

## **OFCOM: OFFICE OF COMMUNICATIONS**

### **BACKGROUND**

This paper provides information on the consultation document from OFCOM; in relation to the Digital Opportunity (Phase One) and Preparing for the digital future (Phase Two) for Public Service Broadcasting. A summary of key issues from Phase One and Phase Two of the consultation are included below.

### **OFCOM: OFFICE OF COMMUNICATIONS**

The Office of Communications (Ofcom), under the **Communications Act 2003**, had functions transferred to them from the bodies who regulate the communications sector (which broadly encompasses telecommunications and broadcasting) and radio<sup>1</sup>.

Subsections (3), (4) and (5) of the Communications Act 2003 provide Ofcom with a number of powers in order to carry out its functions. These powers include<sup>2</sup>:

- The power to **borrow money** (provided that this is done with the consent of, or in accordance with a general authorisation given by, the Secretary of State);
- The power to **undertake research and development work** in relation to their functions as well as to promote and arrange for it to be carried out by others;
- The power to **prosecute in England, Wales and Northern Ireland** offences relating to matters in respect of which they have functions, and;
- The power, at their discretion, **to compensate** (where no legal liability arises) persons adversely affected by Ofcom's activities.

Ofcom is required by Parliament to **review Public Service Broadcasting** at least once **every five years**, and to make recommendations about how its quality can be maintained and strengthened.

Ofcom's research suggest central government spends around £70-90 million on public service content online, with local and devolved government estimated to spend a further £45-55 million<sup>3</sup>.

The public service television channels are as follows:

<sup>1</sup> Communications Act 2003 Explanatory Notes,  
[http://www.opsi.gov.uk/acts/acts2003/en/ukpgaen\\_20030021\\_en.pdf](http://www.opsi.gov.uk/acts/acts2003/en/ukpgaen_20030021_en.pdf)

<sup>2</sup> Communications Act 2003 Explanatory Notes,  
[http://www.opsi.gov.uk/acts/acts2003/en/ukpgaen\\_20030021\\_en.pdf](http://www.opsi.gov.uk/acts/acts2003/en/ukpgaen_20030021_en.pdf)

<sup>3</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf)

- (1) the BBC's channel;
- (2) channel 3/ITV, Channel 4;
- (3) S4C (Welsh Channel) and;
- (4) Five

These channels **account for over 90% of investment** in new UK-originated television content<sup>4</sup>.

The Ofcom review states that the amount of UK originated programmes in peak time has declined slightly since 2003, but some areas have seen increases, for example factual programming. The research conducted by Ofcom states that the **share of the main five channels has fallen by 17% between 2003 and 2007**, although the five main channels still account for almost two thirds of all television viewing.

The Ofcom review also found that the **BBC** is particularly valued, and is seen by audiences as the '**cornerstone**' of public service broadcasting.

Ofcom's analysis shows that the **total implicit funding** for commercial public service broadcasting has **declined by a quarter** (approximately £130 million) since the Communications Act was passed in 2003. By 2012 it is projected to decline by nearly two thirds since 2003 - a total of over £300 million. By 2012, the BBC will receive over 90% of all funding for public service broadcasting, up from a little over 80% in 2003<sup>5</sup>.

Ofcom estimate that annual funding for UK children's programming among the five main PSBs (Public Service Broadcasters) has declined by around £51 million since 2003<sup>6</sup>.

#### **PHASE ONE: OFCOM'S SECOND PUBLIC SERVICE BROADCASTING REVIEW PHASE ONE: THE DIGITAL OPPORTUNITY**

The two main findings from the Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity are as follows<sup>7</sup>:

- (a) **audiences expect more** from the five main channels, in relation to programming from the UK's nations and regions and UK children's content; and
- (b) Provision for **UK nations, regions and children's programming is relatively secure from the BBC, but not from commercial broadcasters.**

#### Market Evolution

Three suggestions have been put forward in relation to market evolution and the level of intervention needed in public service content. The suggestions are as follows;

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<sup>4</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf)

<sup>5</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf)

<sup>6</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf)

<sup>7</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf)

- There is a broad range of plausible outcomes for audiences' future use of different kinds of media, and the level of take-up of innovative and mobile services;
- Under a wide range of scenarios, the reach and impact of the designated public service linear channels is likely to decline;
- The level and mix of investment in UK-originated content is likely to decline, with particular pressure on innovative or 'risk-taking' programming

Three time periods were looked at for Ofcom's piece of research; identifying the possible outcomes for Channel 4 and the commercial public service channels in each scenario. The time periods selected are as follows<sup>8</sup>;

**Short-term:** before the completion of digital switchover – from now to 2011

**Medium-term:** from the end of switchover to the end of current commercial broadcasting licences – from around 2011 to 2014

**Long-term:** past the end of current commercial broadcasting licences – beyond 2014

In the **short-term**; -

- The decline in the amount of UK children's programming for older children
- Programming for the nations and regions.

In the **medium-term**; -

- Nations and regions services on ITV1 (including UTV) may become increasingly unsustainable, even at a reduced level
- By 2011, one or more of the ITV1 licensees may face a commercial decision to hand back their licences
- Five's public service contribution looks secure throughout this period, although pressure on its investment in original UK content may grow
- For Channel 4 will need greater certainty in its funding model. Its reserves may be sufficient to maintain its public service contribution in the short-term but it needs clarity about its longer-term funding position.

In the **long term**; -

- More options are available at the point of renewal of the existing commercial broadcasting licences
- If Channel 4's 'special role' were to be maintained, it would need a new remit, a sustainable and proportionate funding model and accountability arrangements.

### Funding sources in a digital age

Possible funding sources include the following<sup>9</sup>:

**Direct public funding:** sources of funds include direct taxation;

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<sup>8</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf)

<sup>9</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf)

**The licence fee:** possible retaining the excess licence fee funding currently ring-fenced for Digital switchover, opening up core licence fee funding to other providers, or using BBC assets to support other providers;

**Regulatory assets:** could include revised advertising timing rules, or public service broadcaster status for additional channels; and

**Industry funding:** a wide range of industry levies could be considered.

#### New approaches to meet the needs of the UK's nations, regions and localities

Phase One of the Ofcom Report states that the **broadcasting and political needs differ between the UK's nations**, resulting in each needing a tailored solution.

Radio and newspapers continue to contribute strongly to national, regional and local provision. New opportunities for delivery, such as local online services and digital local TV are emerging.

The **cost of producing multiple different editions for a single time slot makes regional news the highest public service cost of the ITV1 licences**. Last year it proposed to Ofcom that from 2009 there should be a new structure for regional news in England and the Scottish Boarders which would merge some regions; reducing the number of regions by two.

Following the launch of an extensive programme of research and evolution to the ITV plc proposals (see above), Ofcom could respond in a number of ways, for example by:

- Refusing any change to current licences;
- Allowing ITV plc to reduce its costs by a version of its re-structuring plan
- Considering other options for the sustainability of regional news

#### PHASE TWO: OFCOM'S SECOND PUBLIC REVIEW SERVICE BROADCASTING REVIEW PHASE TWO: PREPARING FOR THE DIGITAL FUTURE

Phase Two of Ofcom's review is an **analysis of audiences' attitudes** to be willing to pay more for existing service broadcasting to ensure plural provision is maintained.

#### The Public Service Broadcasting

The existing model for commercial provision of public service content lacks the flexibility to adapt to audiences' evolving needs.

Ofcom asked stakeholders for views on these findings<sup>10</sup>;

- on four illustrative models (see page 6) for public service broadcasting delivery;
- alongside possible ways of funding those options; and
- Ofcom also asked what action stakeholders considered appropriate in the short term.

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<sup>10</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase 2: Preparing for the digital future*, [http://www.ofcom.org.uk/consult/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/psb2_phase2/psb2_phase2.pdf)

This Phase Two document addresses the many and varied responses Ofcom received, and elaborates on the choices lying ahead.

To investigate, **Ofcom reviewed new viewing data showing that competition in public service provision enhances rather than reduces impact**, opening up genres to audiences who tend not to watch similar content on the BBC. Ofcom also carried out further research which suggests that audiences would be willing to pay to ensure provision of public service content outside the BBC.

#### Commercial public service broadcasting

The **current level of provision will not be sustained by ITV1 and Channel 4** across a range of genres. The value of the ITV1 licences will fall below the cost of their current obligations before 2012, with the result that ITV plc may surrender those licences. By 2012, Ofcom estimate that **Channel 4 will need additional funding of approximately £60-100 million** to sustain investment in public service content.

#### The Market is unlikely to meet all needs

Multi-channel broadcasters provide very little original programming in the genres under most pressure on commercial public service channels, the genres include;

- Current affairs;
- Nations and regions programming;
- Challenging UK drama and UK scripted comedy; and
- UK drama and factual programming for children.

#### Existing institutions and competition for funding

Ofcom refers to the need for a more flexible model of intervention, they state;

*“The Model for provision of public service content beyond the BBC now faces its greatest challenge – how to harness the opportunities opened up by digital media while responding to growing pressures on funding, and reconciling the divergent needs of different audiences”<sup>11</sup>.*

Competition for funding which is used in other areas of public service could enable an enhanced contribution from a range of alternative organisations. It could keep providers accountable and ensure the main public service institutions do not become complacent.

In Phase One, **4 illustrative models** for the future were set out;

- Evolution Model
- BBC Only
- BBC/C4 plus limited competitive funding
- Broad competitive funding

The BBC-only model attracted very little support. No consensus was reached in relation to the three remaining models. Audiences and stakeholders valued the

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<sup>11</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase 2: Preparing for the digital future*, [http://www.ofcom.org.uk/consult/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/psb2_phase2/psb2_phase2.pdf)

flexibility of the competitive funding model, but expressed concern about possible bureaucracy.

### Three models for the post-swatchover world

Given that the current model will become unsustainable before 2012, Ofcom believe that there is a need for action with a clear direction, established by government, no later than 2010<sup>12</sup>.

#### An Evolution model

If audiences' needs change relatively little over the next few years, and the existing broadcasters remain best placed to meet those needs, an enhanced Evolution model has advantages.

In this model;

- The main commercial PSBs would retain obligations.
- ITV1 could become a network of nations-based licences, or a single UK licence, with obligations only for UK origination, UK and international news, and potentially news for the devolved nations and the English regions, for which replacement funding is likely to be required.
- Channel 4 would have an extended remit to innovate and provide distinctive public service content across platforms, with additional funding
- Five's role would focus on UK origination, in particular UK children's programming, and news
- there might be no need to retain a public teletext licence, nor a Channel 3 breakfast-time licence

#### A refined BBC/Channel 4 model

- Competition for new funding could be introduced for nations, regions and potentially local news.
- Channel 3 licensees would have no ongoing public service benefits or obligations, but could compete for funding to provide nations and regions news, alongside, others.
- Five would also lose public service status but could similarly bid.

#### A refined competitive funding model

If competition for funding is deemed to be the best way to ensure the accountable and efficient use of public resources, a competitive funding model offers advantages.

In this model;

- The BBC would remain as the cornerstone of provision, but additional funding would be opened up to a wider pool providers;
- Channel 4 could retain its PSB status along with its existing regulatory assets, but be required to bid for any additional funds alongside other providers; and
- Current Channel 3 licensees and Five could also bid for funding, alongside others, if they wished to continue to contribute.

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<sup>12</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase 2: Preparing for the digital future*, [http://www.ofcom.org.uk/consult/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/psb2_phase2/psb2_phase2.pdf)

Provision of news and information for the devolved nations

Because the costs of provision for some Channel 3 licensees will soon outweigh the benefits of PSB status, it is likely that replacement funding will be needed for nations and regions services, particularly news. The options as Ofcom see them are<sup>13</sup>:

- (1) do nothing, and allow provision to decline over time, against clear audience preferences;
- (2) provide new public funding for Channel 3 licensees in the nations and regions;
- (3) introduce competitive funding for services in the nations and regions to enable other providers to bid, potentially enabling the creation of cross-media services in Scotland, Wales and Northern Ireland; or
- (4) fund the creation of dedicated channels for the devolved nations, such as that proposed by the Scottish Broadcasting Commission

Replacement direct or indirect funding

Ofcom estimate that **public funding of between £330-420 million is likely to be required by 2012** in addition to core licence fee if audiences want to continue to enjoy the same mix of public and private content<sup>14</sup>.

The surplus in the current licence fee settlement that is ring-fenced to pay for costs of digital switchover, if retained, could be used for other purposes after 2012 without in any way curtailing the BBC's ability to deliver high quality public service content. This surplus is worth around £130 million per annum in the current settlement. Ofcom research indicates that using such a funding source after 2012 would be supported by audiences, and that understanding of what the licence fee currently funds is fairly limited<sup>15</sup>.

Ofcom state that any new model of funding should be transparent and proportionate, should not impact unduly on market provision and should be subject to independent scrutiny. Appropriate governance arrangements would be essential.

Channel 4's role and model by 2010

**Channel 4 is experiencing increasing financial pressure**; it has already cut its programme budget for 2008 and 2009 in order to break even. Its reserves could be used to sustain its public service investment to around 2010, but certainty about its long term role and funding is now a pressing priority.

Proposals for the commercial PSB's obligations from 2009

**Ofcom is required to decide what obligations the commercially funded public service broadcasters should have.** Their obligations must be sustainable and targeted at the areas most highly valued by audiences. In making these proposals,

<sup>13</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase 2: Preparing for the digital future*, [http://www.ofcom.org.uk/consult/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/psb2_phase2/psb2_phase2.pdf)

<sup>14</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase 2: Preparing for the digital future*, [http://www.ofcom.org.uk/consult/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/psb2_phase2/psb2_phase2.pdf)

<sup>15</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase 2: Preparing for the digital future*, [http://www.ofcom.org.uk/consult/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/psb2_phase2/psb2_phase2.pdf)

Ofcom state they are mindful of the need not to foreclose any long term options government and Parliament may wish to consider.

These proposals seek to ensure audiences' priorities of UK programmes, UK news and nations and regions news are served. To do that Ofcom are proposing to reduce the cost of obligations substantially in other areas, consistent with existing legislation.

Ofcom therefore seek views on the following proposals for ITV1<sup>16</sup>:

- (1) **Retained nations and regions news**, but a modest reduction in the minimum requirement for news timing, reflecting **removal of some daytime bulletins**;
- (2) Reduced minimum requirements for nations and regions non-news programming, to 15 minutes in England and from **3 to 1.5 hours in Wales, Scotland and Northern Ireland**;
- (3) Reduced quotas for out-of-London production to 35%, in the context of new commitments to such production from the BBC and Channel 4
- (4) **Reduced network current affairs minimum quota of 50 minutes per week**, with the reduction largely outside peak time

**ITV plc is also seeking to rationalise its regional news delivery in England and the Scottish Boarders** from 17 separate main programmes to 9. Ofcom propose to accept ITV plc proposals.

Ofcom propose to **raise Channel 4's out-of-London quota** from 30% to 35% from 2010, and to **introduce a new quota for Channel 4's productions from Scotland, Wales and Northern Ireland**, also from 2010. These would need to be aligned to new long term funding arrangements for Channel 4.

Ofcom also propose to make a small adjustment to Five's current quota for original productions from 53% to 50%, with a reduction from 42% to 40% in peak time, from 2009. Alongside this, Ofcom welcome Five's commitment to enhanced delivery of children's programmes going forward.

In the absence of a statutory basis to set quotas for children's programming, there is limited scope to enforce provision by other PSBs. Ofcom want to ensure that the BBC continues to play a leading role, including in safeguarding programming for older children and teenagers. Alongside Five's commitment, Ofcom propose to support Channel 4's aim to play a role in serving 10-16 years old.

### **NEWS IN THE DEVOLVED NATIONS**

The research carried out by Ofcom states that;

In **Wales** the key issue is sustaining democratic plurality, especially due to the absence of competition at **national press** level. **Scotland and Northern Ireland** have a **higher level of competition** in their respective national press. Thus, Ofcom state that the place of the Channel 4/ITV1 service in news and current affairs is crucial in providing an alternative for Wales.

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<sup>16</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase 2: Preparing for the digital future*, [http://www.ofcom.org.uk/consult/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/psb2_phase2/psb2_phase2.pdf)

**Northern Ireland:**

- (1) UTV appears **financially robust** through to the digital switchover
- (2) Evidence of **healthy press and radio sectors** and (uniquely in the UK)
- (3) There is **widespread availability of media from the Republic of Ireland**
- (4) **Secure and widespread distribution has to be obtained** in Northern Ireland for the **Irish service** TG4 and RTE
- (5) **Funding needs to be secured for indigenous language production**

The Ofcom report refers to possible approaches that could be taken to ensuring these goals are achieved<sup>17</sup>:

- A focus on out-of-England as well as out-of-London production for the BBC and Channel 4;
- Revised quotas for ITV1 production outside London;
- In both cases combined with positive efforts from the broadcasters, development agencies and local Screen Agencies to develop the national and local production sector.

**Provisional conclusions**

Based on the responses to Ofcom's previous consultation, and the research and analysis Ofcom conducted for this review, Ofcom's provisional conclusions are<sup>18</sup>:

- (1) The **BBC should remain the cornerstone of public service content**, and its core programme and service budget should be secure;
- (2) **Audiences should have a choice of providers** in most areas of public service content, which the market alone will not provide. To achieve this, replacement funding of between £145-235 million per annum may be necessary by 2012, in addition to the regulatory assets held by existing PSBs;
- (3) Public service remits should be delivered across platforms in future;
- (4) **The provision of content for the devolved nations – in particular dedicated news – remains as essential requirement for any future model**;
- (5) Institutional and competitive funding could both play important complementary roles in the future model for public service content;
- (6) **Channel 4 should have a significant public service role in the digital age**. An economic model and funding mechanism is needed to support this;
- (7) Between now and 2014, ITV1 and Five should retain important roles focused on UK origination and news, and (for ITV1) the nations and regions and (for Five) children's content. After 2014, the arguments for retaining their public service benefits and obligations are more evenly balanced;

**November 2008**

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<sup>17</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf)

<sup>18</sup> Ofcom: Office of Communications, *Ofcom's Second Public Service Broadcasting Review Phase 2: Preparing for the digital future*, [http://www.ofcom.org.uk/consult/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/psb2_phase2/psb2_phase2.pdf)