



OFCOM'S SECOND PUBLIC SERVICE BROADCASTING REVIEW

Submission by the Satellite and Cable Broadcasters' Group 24.06.2008

The SCBG is the trade association for digital programme providers who are independent of one of the main terrestrial broadcasters. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. Many member companies are pan-European broadcasters, producing and commissioning content for different national markets.

SCBG channels provide citizens and consumers with programmes and services for a diverse range of audiences across a wide range of genres and audiences, including entertainment, factual, educational, history, music, nature, art and science. Our member companies make and show programmes for children and young people, and for ethnic minorities in their own languages. SCBG members' channels can be found on all of the UK's major digital pay and free-to-air platforms, which are now available in nearly 90% of UK homes.

Our members operate in an extremely competitive and challenging environment, without privileged access to scarce government-controlled spectrum or to the must-carry status afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and – with a couple of notable exceptions – do not benefit from public funding.

Executive Summary

- SCBG's primary concern is to ensure that citizens and consumers benefit from vigorous and fair competition between providers of quality content. Any interventions to secure specific public policy outcomes must be considered within the context of that fundamental provision.
- The commercial multichannel sector has been successful in attracting audiences with its range and quality of output. It already delivers substantial levels of content that meet Ofcom's definitions of public service purposes and characteristics. The sector also makes a substantial contribution to the UK economy – worth some £2bn pounds.
- We continue to be concerned by Ofcom's definition of "PSB" – with its implicit assumption that only free-to-air content can meet public purposes, and that UK-originated content must be the primary source of public value. We do not believe that Ofcom sufficiently appreciates the contribution that can be made by content on pay-TV channels, or content from elsewhere in the world.
- As the value of the current PSB subsidies declines, Ofcom should ensure that they maximise the residual value retained by the existing institutions – focusing on those areas where the market will not provide. Ofcom should then allow the rest of the commercial sector to compensate for the decline in the value of that subsidy, by creating a more competitive, more flexible market for spectrum, rights and advertising revenues.
- We urge Ofcom to consider how best to harness this dynamic for the benefit of UK viewers. We caution strongly against the belief that more subsidy is the answer. Such an approach would actually damage the growth of alternative sources of content, and crowd out new investment.
- Notwithstanding our opposition to new sources of subsidy, many SCBG companies remain supportive of great competition for existing funding. Their support assumes that this is made available freely and fairly to all potential bidders rather than limited only to the commercial PSBs, or to free-to-air broadcasters only.

Introduction

The Satellite and Cable Broadcasters' Group (SCBG) welcomes the opportunity to make this submission to Ofcom's consultation on its second statutory review of public service broadcasting (PSB). SCBG represents the views of a wide range of businesses that run a diversity of television brands, run independently of the incumbent terrestrial broadcasters and largely without public support or subsidy.

Our primary concern is to ensure that citizens and consumers benefit from vigorous and fair competition between providers of quality content, on whatever platform, and on whichever device. Our belief is that any regulatory or public policy interventions aimed at sustaining (or privileging) certain types of content and certain types of provider must be made in the context of this fundamental principle.

We remain concerned about Ofcom's narrow definition of what constitutes "public service broadcasting" – especially the implication that only free-to-air content can truly deliver public value – and question Ofcom's focus on "plurality" as a specific objective of intervention.

Our belief is that more and more high-quality content is already being made available to UK consumers by brands that do not enjoy the privilege of formal PSB status. Ofcom ought to be seeking to encourage this further by removing barriers to effective competition, rather than by intensifying public intervention in the form of new subsidies for the current institutions.

The Present

Our starting point is what SCBG members already deliver in terms of high-quality content to UK audiences. As we argued during Ofcom's first review, commercial digital channels provide a substantial (and in some cases majority) share of genres traditionally associated with PSB. Although Ofcom has – for the first time – acknowledged that non-PSB channels are delivering substantial levels of content that meets its definition of PSB purposes and characteristics, we still do not believe that Ofcom is adequately valuing this contribution.

SCBG members' brands uniquely address particular groups and communities of viewers, often reaching audiences that traditional PSB institutions are finding it increasingly difficult to reach. They do so with programming that meets high standards of originality and quality, and most importantly, that meets the needs of audiences. For example, Nickelodeon was named "Best Children's Channel" at this year's Broadcast Digital Channel Awards. In particular, the judges praised Nickelodeon for its wide range of programming rich in public value, and for its sustained innovation and support for UK original content. Nickelodeon is by no means alone in this respect.

Many channels are also contributing to Ofcom's objectives by serving minority cultural or ethnic interests, engaging audiences groups such as 16-24 year olds that are increasingly disenfranchised from the current PSB institutions, or developing new on-screen and production talent. We note with satisfaction that many respondents in Ofcom's research spontaneously mentioned SCBG members as providers of "public service content". In the main, this contribution is delivered efficiently and effectively without public subsidy.

Ofcom may also be interested to note that our members are also making a substantial contribution to the UK economy. We have commissioned Deloitte to conduct an assessment of the economic impact made by our sector, and to examine the investment of SCBG members in content that we believe meets Ofcom's narrow definition of PSB. This investment is already sustaining content across both linear and non-linear media.

The full results of Deloitte's study will be presented to Ofcom later in the Summer, but we can already reveal that preliminary findings demonstrate that SCBG members generate significant added value for the UK economy. According to Deloitte, SCBG members generated "value add" of around £2 billion for the UK economy in 2007¹. Our members' activities sustain employment in the UK for around 20,000 full time-equivalent employees.

However, the study also demonstrates that Ofcom's proposals for market intervention in the name of "maintaining and strengthening PSB" have the potential to undermine this contribution, adversely affecting SCBG members' ability to continue increasing their contribution to the UK economy, to the UK production sector, and to UK viewers.

Definitions and Objectives

We wish to address a number of specific issues raised by this first phase of the review.

Firstly, we note that one of Ofcom's criteria for PSB characteristics remains "widely available". We are concerned that Ofcom retains an implicit assumption that only free-to-air content can meet this criterion.

Although some SCBG members operate channels on Freeview, the vast majority of members' brands are available on subscription services such as Sky and Virgin Media. (As an aside, we have consistently argued for Ofcom to reform regulation of the digital terrestrial platform in order to stimulate a greater diversity of suppliers. The present system of gifted spectrum acts to limit choice, and suppress effective competition on a growing platform). Consumers are accustomed to paying for content that they value – whether that be in the form of pay-TV subscriptions, DVD sales and rentals or newspapers and magazines.

¹ Value add is calculated by aggregating the direct value generated by SCBG members, indirect value add from members expenditure and induced or multiplier value from further spend of wages etc.

In total, some 50% of UK homes subscribe to multichannel television – around twelve million homes in total. These homes spend a substantial amount of time choosing to view channels offered by non-PSB operators. We believe that rather than trying to hold back the tide by offering the existing PSB institutions enhanced subsidies and further privileges, Ofcom should embrace the preferences of consumers, and act to free up competition for their benefit. We are concerned that if the vast majority of SCBG members' output can never be regarded as contributing public value because it is available on a paid-for basis, this will perpetuate a bias towards intervention in favour of the existing PSB institutions.

Secondly, Ofcom is very clear in its belief that UK content plays an essential part in delivering public purposes. While we agree that genres such as national and regional news and current affairs need to be produced in the UK, we would note that Ofcom's research suggests that it is primarily in these genres that UK audiences expect and priorities domestic production.

Our strong belief is that content produced internationally can deliver as much PSB value as UK content – and in some cases, more. Producers from the United States routinely produce content that dwarfs UK production in ambition, innovation, depth and quality. In genres such as anthropology, science, sport, arts and documentary, an international perspective adds value for UK audiences. Many SCBG companies routinely co-produce content with international partners, bringing untold stories and issues of global concern to UK audiences.

We would also note that the terrestrial networks commission UK content not simply because they are required to do so by their remits or by their statutory quotas, but because UK content is popular with viewers. Absent their PSB obligations, ITV1, Channel 4 and five would continue to commission high levels of UK programming. Our belief is that the PSB framework should compensate them in only those limited areas where the market would not fulfil audience needs.

Finally, we challenge Ofcom's focus on "plurality" as an objective for this review. We note that the UK is uniquely preoccupied with maintaining multiple institutional providers of public service broadcasting, and we do not believe that Ofcom has adequately explained why it believes plurality of provision to be beneficial in and of itself.

It is clear to us that plurality is already widespread (notwithstanding our views about the oligopoly enjoyed by the PSBs on the Freeview platform). SCBG members offer a wide array of content that competes for audience with that of the PSB institutions – as recognised by the Culture, Media and Sport Select Committee in its report on Public Service Media Content. Interventions designed specifically to generate plurality risk duplicating activity in a market where PSB institutions already enjoy huge advantages.

The Future

The Future of the Commercial PSBs

As Ofcom articulates in its review, the current model extract PSB obligations from the commercial broadcasters by granting them particular advantages in return for specific guarantees. While we recognise that the value of ITV1 and five's implicit subsidies are declining as switchover gathers pace, we believe that they will retain substantial residual value beyond 2012, and Ofcom should still be in a position to encourage them to deliver certain kinds of content that would otherwise be put under pressure.

In both cases, ITV and five will continue to enjoy a range of valuable advantages that justify specific requirements in return: namely subsidised access to otherwise expensive DTT capacity and preferential positions on EPGs. Indeed, we have consistently questioned the fairness of the PSB institutions having privileged access to spectrum for channels that deliver little or no public value and compete directly with channels that must pay market rates for spectrum and content².

In the specific case of Channel 4, we remain unconvinced that their business model will be unsustainable in the long term. It will continue to benefit from its strong brand, its audience of valuable young adults, and its free broadcasting spectrum.

Even after switchover is complete, all of the current PSB institutions will continue to enjoy the benefits of incumbency (which in ITV's case results from over 50 years as the dominant commercial broadcaster in the UK) and will continue to attract substantial audiences, exert considerable leverage with producers, programme distributors and advertisers, and retain a powerful ability to cross-promote between their channels and platforms. The value of the terrestrials' cross-promotional airtime is enormous – and dwarfs any investment that any of our members can make in advertising our channels in commercial airtime.

Ofcom's focus should be to use its regulatory assets to extract a reasonable level of commitment from ITV1 and five; find a proportionate and appropriate way of allowing Channel 4 to focus its investment on original, innovative and distinctive content; and then act to ensure that other commercial providers are capable of growing the range and diversity of their own output for the benefit of audiences.

² We also continue to press Ofcom to free up the digital terrestrial platform, which is increasingly looking like a digital version of analogue. Channels delivering content rich in public value – such as Teachers' TV and the Community Channel – are keen to benefit from the increased reach that access to DTT would grant them, but are unable to afford carriage due to the PSBs' incumbent positions, offering content on their spin-off channels that often fails to deliver content of any defined public value whatsoever.

Future PSB Models

We have asked Deloitte to model various different scenarios for the future delivery of PSB in the UK, based on those outlined in Ofcom's consultation.

Deloitte have noted that there are a number of uncertainties about how these scenarios will be developed in practice, and the UK TV industry may evolve in various ways over the coming decade. In particular, Deloitte have not modelled the impact of Ofcom's competitive funding scenario, since it is not possible to predict who might be successful in such a bidding process. Deloitte's interviews with SCBG members suggest that commercial broadcasters' willingness to bid for public funding will depend on the types of restrictions attached to the funding, and how the bidding process is organised. Deloitte's estimates at this stage should therefore be taken as illustrative.

The key preliminary findings of Deloitte's modelling are that:

- Increasing funding for some of the existing PSBs has the potential to have a negative impact on commercial non-PSB broadcasters – in terms of their revenues and their contribution to the wider economy (including their investment in content).
- Deloitte's preliminary estimates indicate that between 2012 and 2016, SCBG members' revenues could fall between 2% to over 3% per annum on if increased public funding is provided. They estimate that this would have a negative impact on multi-channel broadcasters' content spend of up to £40m in total over the period 2012-2016.
- If the BBC retained a role as the sole Public Service Broadcaster, this would have an impact on multi-channel broadcasters as a result of ITV, C4 and five adopting purely commercial strategies and exploiting the benefits of their long-held incumbency;

These results from the Deloitte study support our central position on future funding for public service content: that we are strongly opposed to new sources of subsidy or support for PSB. Such an approach would risk increasing the "crowding out" of new sources of investment for both linear and non-linear content.

SCBG member companies already provide a vast array of content that satisfies the public's appetite for high-quality entertainment and information. As the value of the current PSB subsidies declines, Ofcom should ensure that they maximise the residual value retained by the existing institutions – focusing on those areas where the market will not provide. Ofcom should then allow the rest of the commercial sector to compensate for the decline in the value of that subsidy, by creating a more competitive, more flexible market for spectrum, rights and advertising revenues.

Contestability

Notwithstanding our opposition to new sources of subsidy, many SCBG companies remain supportive of great competition for the funding that is already made available to support the delivery of public purposes. Support for this assumes that these funds are made available freely and fairly to all potential bidders, as described in Option Four of Ofcom's paper, rather than limiting contestability only to the commercial PSBs, or to free-to-air broadcasters only.

Children's Programming

Ofcom should refer to SCBG's previous submission on children's programming from December 2007, in which we supported the idea of tax incentives for boosting investment in original children's content. This approach would be more cost effective than other proposals and, from our perspective, is a solution based upon partnership and positive incentives rather than industrial engineering and static intervention.

Conclusion

SCBG members are already delivering substantial levels of content that meets Ofcom's definition of what constitutes "public service content". Our sector has been a source of valuable competition, innovation and efficiency, and given the opportunity, will continue to be so.

In all of Ofcom's scenarios, the BBC remains the cornerstone of PSB delivery. Its status as the nation's primary public service broadcaster is secure for the foreseeable future, and it has a relatively secure source of licence fee income for the next few years. The key issue being addressed in this review is what the role of the commercial PSBs should be in future.

Although we recognise the decline in the value of public subsidy for commercial PSB, we are confident that channels such as those offered by SCBG will more than compensate for that decline. A reduction in public subsidy will actually create greater incentives for investment and innovation – giving a boost to competition between providers.

In its deliberations, we urge Ofcom to consider how best to harness this dynamic for the benefit of UK viewers. We caution strongly against the belief that more subsidy is the answer. Such an approach would actually damage the growth of alternative sources of content, and crowd out new investment.

We look forward to continuing the discussion with Ofcom about this important subject. We hope to arrange a meeting with you to present the full Deloitte report to you as soon as it has been finalised and hope that it will be useful in your future deliberations.