to address market failure in Regional / Local News and Non News will be absolutely unavailable if Local TV is forced to bid against other competing technologies with dramatically different business models during the DDR auction process. In the same way Ofcom has ring-fenced PMSE from the process, ring-fencing limited amounts of spectrum for Local TV can support the commercial development of Local TV and support Ofcom Regional / Local content objectives.

3: We do not see market failure online and believe scope creep by publicly funded agencies seriously risks the future of many commercial media organisations

We believe that a one-size-fits-all approach across broadcast *and* online is unnecessary. We do *not* perceive a need for Ofcom to intervene in the online provision of public service content, as we do not see evidence of an under-provision of genres of content that the citizen and consumer see as best delivered online. Even if we *did* see evidence of market failure online, we believe that the ideal agencies to *broadcast* public service content, the BBC and Channel 4, are *not* de facto the same agencies required to deliver public service content online. Preventing creep by the BBC and Channel 4 into areas that can be commercially served is crucial to the ongoing commercial viability of many of the UK's commercial media businesses - even small interventions by publicly funded players online can destroy fledgling commercial markets.

Ofcom needs to preserve not just the public sector but also the UK's *commercial* media businesses, to ensure plurality of funding and the continued provision of high quality public service content by the commercial sector. The ability of the commercial sector to continue to represent a high quality, plural voice is challenged by the BBC and Channel 4's actions online, threatening the future of many commercial organisations. Specifically:

- The BBC and BBC Worldwide are encroaching into online areas where commercially funded players could provide the content required - for example, the scale of investment that can be put behind BBC's online activities, including advertising on BBC.com, the launch of BBC Worldwide's passion sites (eg bbcgreen.com), and the BBC's plans to develop 60 local websites, though presumably well-intended, dwarfs funds available to many players in the commercial sector and provides services that many commercial organisations have been investing in developing. We believe that institutional creep extends through many other areas of the BBC outside the scope of this review (such as Radios 1 and 2); we question the ability of the BBC Trust to effectively regulate on grounds of the resources and impartiality and believe an *independent* regulator should be established to ensure the BBC and BBC Worldwide operate within a clear remit.
- Channel 4 has an important role to play in Public Service *Broadcasting* providing pluralism and a distinctive voice; however, we believe that this important but advantaged role should remain restricted to broadcasting. We believe that the remedy should always match the cause; seeking to address Channel 4's *broadcasting* funding gap through diverting public funding to Channel 4 for online investment fails to address the root causes of broadcasting challenges and risks doing more harm than good to the UK media landscape.

In summary, we fully support the principles and vision behind Public Service Broadcasting and look forward to engaging in constructive dialogue. We very much support the role of the BBC and Channel 4 in Public Service *Broadcasting* and acknowledge that changes to Channel 4's funding will be required for Channel 4 to continue to broadcast a similar quality and breadth of public service content. However, we see substantial investment by both the BBC and Channel 4 online as unnecessary and substantial public funding online potentially risks doing more harm than good to the UK media landscape.

What follows are responses to Ofcom's individual questions.

Section 3. How well are the Public Service Broadcasters delivering public purposes?

i) Do you agree with Ofcom's assessment that television continues to have an essential role in delivering the purposes of Public Service Broadcasting?

We believe that, for the majority of genres, *broadcast* remains the most effective platform for the delivery of public service content. Ofcom's research shows that consumers still value public service *broadcast* content; 79% of respondents believe TV has an important social role to play and 75% believe that it should help promote understanding of other social and cultural groups¹. Specifically, television remains by far the most important medium for obtaining National, Regional and Local News². Ofcom's own research highlights the fact that TV *increased* its share of voice for consumers accessing National and Regional / Local news from 37% combined in 2003 to 63% and 44% respectively by 2007³.

We believe that the importance of *broadcasting* differs by genre; it is important to move the debate from generic public service content onto a debate around individual public service genres, a point that we will come back to throughout this response. In genres where online is an effective delivery platform for public service content and citizens and consumers demand online delivery (such as Information / Search / Reference), we believe that commercial providers' existing and new initiatives will supply the service required to prevent any under-provision. Examples, including Wikipedia.org, Guardian.co.uk and the plethora of local news and content sites, highlight commercial providers' abilities to address citizen and consumer needs online without public intervention.

Where online provision is lower today, in genres including Community / Social Action and Arts / Culture / Heritage⁴, we do not see evidence that citizens and consumers see online as the most effective delivery platform. Since this content is effectively delivered on television through Public Service *Broadcasting*, there is no evidence of market failure.

Diverting public funds to serve online purposes that are better served through broadcast should be avoided. In the unlikely event that evidence of online market failure *does* appear in the future and commercial providers fail to solve the issue, then this point could be readdressed.

ii) Do you agree that UK-originated output is fundamental to the delivery of Public Service Broadcasting purposes?

Audiences expect and enjoy programmes from all over the world. That said, for certain genres, a local perspective and local knowledge are clearly essential – for example, the Discovery Channel's wildlife coverage is excellent but expert and extensive coverage of UK biodiversity issues only comes from UK originated programming.

More importantly, public service objectives aside, using PSB funding to promote the UK creative sector is critical to maintaining the UK's positioning as a global leader in the creative economy (one of only three areas identified by the UK Government as strategically important and where the UK has an international comparative advantage⁵).

1 Ofcom PSB review Phase 1, Figure 4

2 Ofcom PSB review Phase 1, Figure 5

3 Ofcom PSB review Phase 1, Figure 7

4 Ofcom PSB review Phase 1, MTM analysis in Annex 9

5 The UK economy: analysis of long-term performance and strategic challenges, HM Treasury, March 2008

Section 4. The changing market environment

j) Do you agree with Ofcom's conclusions about the way that other digital channels and interactive media contribute towards the public purposes?

We recognise that in some respects digital interactive media may be better suited to delivering certain public service genres than traditional linear TV, driven by advantages from personalisation, interactivity and community amongst others. That said, for most genres we believe the role of broadcasting will remain key until such time as broadband-delivered content is universally available, discoverable and accessible.

Importantly, we do not infer from the medium's role in the delivery of certain genres of public service content that online needs to be regulated under the same mechanisms as broadcast or be provided by the same agencies. There are many examples of media propositions that contribute to public service content that are regulated differently, if at all, and provided by entirely separate agencies. An example would be the self-regulated newspaper industry.

Section 6. Meeting audience needs in a digital age

j) Do you agree with Ofcom's vision for public service content?

With the continual increase in cultural, religious and regional diversity in the UK, we believe that the educational and informational objectives of PSB content are more important than ever. Finding a future-proof solution to the funding issues facing Public Service Broadcasters is important to ensuring the continued quality and quantity of broadcasting in some genres.

We think Ofcom's proposed vision for PSB content is a very useful start. However, we would also stress the importance of developing and nurturing creative talent, identified by the Government as a crucial step in maintaining the UK's position as a leader in the creative industries⁶. Since Ofcom stresses the importance of UK content, we float the idea of adding into the vision a theme around the development and support of creative talent, on which UK PSB is critically dependent.

We also feel it is important to stress the degree to which we believe Local TV meets Ofcom's vision for PSB⁷, as highlighted in the following table:

Ofcom's proposed vision	Local TV delivery against Ofcom's vision
UK content that increases knowledge and learning, reflecting UK cultural identity and alternative points of view	Creation of nearly 20 hours of original UK content per week, delivering development opportunities for new creative talent; strong focus on regional identity
Innovative, original, challenging, engaging and high quality	
Available in variety of forms and on a variety of platforms to ensure reach	Reach over and above BBC and ITV created through ability to target new niches
Exploits the benefits of different platforms	Multimedia usage of content across press, TV and online
Ensures competition with the BBC	Demonstrated competition within Greater Manchester
Content that meets the needs of diverse communities	Ofcom identifies under-provision of regionally created and regionally messaged content that Local TV addresses

ii) How important are plurality and competition for quality in delivering the purposes of Public Service Broadcasting, and in what areas?

We share the view of the vast majority of UK media commentators that plurality is essential in a democratic society, delivering diversity of voice, enhanced reach and ensuring competition, quality and innovation. Whereas plurality of voice is commercially delivered in most media sectors (such as newsprint or online) the entry costs of television, caused by scarcity of broadcast spectrum, imply that fewer commercially viable voices exist. As such, diversity of funding mechanisms is required to ensure continued diversity of voice in some commercially non-viable public service broadcast genres.

We note Ofcom's analysis⁸ suggesting that the public share this view, with over 70% of respondents believing plurality is important in genres of particular relevance to our submission; including News, Current Affairs, National / Regional News, Current Affairs About My Nation / Region.

⁶ DCMS, BERR, DIUS (February 2008): Creative Britain - new talents for the new economy

⁷ Paragraph 6.3 in Ofcom review

iii) In maximising reach and impact of public service content in the future, what roles can different platforms and services play?

We believe that many of the cases for intervention that exist for Public Service *Broadcasting* do not exist online and, as such, the online market should be left outside public intervention. We believe that intervention by Ofcom to publicly fund agencies (such as Channel 4) to deliver online content should only be encouraged if:

1. Ofcom is legislatively asked to regulate the delivery of public service content online *and*
2. A demonstrable case of market failure can be demonstrated, within a certain content genre, that cannot be satisfied by properly incentivised commercial players

As explained in section three, we do not see evidence of market failure online. Further, to the extent that any under-provision does exist, investments by commercial players to serve these needs are being delivered and substantial public investment will only serve to deter future commercial investment.

In contrast to the majority of high quality analysis presented in the review, we believe Ofcom is overly simplistic in suggesting the level of online advertising growth in the UK is appropriate evidence that the BBC is not deterring or crowding out investment by commercial players. The UK's online advertising market is driven by many factors including the overall advertising market, high broadband penetration, the success of online search marketing in the UK and the UK's ability to enjoy the benefits of US innovation through common language.

The BBC's £68m investment in local websites and Channel 4's planned £50m 4IP investment are well in excess of levels available to all bar a select few media organisations and in reality cannot fail to have an impact on commercial investment – which commercial organisation is going to invest heavily in local online video when set against the BBC and its £68m planned investment?

iv) Do you agree that the existing model for delivering Public Service Broadcasting will not be sufficient to meet changing needs in future?

We agree that from a *broadcasting* perspective and in *certain* genres, the existing model will indeed fail. Specifically, the Nations and Regions of the UK will be underserved in the need for plural content.

On the subject of Regional broadcast market failure, which we will focus on in section 9, we understand Ofcom's position that intervention in News costs £100m per year (plus a further £10m for Non-News) and that there is a limited commercial business case for Regional television. We agree there appears to be a limited commercial case for *100% ubiquitous* UK Regional News and Non-News broadcast coverage. However, we believe that a commercial case for the provision of linear public service and commercial programming in selected urban centres does exist and could be encouraged through gifting of spectrum to established licensees. This could be expanded online outside these major conurbations through partnerships with existing players.

Section 7. Future models for funding and providing public service content

i) What are your views of the high-level options for funding Public Service Broadcasting in future?

We believe that Ofcom's four models are a useful framework to stimulate debate around the options available for Public Service Broadcasting. We make four comments on the models that Ofcom may like to consider during Phase Two of the Review.

Firstly, it could be (and indeed has been) argued that Ofcom's options are constructed in a manner that inadvertently leads the reader towards Model 3. We would not seek to comment but encourage Ofcom to ensure that debate from all parties remains open to a full range of options.

Secondly, as discussed earlier, we believe that different answers will be required for different genres of public service content. The models, although useful, can lead to people grouping all PSB content genres together and care is required that the solution covers the needs of genres individually.

Thirdly, we note that one model need not be applied to both broadcasting and online. The fact that intervention is legislatively required for market failure in certain genres of *broadcast* content does not imply that a similar response or model for online is required, where such market failure does not exist.

Fourthly, we agree with Ofcom's creative ideas around alternatives to direct funding. For example, enabling *distribution* of existing content on a greater number of platforms than is commercially viable is a pragmatic idea. Secondly, *allocation of regulatory assets* with low opportunity costs to operators who can broadcast public service content (e.g. Local TV) is also a viable alternative. For the avoidance of doubt, we believe gifting of cleared national spectrum would have a high opportunity cost to society, tantamount to cash being paid from the public purse. This is *not* being proposed here.

ii) Are the proposed tests of effectiveness for future models for Public Service Broadcasting the right ones?

Ofcom's potential tests are a useful framework to stimulate debate. We have three comments to add to the debate.

Firstly, we would seek to split the Reach and Impact test into two separate tests. In TV broadcast terminology, Reach and Impact are very similar. However, in the more traditional sense, 'impact' also expresses the level to which the content influences, educates and informs its audience. Content with a large reach and low impact (using the common definition) may have no more societal benefit than narrow reach high impact content. We are keen to ensure that low-reach content that is of high impact, by focusing on tight demographics or geographies (e.g. Local TV), is not dismissed out of hand. Indeed significant management thinking would suggest that a focus on impact and focus over pure reach has much merit.

Secondly, the concepts of governance and complementarity are crucial. Present ongoing creep by publicly funded organisations into the commercial domain needs to be controlled so public funding is a *complement* to commercial content in areas of market failure, not a substitute for it.

Thirdly, if the criteria are to be used in any detail, agreeing the weightings that each criterion is given will be critical to arrive at the best answer, since dramatically different answers can be generated through greater importance of individual criteria.

iii) Of the four possible models for long term delivery of public service content, which, if any, do you consider the most appropriate and why?

We favour Model 3 for Public Service *Broadcasting*. We admire the principle of Model 3, where funding is allocated to the optimal agency to deliver the service. For the majority of genres, such as comedy and factual, where broadcast market failure could exist and plurality is required, we believe that Channel 4 is the right agency to deliver a broadcast remedy, driven by its public ownership, its history of delivering high quality, innovative programming and its desire to remain at the heart of Public Service Broadcasting in the UK. As Ofcom notes, there may be some genres, such as Regional News and Non-News broadcasting, where Channel 4 is less well placed, that may be better served by a different organisation. We will return to this in section 9.

However, we strongly challenge the notion that Channel 4 is the default best agency to either allocate new funds or to spend funding to deliver public services objectives online. The solution to Channel 4's broadcast funding problems should not be in the form of cash funding for an increased online presence.

Regarding the alternative models proposed:

- Model 1 does not appear to be a long term sustainable solution to the issues presented, since the level of financial challenge that ITV and Channel 4 will experience by 2012 requires more than incremental change – both ITV and Channel 4 argue that a fundamentally new compact is required. Further, it does not allow allocation of spectrum to non traditional PSBs and retains PSB status for operations such as Five and Teletext that may not require this status going forward.
- Model 2 falls short of guaranteeing plurality and sees the role of the BBC increase, failing Ofcom's complementarity test. Since the research presented in Section 6 highlights the importance of plurality to citizens and consumers, moving away from today's plural broadcast environment would not be progressive.
- Model 4 would require a new public body to be created to allocate funding. This organisation would break the crucial relationship between the audiences and the creative organisation delivering the content. Unless the body's allocation rules are highly prescriptive, it will be continually legally challenged. However, the imposition of any prescriptive rules will kill the

creative process – previous attempts to apply tick-box rules to the creative process have delivered the expected poor results.

Section 8. Options for the commercial PSBs

i) What do you think is the appropriate public service role for Channel 4 in the short, medium and long term? What do you think of Channel 4's proposed vision?

We appreciate the value to society that Channel 4 delivers and that changes to funding are essential if Channel 4 is to continue to broadcast the same quality and breadth of content that it does today. However, we are concerned that Channel 4's £50m proposed investment in online through 4IP will substantially distort and harm fledgling commercial markets. Channel 4's role as a core UK Public Service *Broadcaster* should be protected; however, its role should remain as a *broadcaster*. In particular we point to Channel 4's lack of prioritisation of PSB content within their online activity, which tends to focus on their larger entertainment brands (e.g. Big Brother)

ii) Which of the options set out for the commercial PSBs do you favour?

See section 9 iv for our position on ITV.

Five currently receives a financial benefit from its PSB status. Given our support of Model 3, we find it hard to understand why Five should retain its privileged position.

One model that has been floated would involve removing PSB status from ITV and Five and levying a charge on the two broadcasters for their EPG positions to help Channel 4's funding gap. We will leave it for those closest to these matters to debate this more thoroughly.

Finally, given the strengths of online in delivering information and search results (one PSB genre) we agree with Ofcom's questioning of the continued need for intervention to ensure the existence of Teletext.

Section 9. Scenarios for the UK's nations, regions and localities

i) To what extent do you agree with Ofcom's assessment of the likely future long term issues as they apply to the nations, regions and localities of the UK?

We believe that the future provision of Regional News and Non-News PSB content in the UK is a cause for serious concern. Ofcom's research shows that, overall, the importance to consumers of regional content has been increasing since 2004⁹. The regional problem is most acute for Regional and Local News (as distinct from Non-News).

Firstly, there is systematic under-provision of local content demanded by citizens and consumers – Regional / Local News is the joint third most important genre of PSB content (78% of respondents believing it to be important) but only 53% of respondents are satisfied with present provision¹⁰.

Secondly, pluralism of voice is also crucial to the consumer – 76% of respondents believe pluralism is important (the third highest score of all genres) implying competition to the BBC is essential for Regional / Local News.

These issues (a mismatch between demand and satisfaction and the necessity for plurality) are also present, albeit to a lesser degree, in the Regional and Local Non-News genre.

Against this backdrop of an increasing importance of Regional / Local content, a dissatisfaction with present provision and the ongoing need for plurality, ITV is seeking to step back from its regional obligations. As such, we see a substantial risk of market failure in the present and future broadcast of Regional / Local public service content.

We note two more detailed points here:

1. Ofcom's research helps illustrate the quality of Channel M in the Granada region: comments from respondents in the region were significantly more positive about the quality of news available in the region than the UK average, supporting our belief in the strength of the PSB service that Channel M is providing¹¹.

⁹ Ofcom PSB Review Phase 1, paragraph 3.41

¹⁰ Ofcom PSB Review Phase 1, figure 20

¹¹ Ofcom PSB Review Phase 1, Figure 53: statements are "news about my region is generally of a high standard" and "the main TV channels should not be made to show more news about my nation/ region...."

2. The BBC's research¹² suggests that online is not yet seen as a substitute for Nations and Regions programming and local video remains an emerging sector.

ii) Which model(s) do you think will be most appropriate in each of the nations and in the English regions in the long term, and why?

We remain convinced that direct public funding of agencies other than Channel 4 and the BBC to broadcast public service content is unattractive. We believe that Model 3 is the best option for the UK Nations and Regions.

As Ofcom notes, in cases such as Regional / Local News and Non-News, Channel 4 may not be the best agency to deliver the pluralism required by citizens and consumers. In these limited situations, other agencies may be better placed to provide the content required. Gifting limited amounts of low-opportunity cost, local interleaved spectrum would help develop the commercial Local TV model as a means to address systemic market failure in selected urban areas of England and Scotland.

As we noted in our response to the DDR consultation, the economics of local TV are fragile and the imposition of a cost to use the spectrum would fundamentally reduce the likelihood of commercial players being able to provide this public service.

iii) What are your views on short/medium-term issues referred to, including the out-of-London network production quotas?

Continued production of regional content is crucial both to meet PSB objectives, such as educating consumers on Regional / Local identities, and for economic reasons, such as maintaining the creative economy outside of the M25.

We note three issues with the present model:

Firstly, non-London production has fallen by 8% since 2003¹³.

Secondly, the quotas in place to prevent sustained erosion are routinely missed by certain PSBs.

Thirdly, even content that *is* produced outside London does not carry local or regional messages; the extent to which it is fulfilling its PSB purpose of educating on Regional / Local identity and issues is questionable. We note here both Ofcom's analysis but also comments earlier this month by the BBC Trust on the overly London-centric focus of the BBC's News.

We note that Channel M makes a strong contribution to UK regional content and the creative economy, creating nearly 20 hours of locally produced, locally relevant content per week and supporting over 100 jobs in the creative economy in Manchester.

iv) What are your initial views on the preliminary options set out relating to ITV plc's regional news proposal?

The importance of plurality in regional content that Ofcom has identified suggests that at least one non-BBC source of local news is required. However, since ITV is a commercial operation with a requirement to deliver returns to shareholders and has stated that it is not able to make regional news and content commercially viable, it may not be best placed to provide this service. This needs to be carefully considered since it may result in a systemic under-delivery of content demanded by citizens and consumers (e.g. regional broadcast content).

However, if *alternative* providers could be supported in delivering Regional / Local public service objectives through gifting of spectrum (the same advantage that ITV enjoys today), the loss to society of ITV's proposed changes would be mitigated, allowing ITV more freedom to pursue its objectives and meet the needs of its shareholders.

Section 11. Timetable for implementing a new model

i) Do you agree that new legislation will need to be in place by 2011 in order to ensure continued delivery of the public purposes in the medium and long term?

¹² Ofcom PSB review Phase 1, referred to in section 9.7

¹³ Ofcom PSB Review Phase 1, 3.87

We agree that getting a solution to the PSB review as quickly as possible is crucial, since uncertainty is unhelpful for both publicly funded and commercial players alike. However, it is crucial that Ofcom acknowledge the linkage between this review and the ongoing DDR auction, since both could place requirements on broadcast spectrum.

Ofcom's ability to use Local TV as a partial remedy to address market failure in Regional / Local News and Non News, as suggested in the document, will be absolutely unavailable if Local TV is forced to bid against other competing technologies leveraging different business models¹⁴. We believe that Local TV as a remedy could be over before it has begun if Channel M, the UK's most established Local TV broadcaster, fails to secure low opportunity cost, local interleaved spectrum during this year's DDR process.

In the same way Ofcom has ring-fenced PMSE from the process, ring-fencing limited amounts of spectrum for Local TV can support the commercial development of Local TV and support Ofcom's Regional / Local content objectives.

¹⁴ Ofcom identifies four potential uses; new nationwide digital TV services, local TV services, products supporting programme - making and special events and mobile television and mobile broadband