



Market Impact Assessment of the BBC/Gaelic Media Service Gaelic Digital Service

Statement

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Section 1

Executive Summary

- 1.1 The current BBC Royal Charter and Agreement, which came into effect on 1 January 2007, included the setting up of a Public Value Test (PVT) regime to assess whether the BBC's proposals to launch new services in future – or to amend existing services – would be in the wider public interest.
- 1.2 The decision as to whether to authorise the proposed services sits with the BBC Trust (the Trust). In reaching its conclusions, the Trust must take into account the findings of two separate reviews. The first – the Public Value Assessment (PVA) – is commissioned by the Trust directly and seeks to assess the broader public value of the proposed service to UK citizens and consumers. The second – conducted by Ofcom – is a Market Impact Assessment (MIA). The purpose of an Ofcom MIA is to assess the likely impact of the proposed services on products and services which are substitutes or complements to the proposed BBC service.
- 1.3 This document sets out the findings of Ofcom's third MIA to be carried out in the context of the new PVT regime. It considers the market impact of the BBC's proposed Gaelic Digital Service (GDS), based on a partnership with the Gaelic Media Service (GMS). Where we refer in this document to the BBC-proposed GDS this is in the full knowledge that the proposal is based on this partnership. The MIA has been conducted in accordance with the GDS MIA Terms of Reference, and with the MIA methodology agreed between Ofcom and the BBC Trust.

The proposed BBC service

- 1.4 In July 2007, the BBC Executive applied to the BBC Trust for permission to introduce a new GDS. This application built upon a co-funding agreement between the BBC Executive and GMS to provide the Gaelic Digital Service – drawing on content from the BBC and a variety of other providers.
- 1.5 The proposal is to launch a dedicated digital TV channel in Gaelic – on-air for up to seven hours per day (concentrated in, but not confined to, late afternoons and evenings). This would comprise 1.5 hours per day of originated programming (including existing output from the BBC), narrative repeats and archive content. The service would also draw on BBC Radio nan Gàidheal as a sustaining service when the TV channel is off-air. There would also be significantly enhanced Gaelic content for users of bbc.co.uk. The service would be mixed-genre – including the daily news and weather in Gaelic.
- 1.6 The stated intention is for at least half of the programme fund contributed by GMS to be spent in the independent sector. It is further intended that, in due course, up to 50 per cent of non-news and current affairs programmes on the TV channel would come from independent producers, subject to a sufficiently developed independent Gaelic production base. The content supply strategy would be formulated after further negotiation with key stakeholders.
- 1.7 It was expected that the service would launch before the end of March 2008. It would be available, in the first instance, on satellite and broadband and on digital cable later in 2008. Distribution on digital terrestrial television would be in Scotland only and would come with digital switchover.

- 1.8 Following completion of digital switchover, the existing regular Gaelic zones on BBC Two would be withdrawn. The BBC and GMS would continue to provide programming to the Gaelic digital channel TeleG for the duration of TeleG's licence unless a decision were to be taken by Government to vary the terms of that licence. The licence, as currently defined, expires in 2010.
- 1.9 The proposed Gaelic Digital Service would be licensed and regulated by the BBC Trust, and would be subject also to Ofcom regulation to the same extent as any other BBC service. The BBC proposes to manage the service jointly with GMS, although ultimate responsibility for editorial standards would rest with the Director-General of the BBC.

Our analytical approach

- 1.10 The MIA was carried out in accordance with the methodology agreed between the BBC Trust and Ofcom. In accordance with paragraphs 2.14-2.15 of that document ¹, Ofcom considered that a simplified approach was appropriate in this case since:
- the proposal seemed unlikely to have a significant market impact on other services; and
 - no market research was required as part of the MIA.
- 1.11 However we advised that if consultation responses or further Ofcom analysis highlighted significant issues or concerns, then Ofcom would consider whether the simplified approach was still appropriate or whether a full MIA was required with an extension to the timetable.
- 1.12 Although no stakeholder disagreed with the simplified MIA proposal (see Section 4) and there was strong support in principle for the GDS, some stakeholders raised issues. Some were outwith the remit of the MIA, but others required further analysis and clarification. This resulted in a three-week extension to the timetable for the MIA, to ensure that questions raised by stakeholders were given due consideration.
- 1.13 Our assessment of the likely market impact of this service has been based on:
- A stakeholder engagement programme – including written submissions, and a series of subsequent meetings with a number of stakeholders.
 - Ofcom's own analysis of issues it identified both from its knowledge of the Gaelic broadcasting sector and from input from stakeholders.
- 1.14 Our analysis has also drawn on the work of the BBC Executive. Throughout our analysis, we have maintained regular communication with the BBC Trust Unit, with the aim of ensuring that the PVA and the Ofcom MIA are based on a broadly consistent set of assumptions, and that the PVA and MIA both provide evidence on all relevant issues.
- 1.15 The aim of Ofcom's MIA is to identify any significant market impacts arising from the BBC proposal. We seek to identify ways in which other services are likely to be affected by the BBC proposal, both positively and negatively. An important aspect of this assessment is the impact on content producers for the proposed new service.

¹ Ofcom, *Methodology for Market Impact Assessments of BBC services*; published 22 May 2007.

Background

- 1.16 Gaelic TV programming is currently transmitted by BBC Scotland, stv and the TeleG service. GMS funds programmes for transmission by all three providers while the BBC and stv also fund their own Gaelic programming. GMS was established under the Communications Act 2003 to ensure that a wide and diverse range of high quality programmes in Gaelic is broadcast or otherwise transmitted so as to be available to people in Scotland. GMS's budget is set and administered by the Scottish Government. It has long been an ambition of GMS to have a dedicated Gaelic digital channel and considerable work has been undertaken in the past on the proposal.² A more detailed background to Gaelic broadcasting is described in Section 3.

Impact on affected products and services

- 1.17 Ofcom's Terms of Reference document noted that the following products and services could be affected by the launch of the BBC GDS:
- Independently Produced Gaelic TV Programmes
 - Other Gaelic Programming on Radio and Television
 - Gaelic Print and Online Material
 - Gaelic Education Services
 - TV Platform and Network Services

Recommendations and proposed modifications

- 1.18 Ofcom concludes that there are very significant positive market impacts arising from the proposal, most notably in the net increase in scale it will bring to the Gaelic media sector, which should involve an increase in market opportunities for a number of players, as well as wider benefits. However, Ofcom also notes the significant concerns of potential suppliers to the GDS about commissioning processes and protocols. We make a number of recommendations to the Trust to ensure that there is transparency in these processes and that the GDS is encouraged to play its part in further developing a diverse and creative production base for the Gaelic media sector.

² The Milne Report (2000) recommended a Gaelic television channel on digital television.

Section 2

Introduction

The role of the MIA in the PVT process

- 2.1 The current BBC Royal Charter and Agreement, which came into effect on 1 January 2007, provided for the establishment of a new Public Value Test (PVT) regime. The PVT must be applied before a decision can be taken to make any significant change to the BBC's UK public services, which can include the introduction of a new service or the discontinuation of an existing one.
- 2.2 Under the new regime, the decision on whether to authorise such a change will be made by the BBC Trust (the Trust), following the application of a PVT. In reaching a decision on a PVT, the Trust must take into account the findings of two separate reviews:
- A Public Value Assessment (PVA), carried out by the Trust Unit, which assesses the likely value of the service to licence fee payers, particularly in terms of its contribution to the BBC's public purposes.
 - A Market Impact Assessment (MIA), carried out by Ofcom, which assesses the effect of the proposed service on other services in the market. It considers both the direct impact on consumers and producers of other services, for example in terms of price and choice, and the likely impact on competition and market development, which will affect consumer and citizen interests in the longer term.
- 2.3 This report represents Ofcom's MIA of the BBC's proposed GDS. This section briefly summarises the approach we have taken to conducting this MIA. For more detail on the methodology adopted for Ofcom's MIAs, see the methodology document³ published in May 2007.

The proposed service

- 2.4 The BBC Executive is applying for permission to provide a GDS. The full service description was agreed by the BBC Trust and Ofcom at the outset of the PVT process. The service description is summarised in Section 1, and the full service description is reproduced at Annex 1 of this document.

Our approach to the MIA

- 2.5 This MIA has been carried out in accordance with the terms of reference published in August 2007, and which are reproduced at Annex 2 of this document. In those terms of reference, we noted that this MIA would consider the potential impact of the BBC's GDS proposition on the affected products and services, which we identified both in the Executive Summary and discuss in more detail in Section 4.
- 2.6 Our MIA seeks to identify ways in which the products and services might be affected by the BBC's proposals. Most particularly, it considers the extent to which the BBC's proposed GDS is likely to affect the independent production sector. It addresses issues related to GDS online content and the relationship between the GDS and the TeleG service.

³ Ofcom, *Methodology for Market Impact Assessments of BBC services*; published 22 May 2007.

- 2.7 At the same time, the BBC's proposals are likely to generate substantial benefits to consumers and citizens, particularly Gaelic speakers. Many of these will be captured in the PVA, but of relevance to the MIA, the proposals may increase and consolidate the resources available for Gaelic broadcasting into the one, integrated service resulting in an improved service for Gaelic viewers.
- 2.8 The MIA also proposes a number of modifications or conditions designed to limit some of the negative impacts which have been identified, while at the same time allowing the positive benefits of the proposals to be retained.

The sources of evidence for this MIA

- 2.9 This MIA has been informed by a stakeholder engagement programme and Ofcom's own analysis. In order to engage fully with stakeholders, we published a consultation document at the start of the MIA process in August 2007. We received 18 written responses to that document. Our review of these written responses was complemented by a series of meetings and discussions with interested stakeholders. Given the timescale, we were unable to meet all respondents but we engaged with most of the key stakeholders with a direct interest. We are grateful to all stakeholders who provided views and information to Ofcom – including the BBC Executive and GMS who responded to questions during the MIA process.

Section 3

Background and market developments

- 3.1 This section provides the background for Ofcom's analysis of the market impact of the launch of the GDS. This section explains:
- The context for the MIA in terms of the current provision of Gaelic programming. This was briefly referred to in the Executive Summary.
 - The counterfactual against which we assess the impact of the BBC's proposed service.

Current Provision of Gaelic Programming

- 3.2 The 1990 Broadcasting Act requires Channel 3 licensees in Scotland to broadcast Gaelic programmes from each of two sources – programmes funded by the GMS and also programmes funded by the licensees themselves. Currently stv North and stv Central are together required to broadcast one hour per week of licensee-funded Gaelic programmes and a further one hour per week of GMS-funded Gaelic programmes. The stv licences also contain the requirement to broadcast at least six hours of GMS-funded Gaelic programming in peak across the year. BBC Scotland currently provides 2 hours per week in peak for approximately 36 weeks of the year plus half-an-hour of pre-school children's programming Monday to Friday throughout the year. In 2006/7, the BBC invested £2.1m in 35 hours of originated Gaelic television programming, repeat TV transmissions and the Gaelic language website www.bbc.co.uk/alba. SDN provides 30-60 minutes per day of previously broadcast programmes on the digital terrestrial Multiplex A, branded as TeleG.
- 3.3 In the PSB Review Statement on programming for the Nations and Regions, Ofcom said that a dedicated digital service was the priority for the Gaelic audience and for the future of Gaelic broadcasting, and that the efforts of Ofcom and others should primarily be focussed on delivering this.
- 3.4 The majority of respondents to Ofcom's last PSB Review proposals for Gaelic broadcasting agreed that a digital channel was the most appropriate solution to the needs of the Gaelic-speaking audience.
- 3.5 Looking forward, Ofcom said that the purpose of stv's contribution to Gaelic should start to change from being one of the major broadcasters of Gaelic to:
- providing support for the creation of the new channel;
 - creating an analogue 'shop window' for the new digital channel, and
 - ensuring that analogue terrestrial viewers continue to have access to Gaelic, provided by more than one broadcaster, while the new digital channel becomes established.
- 3.6 Ofcom also suggested that once a Gaelic channel had been in existence for a year (thus giving viewers a reasonable period to gain access to the digital channel) stv should lose its requirement to broadcast licensee-funded Gaelic and its requirement to broadcast GMS-funded Gaelic in peak, subject to the necessary changes in legislation.

- 3.7 If for any reason a Gaelic channel was not created, Ofcom suggested that these changes should be introduced in any case when the first UK region achieved digital switchover in order to help maintain sustainability of stv's broader PSB requirements.
- 3.8 Looking further ahead, Ofcom suggested that stv should retain a requirement to show up to an hour per week of GMS-funded material, and to promote the Gaelic channel, until digital switchover in the stv North and stv Central regions (2010 – 11). At this point it would lose these last remaining requirements, again subject to the necessary legislative change.

The Counterfactual

- 3.9 The purpose of Ofcom's MIA is to set out the impact of the BBC's proposed new service against a counterfactual world in which the BBC does not launch that service. There has recently been considerable debate about the way forward for Gaelic broadcasting. For example, we refer above to the possible future of Gaelic programming on stv being dependent upon legislative requirements. In this context of some uncertainty we are conscious that any definitions of the counterfactual could appear to be simplistic. However in our view there are three possible scenarios:
- i) If the GDS does not go ahead and there are no other changes then the Gaelic service remains as described above *ie* programmes are commissioned for transmission on BBC Scotland and stv; and programmes are supplied for repeat transmission on TeleG. Stv's Gaelic requirements would be unchanged so it would continue to fund its own Gaelic output in addition to transmitting GMS-funded programming. GMS would continue to fund programmes with a minimum of 50% of its development and content budget allocated to independents, as has been the case since 2004/5.
 - ii) Under the second scenario, stv's Gaelic obligations could be lifted subject to legislative change. If this happened they would no longer have to be a commissioner of Gaelic programming and would not ultimately be required to show any Gaelic programmes. This would mean two channels transmitting Gaelic – BBC2 Scotland and TeleG – and two commissioners – BBC Scotland and GMS.
 - iii) The third scenario could involve the GMS setting up its own cable and satellite service called "Sia" using its Television Licensable Content Service licence granted by Ofcom in July 2007. Without any legislative change, this would mean there would be four channels transmitting Gaelic – BBC2 Scotland, stv, TeleG and "Sia" – and three commissioners of Gaelic programmes – BBC Scotland, stv and GMS.
- 3.10 The impact needs to be assessed versus the counterfactual, and this could vary according to a number of decisions taken by various bodies. Although the precise impact of the GDS might vary according to the exact nature of the counterfactual considered, it is not a worthwhile exercise to consider the detailed impact in every possible scenario and against each possible counterfactual. The broad impact can be assessed against scenario (i) and that is what we have done.
- 3.11 One respondent to the consultation questioned the potential impact of the "Sia" service which, it felt, could further segment the Gaelic service provision. Ofcom understands, however, that the "Sia" licence would only be used if the GDS is not approved and the GMS wishes to proceed with an alternative service.

Section 4

Impact on relevant products and services

Contents of this section

- 4.1 This section reports the main analysis and findings of this MIA. We start by providing an overview of stakeholder views on the possible market impacts of the proposed BBC GDS. We then move on to our consideration of the market impacts in the areas previously identified:

Overview of stakeholder views

- 4.2 We have placed significant weight on the views expressed by stakeholders – as the stakeholders who responded to Ofcom are those most likely to be affected by the BBC's proposals. We consider stakeholder views in more detail within each sub-section of this document, and provide an overview of stakeholder feedback here.
- 4.3 We received 18 responses to our consultation document, of which 17 were strongly supportive of the principle of a GDS⁴. These responses included those from Gaelic language organisations, the independent sector and broadcasters. Some key respondents from the public sector were strongly supportive of the GDS, envisaging benefits for the language, broadcasting production, economic development and training.

Simplified MIA

Stakeholder views

- 4.4 There was agreement from those who commented on the proposition that Ofcom should carry out a simplified version of an MIA. The six respondents who directly answered this question supported a simplified version. While not addressing the question specifically, other respondents commented that they did not wish to see any further delay to the revised launch date in 2008. One stakeholder expressed the view that there were no competition issues associated with the GDS and felt that it would greatly enhance and complement existing services in Gaelic education, publishing, the arts and culture.

Assessment of support for GDS and simplified MIA

- 4.5 Ofcom noted the reasonable level of support for conducting a simplified MIA. Considered alongside the strong support in principle for the GDS, Ofcom concluded that a full MIA was not required. However as referred to below and in the executive summary, issues were raised that required further investigation after the consultation period ended.

⁴ One individual viewer did not support it.

Independently Produced Gaelic TV Programmes

Stakeholder views

- 4.6 Despite the strong support for the notion of a GDS, there were significant concerns about the model being proposed by the BBC. These came mostly from the independent sector which, despite noting potential positive impacts, also believed that the BBC would stand to benefit most from the GDS with limited increase in commissions likely for independents. There were concerns that the BBC would have significant control over the way the service would be run and in particular how programmes would be commissioned. One independent company predicted that the GDS proposal could have a major impact on long-standing suppliers of Gaelic television programming and that all its services could potentially be affected.
- 4.7 The independent sector was concerned at the prospect of the BBC benefiting disproportionately and the GDS potentially stunting its growth. One respondent calculated that independents could expect only a modest increase in commissions compared to what they currently secured from the GMS. It claimed that by comparison the BBC in-house would benefit to a much greater extent, especially with all news being produced in house within the BBC. Another respondent called for the establishment of the “sufficiently developed Gaelic production base” in the service description to be set as a priority. Respondents from the Gaelic independent sector considered that they were well placed to take on any extra commissioning.
- 4.8 A respondent cited the potential for a near monopoly situation with fewer commissioning bodies for Gaelic programming which could lead to inefficient production practices and limit the range of programmes on offer to audiences.
- 4.9 The independent sector also criticised the lack of detail in how commissioning and in-house production would be separated. It was felt that it was necessary to ensure that there was clear separation between BBC employees involved with commissioning in the GDS and the BBC in-house production unit. One independent company feared that the BBC would favour long-standing suppliers to the detriment of those with whom it had not had dealings while another claimed that the BBC tended not to commission independents for producing its own Gaelic programming.
- 4.10 Respondents suggested different levels of funding allocation to the independent sector. One suggested that in line with current obligations on PSB channels, 25% of the programmes commissioned should be reserved for the independent sector. Another proposed an increase in the share of GMS funds going to the independent sector to 90%.
- 4.11 Several independents argued that they should not be barred from competing for news and current affairs commissions. Others sought reassurance that genres for which they supplied programming would continue under the GDS.

Assessment of impact on independently produced Gaelic TV programmes

- 4.12 The concern about increased BBC control over the Gaelic broadcast sector is clearly strongly felt. In assessing market impact, however, Ofcom notes that as a result of the new Gaelic Digital Channel, overall funding available for independents stands to increase. Thus, the Gaelic broadcasting sector as a whole is unlikely to suffer a negative impact.

- 4.13 However, the level and nature of the BBC's influence on Gaelic services generally following the planned launch of the new digital channel is clearly a concern to some independent producers. In its work on public service broadcasting generally, Ofcom has recognised the importance in terms of creative strength and plurality of a diverse production base.
- 4.14 The appropriate way of evaluating whether the BBC benefits more than the independent sector is to compare the situation with the GDS with the relevant counterfactual which is that it does not exist. The incremental change between the counterfactual and the proposal is positive for the independent sector and that is sufficient for the purposes of the MIA to conclude that there is no overall adverse effect. However Ofcom believes that it would be healthy for the BBC to recognise the concerns expressed by the independent sector in the area of commissioning. In section 5 of this document, we make a number of recommendations designed to address these points. In particular, we make recommendations about transparency in commissioning. We also welcome the commitment given by BBC management that SMG, as a non-qualifying production company, will remain a potential supplier to the GDS.
- 4.15 Ofcom has not sought in this MIA to recommend precise levels or targets for commissioning of independents by the GDS – any such levels or targets would ultimately be a question for the Trust. However, it should be noted that Ofcom has already approved the GMS Operational Plan for 2007/8 which commits to allocate not less than 50% of its development and content budget to the independent sector for the financial year 2007/8, as referred to in 3.9(i) above. We are also mindful that the projected percentage of independent spend on the channel will be higher than that on other PSB channels in the UK.
- 4.16 The editorial policy of the GDS is also outwith the scope of the MIA. However we can clarify from discussions with GMS and BBC that there is no intention to reserve the current affairs genre for in-house BBC production. We also recommend in section 5 that independents should be able to make a contribution to all genres of GDS programming.
- 4.17 SMG's position is unique in that the move to the new GDS could involve it being released from most of its own Gaelic broadcasting commitments. At the same time, however, SMG as a supplier of Gaelic content could be adversely affected by its non-qualifying status as an independent producer.

Other Gaelic Programmes on TV and Radio

Stakeholder views

- 4.18 There were no significant views expressed in this area that were within the scope of the MIA.

Assessment of impact on other Gaelic programmes on TV and radio

- 4.19 There were some stakeholder proposals about Gaelic programming on other TV services however these were largely legislative or licensing matters which cannot be addressed by the MIA. As referred to in Section 3, Ofcom's last PSB Review contained proposals that would reduce stv's Gaelic obligations based on the assumption that a Gaelic digital channel would be launched. If the GDS is approved, these obligations would need to be addressed. However they are dependent on legislative change and are not within the scope of the MIA.

Gaelic Print and Online Material

Stakeholder views

- 4.20 The independent sector believed greater clarity was needed on the role of independents in online platforms. It was felt there was a lack of detail on commercial on-line opportunities for GDS content. One independent pointed out that all references in the consultation documents to online appeared to suggest development of the BBC Alba website and that there appeared to be no scope for the independent sector in this area. Another company hoped the GMS would still be able to fund independent websites operating outside the BBC. Another was looking for assurances that material funded by the GMS would, with GMS approval, be made additionally available to as many outlets as possible on commercial websites willing to carry the material. Another respondent described the BBC's online resource of being of a high quality in terms of providing educational resources and suggested there could be a condition placed to provide links to other non-BBC sites.
- 4.21 We received no stakeholder comments expressing concerns about the potential impact on Gaelic print material.

Gaelic online material: current position

- 4.22 It is difficult to make an accurate assessment in this area since discussions are still in progress. Ofcom would expect that clarity will be achieved once negotiations between the parties on terms of trade are complete. We understand Pact expects to negotiate terms of trade for the new channel with the BBC in respect of BBC funded content and is in fact currently negotiating terms of trade with GMS in respect of GMS funded content for the GDS. We expect that GMS's terms will be largely similar to the UK network BBC terms of trade, including agreements for online services, but would reflect the particular nature of the GDS.
- 4.23 The GMS intends to develop its own web presence to facilitate access to Gaelic media content and that would complement the BBC's website. GMS would not object to the provision of online Gaelic content by independent producers where the rights in the content lie with them.
- 4.24 We have also taken into account the assessment by BBC management that the GDS will lead only to a minimal increment to the BBC's online offering. There are currently several Gaelic language websites that cover similar issues to the BBC's online Gaelic language activities. Many are offered on a non-commercial basis; a few are funded through subscriptions or advertising. However as one respondent pointed out, this situation could well change over the next few years given how quickly the on-line market is developing.

Gaelic Education Services

Stakeholder views

- 4.25 The consultation did not provide evidence that those providing services and products supporting Gaelic education would suffer any negative effects. The GDS was broadly welcomed in terms of assisting Gaelic medium education, especially if programmes were of high quality.

Assessment of impact on Gaelic education services

4.26 We do not envisage a negative impact based on responses to the consultation.

TV Platform and Network Services

Stakeholder views

4.27 Through its subsidiary SDN, ITV has Gaelic obligations on Multiplex A which are met via the channel TeleG, which broadcasts for at least 30 minutes a day. TeleG argued that its experience and expertise should be built upon and developed in conjunction with the GDS. It suggested that a reasonable assumption would be that a large number of viewers would migrate from TeleG to watch a better resourced GDS, and that transmitting two Gaelic services in direct competition would not represent good public value. TeleG proposed that the new service could be simulcast on both satellite and the TeleG spectrum but with a modified schedule to accommodate the practical restrictions present in Multiplex A.

Assessment of impact on TV platform and network services

4.28 We have no evidence of significant issues of competition between TV platforms being raised by the GDS, but would not expect it to do so based on the estimates of total weekly reach provided in the BBC Management's Preliminary MIA⁵. TeleG is not funded by advertising, and is thus not likely to suffer a negative market impact from the proposed GDS. Indeed, TeleG's service could be regarded as more of a regulatory obligation than a commercial service and the nature and net cost of the obligation is not likely to be affected by the GDS. The TeleG service will continue as long as its legislative and licence requirements remain in place.

⁵ BBC Management's preliminary market impact assessment for the Gaelic Digital Service, July 2007; pgs 12-16

Section 5

Recommendations and proposed modifications

5.1 This final section briefly summarises the main recommendations and modifications arising from our work. We have recommendations in the following three areas:

Independently Produced Gaelic TV Programmes

5.2 Given concern from the independent sector about the commissioning process and the need for transparency, we recommend the following:

- i) Steps should be considered to ensure transparency of governance for the GDS's commissioning practices.
- ii) More clarity is required on how the GDS will ensure the complete independence of commissioning from in-house production. It may be necessary to have physical separation between commissioner and in-house production.
- iii) There should be a clear and transparent audit trail in the commissioning process and the GDS should make every effort to ensure that all potential producers of programming have access to information on how funds will be applied, who makes the funding decisions and the nature of the editorial strategy.
- iv) In principle, the independent sector should have the opportunity to bid for all genres of GDS programming and there should be no ring fencing. In respect of news we recognise the value to viewers of the GDS being able to draw upon the BBC's resources, editorial reputation and its newsgathering facilities. However given the prominence of news in the schedule, we recommend that the GDS actively considers the use of personnel and facilities from the independent and freelance sector to contribute to its newsgathering operation for the channel.
- v) We recommend that the GDS clarify as a matter of priority the following reference in the service description: "in due course up to 50% of non-news and current affairs programmes on the TV channel would come from independent producers." A number of respondents queried the vagueness of this commitment and as part of GDS's further discussions on the content supply strategy, we recommend that a more precise target or "floor" for independent production be set. In our view, this is consistent with the ambition of the GDS to stimulate creativity by investing in the independent sector.

Gaelic Print and Online Material

5.3 We recommend that clarity is provided as soon as possible in the area of online rights and the production of any content specifically for online outlets. We expect this clarity to be achieved once terms of trade applied to both BBC and GMS funded output are agreed. We would expect agreements to be flexible enough to adapt to any changes in the commercial online market. We would also expect independent producers to be able to compete for commissions for any online-specific content.

5.4 We support the BBC management's observation that there could be scope for the online element of the GDS to develop the market by providing links and signposts to

other Gaelic sites. We encourage the Trust to ensure that this happens in a fair and non-discriminatory fashion.

TV Platform and Network Services

- 5.5 We recommend that as a priority the GDS should open up a dialogue with TeleG to ensure that there is a co-ordinated approach towards the scheduling of Gaelic programmes for the duration of the TeleG licence.
- 5.6 TeleG remains under statutory and licence requirements until 2010. If the GDS is approved and becomes established as a service, it would be up to Government to consider whether it wishes to continue to require the owner of TeleG to provide a service on the digital terrestrial platform. However this is not a matter that can be considered under the MIA.

Annex 1

Joint BBC Trust/Ofcom description of service

Purpose of this document

- A1.1 This document has been drafted by the BBC Trust and Ofcom. It outlines our joint understanding of the proposal from the BBC Executive to launch a digital service for in Gaelic in Scotland, funded by both the licence fee and money from Gaelic Media Service (GMS).
- A1.2 The document is intended to give clarity on the terms and scope of the proposal that will be assessed by the Trust during the Public Value Test (PVT). The PVT comprises two elements – a Public Value Assessment (PVA), carried out by the BBC Trust, and a Market Impact Assessment (MIA), carried out by Ofcom.
- A1.3 We have clarified certain details contained in the BBC Executive's PVT application. For the avoidance of doubt, we have agreed with the Executive that the description contained here supersedes the description of the proposed Gaelic digital service provided in section 2 of the Executive's application. The BBC Executive's application and supporting evidence are published on the BBC Trust's website, subject to certain redactions for reasons of commercial sensitivity. The Trust is committed to making the PVT process as open and transparent as possible and has tried accordingly to keep these redactions to a minimum.
- A1.4 The details provided here are intended as a guide to the nature of the proposed service for the purposes of the PVT. These should not prejudice any eventual Service Licence.

Summary of the proposition

- A1.5 The BBC Executive and Gaelic Media Service have concluded a co-funding agreement to provide the Gaelic digital service – drawing on content from the BBC and a variety of other providers.
- A1.6 The BBC Executive is proposing to launch a dedicated digital TV channel in Gaelic – on-air for up to seven hours per day (concentrated in, but not confined to, late afternoons and evenings). This would comprise 1.5 hours per day of originated programming (including existing output from the BBC), narrative repeats and archive content. The service may also draw on BBC Radio nan Gàidheal as a sustaining service when the TV channel is off-air. There would also be significantly enhanced Gaelic content for users of bbc.co.uk.
- A1.7 The service would be mixed-genre – including the daily news and weather in Gaelic.
- A1.8 At least half of the programme fund contributed by GMS will be spent in the independent sector. It is further intended that, in due course, up to 50 per cent of non-news and current affairs programmes on the TV channel would come from independent producers, subject to a sufficiently developed independent Gaelic production base. The content supply strategy will be formulated after further negotiation with key stakeholders.

- A1.9 Subject to the completion of this PVT by Christmas and consequent BBC Trust approval, it is expected that the service would launch before the end of March 2008.
- A1.10 It would be available, in the first instance, on satellite and broadband and on digital cable later in 2008. Distribution on digital terrestrial television would be in Scotland only and would come with digital switchover.
- A1.11 Following completion of digital switchover, the existing regular Gaelic zones on BBC Two would be withdrawn.
- A1.12 The BBC and GMS would continue to provide programming to the Gaelic digital channel Tele-G for the duration of Tele-G's licence.
- A1.13 The service would be licensed and regulated by the BBC Trust, and would be subject also to Ofcom regulation to the same extent as any other BBC service.
- A1.14 The BBC proposes to manage the service jointly with GMS, although ultimate responsibility for editorial standards would rest with the Director-General of the BBC.

Platforms

- A1.15 The Gaelic digital service would be a multi-media service comprising television, radio and internet content.
- A1.16 It would be available free at the point of use, and without advertising, on all relevant digital platforms on completion of digital switchover.
- A1.17 Although the purpose of the service would be to meet the needs of Gaelic speakers in Scotland, it would be available on some platforms beyond Scotland.
- A1.18 The channel would be provided from launch on satellite throughout the UK, the Isle of Man, Guernsey and Jersey. The channel would be transmitted unencrypted on satellite, so it would be available free and without subscription through Freesat from Sky as well as through PSB Freesat.
- A1.19 At launch, the TV service would also be offered throughout the same territories on broadband, where available.
- A1.20 In addition, TV and radio programmes will be offered for catch-up viewing on-demand after broadcast via BBC iPlayer on bbc.co.uk.
- A1.21 Distribution throughout the UK, the Isle of Man, Guernsey and Jersey on digital cable, where available, would follow later in 2008.
- A1.22 On digital terrestrial television, the service would be provided only in Scotland. It would be available as digital switchover progresses region-by-region – beginning in 2008 and scheduled for completion in 2012.
- A1.23 In principle, the BBC Executive is prepared to make the service available to other providers, subject to syndication agreements, which could potentially include a catch-up service via cable.

Content

- A1.24 The proposal aims to make available a wide range of content relevant to today's audience. A broader range of genres would be available than has been the case to date for television programming in Gaelic. This includes:
- Daily news and weather on weekdays;
 - Sports programming;
 - Live events;
 - Daily programmes for children;
 - Content for teenage and young adult audiences;
 - Music and entertainment;
 - Factual programming;
 - Content to support people learning Gaelic;
 - An aspiration to provide some comedy and drama.
- A1.25 On average, 1.5 hours per day would be originated content. This would include the content produced for the weekly Gaelic zones on BBC Two as well as incremental new content. New content is defined as originated productions, news, and re-versioned content, such as animations, originally produced in another language.
- A1.26 The BBC and Gaelic Media Service share the ambition to increase the amount of originated content to an average of three hours per day over time, subject to additional funding being sourced.
- A1.27 News content would be provided only by the BBC. The agenda would include original stories intended to address issues of specific interest to Gaelic speakers as well as re-versioned material from BBC Newsgathering addressing a Scotland-wide, UK or international mainstream news agenda, as editorially appropriate on the day. On occasion, news material originated for the Gaelic service may be included in bulletins on the BBC's English language services.
- A1.28 When the television service was not on-air, BBC Radio nan Gàidheal – augmented with text content - may be drawn on as a sustaining service.
- A1.29 Learning resources would be provided both in programming content and in support and access services (such as opt-in subtitles in English and Gaelic) and, as at present, content online to support Gaelic learning.
- A1.30 The internet part of the service would aim to build on the existing bbc.co.uk/scotland/alba site. It would include on-demand access to the programmes broadcast on the television and radio channels as well as new opportunities for audience participation.

Schedule

- A1.31 The television element of the service would be on-air for up to seven hours per day, 7 days a week, concentrated in, but not confined to, late afternoons and evenings during the week, with weekend scheduling depending on the nature of the content and the target audience.
- A1.32 The TV schedule would include narrative repeats and material drawn from the archive. Narrative repeats are programmes that would be shown several times for catch-up viewing in the period immediately after initial transmission. Archive programmes are those drawn from the store of Gaelic programmes already transmitted by the BBC or other broadcasters, or held by other libraries and archive holders.
- A1.33 The whole schedule would be built of repeatable blocks – i.e. a sequence of programmes lasting up to two hours may be re-transmitted later in the same evening, week or month to increase opportunities to view.
- A1.34 BBC Scotland's existing schedule of Gaelic programmes on BBC Two would continue to be available through the period of digital switchover and would be simulcast on the Gaelic digital service. These programmes include a daily 30-minute offering of pre-school age programmes and a weekly two-hour Gaelic zone on Thursdays between 6pm and 8pm. These programmes would be offered as narrative repeats on the Gaelic digital service after the initial terrestrial transmission and simulcast, and would be made available on-demand via BBC iPlayer in line with other service content. On completion of digital switchover, the regular scheduled Gaelic zones on BBC Two terrestrial would cease, though landmark programmes may be offered to other BBC networks.
- A1.35 An illustrative schedule for the television channel is provided below.

**BBC/GMS Gaelic digital service
Illustrative schedule**

	Mon	Tues	Wed	Thu	Fri	Sat	Sun
4pm	Children's					Young Zone	Religion
5pm	Lifestyle					RnG	RnG
	News						
6pm	Sport / Factual	Learning / Music / Comedy	Music / Factual	Simulcast	Arts / Archive	Sport	Religion
7pm	Lifestyle				Lifestyle		
	News					Ents / Sport	Ents / Sport
8pm	Sport / Factual	Learning / Music / Comedy	Music / Factual	Lifestyle			
9pm				Simulcast repeat	Ents / Sport	News Review	Music / Factual
	News				News		
10pm	Lifestyle				Lifestyle		

Funding and management

- A1.36 The Gaelic digital service would be the BBC's first UK public service to be funded substantially by a party external to the BBC.
- A1.37 It would cost £17.9m per annum – of which £10.1m would be contributed by Gaelic Media Service and £7.8m would be contributed by the BBC. Of the BBC's contribution, £2.5m would be new incremental expenditure in addition to existing spend on Gaelic content across television, radio and online. Radio nan Gàidheal content will be made available for scheduling on the digital service.
- A1.38 In addition, the BBC would fund the distribution costs of the service. These are estimated at several million pounds, and would make the BBC's total contribution to the service at least equal in value to that of GMS.
- A1.39 The service will benefit from a contribution of programming and promotions from Scottish Media Group (SMG) – to the value of £1.2m over the three years from 2006. This is in return for a reduction in the amount of Gaelic programmes that SMG is required to broadcast in peak-time by virtue of its Ofcom licence. GMS has also purchased SMG's archive of Gaelic programmes, which will be available to the new channel.
- A1.40 The service would operate under a licence issued by the BBC Trust and would be expected to comply with all relevant requirements of the BBC Charter and Agreement. The BBC would be ultimately responsible and accountable for editorial control.
- A1.41 The service would operate under a legal agreement between the BBC and GMS and would be managed jointly by both parties. A joint board, while exercising no executive duties, would appoint the head of the service and would oversee matters such as the commissioning strategy and a rolling two-year service plan. The day-to-day management of the service would be undertaken by a management team comprising staff nominated by both the BBC and GMS.
- A1.42 The service would be subject to regulation by Ofcom to the same extent as any other BBC service.

Reach

- A1.43 The BBC Executive has not submitted a detailed forecast for the reach of the service.
- A1.44 The service can be expected to appeal mainly to Gaelic speakers and people who understand Gaelic – who, on 2001 census data, number approximately 86,000 or circa two per cent of the Scottish population.
- A1.45 The BBC Executive provides research⁶ that suggests the service will achieve an increase in weekly reach among the target audience. Currently, Radio nan Gàidheal has 67 per cent reach, and Gaelic programmes on BBC television have a combined 60 per cent reach, giving a combined all BBC Gaelic TV and Radio nan Gàidheal reach figure of 82 per cent.

⁶ Research by Lèirsinn with a panel of Gaelic speakers.

- A1.46 The BBC Executive further predicts that the service might reach nearly 10 per cent of the Scottish population. This is based on recent research findings⁷ that the service might be accessed by the three per cent of Scots who learn Gaelic, the 19 per cent who claim they might find some personal value in the service, and the 10 per cent who say they might watch it even though they expect it to provide no personal value to them. This document⁸ has been drafted by the BBC Trust and Ofcom. It is intended to outline our joint understanding of the BBC's proposals for a high definition television channel and to give clarity on the terms and scope of the proposal that will be assessed by the Trust during the Public Value Test (PVT). The PVT comprises two elements – a Public Value Assessment (PVA), carried out by the BBC Trust, and a Market Impact Assessment (MIA), carried out by Ofcom.
- A1.47 We have clarified certain details contained in the BBC Executive's PVT application. For the avoidance of doubt, we have agreed with the Executive that the description contained here supersedes the description of the proposed HD channel provided in section 3 of the Executive's application.
- A1.48 The details provided here are intended as a guide to the nature of the proposed service for the purposes of the PVT. These should not prejudge any eventual Service Licence.

⁷ TNS System Three survey for the BBC Executive.

⁸ This document was agreed by the BBC Trust and Ofcom, and published by the BBC Trust in May 2007. It is reproduced here for ease of reference. The paragraph numbers in this Annex differ from those in the document originally published by the Trust.

Annex 2

Terms of Reference

- A2.1 This document provides the terms of reference for Ofcom's market impact assessment of the BBC's proposal for a new Gaelic Digital Service ('GDS').

Introduction

- A2.2 The BBC's new Royal Charter and Agreement, which became legally effective on 1 January 2007, requires the BBC Trust to undertake a Public Value Test ('PVT') before a decision is taken to make any significant change to the UK Public Services. The PVT comprises two elements – a Public Value Assessment ('PVA') and a Market Impact Assessment ('MIA').
- A2.3 For the purposes of conducting MIAs, Ofcom and the BBC Trust have established a Joint Steering Group ('JSG'). The JSG has set these terms of reference for the GDS MIA. The substantive findings of the MIA will, however, remain a matter for the judgement of Ofcom.
- A2.4 Ofcom's initial consideration of the GDS proposal suggests that it is unlikely to raise significant issues. Hence Ofcom is consulting on a simplified approach which is reflected in these terms of reference. This means the MIA will be completed in less than the standard three months for the process.

Summary of the Proposition

- A2.5 The BBC Executive and Gaelic Media Service have concluded a co-funding agreement to provide the Gaelic digital service – drawing on content from the BBC and a variety of other providers.
- A2.6 The BBC Executive is proposing to launch a dedicated digital TV channel in Gaelic – on-air for up to seven hours per day (concentrated in, but not confined to, late afternoons and evenings). This would comprise 1.5 hours per day of originated programming (including existing output from the BBC), narrative repeats and archive content. The service may also draw on BBC Radio nan Gàidheal as a sustaining service when the TV channel is off-air. There would also be significantly enhanced Gaelic content for users of bbc.co.uk.
- A2.7 The service would be mixed-genre – including the daily news and weather in Gaelic.
- A2.8 At least half of the programme fund contributed by GMS will be spent in the independent sector. It is further intended that, in due course, up to 50 per cent of non-news and current affairs programmes on the TV channel would come from independent producers, subject to a sufficiently developed independent Gaelic production base. The content supply strategy will be formulated after further negotiation with key stakeholders.
- A2.9 Subject to the completion of the PVT by Christmas and consequent BBC Trust approval, it is expected that the service would launch before the end of March 2008.

- A2.10 It would be available, in the first instance, on satellite and broadband and on digital cable later in 2008. Distribution on digital terrestrial television would be in Scotland only and would come with digital switchover.
- A2.11 Following completion of digital switchover, the existing regular Gaelic zones on BBC Two would be withdrawn.
- A2.12 The BBC and GMS would continue to provide programming to the Gaelic digital channel Tele-G for the duration of Tele-G's licence.
- A2.13 The service would be licensed and regulated by the BBC Trust, and would be subject also to Ofcom regulation to the same extent as any other BBC service.
- A2.14 The BBC proposes to manage the service jointly with GMS, although ultimate responsibility for editorial standards would rest with the Director-General of the BBC.

Objective

- A2.15 The purpose of the MIA is to assess the impact which the introduction of the proposed service would have on products and services for which the proposed GDS service is likely to be a direct substitute or complement, and on other related products and services. The impact of the proposed service may be either positive (in the case of the impact on a complementary product or service) or negative (in the case of a substitute product or service).

Approach

- A2.16 The MIA will be carried out in accordance with the methodology which has been agreed between the BBC Trust and Ofcom. In accordance with paragraphs 2.14-2.15 of that document, a simplified approach may be appropriate in this case since Ofcom considers that:
- The proposal seems unlikely to have a significant market impact on other services; and
 - No market research is required as part of the MIA.
- A2.17 However if consultation responses or further Ofcom analysis highlights significant issues or concerns regarding the launch of the proposed service, then Ofcom will need to consider whether the simplified approach is still appropriate or whether a full MIA is required which would require an extension to the timetable.

Output

- A2.18 The MIA will provide an assessment and, where possible and relevant, a quantifiable evaluation of the impact on the relevant primary and other services identified. This may include an assessment of the impact on producers and other participants and ultimately consumers.
- A2.19 The assessment of some effects is likely to remain purely qualitative, for example those related to investment incentives. Ofcom should, however, seek to obtain some information as to the likely impact on existing (and perhaps future) producers' plans.

A2.20 The MIA analysis may also include some sensitivity analysis to:

- Identify which aspects of the service may have a particularly strong impact on the overall assessment; and
- As appropriate help identify possible modifications to the service to remove/mitigate some of these effects.

Coordination between the MIA and the PVA

A2.21 Ofcom and the BBC Trust will seek to coordinate the conduct of the PVA and the MIA by:

- Sharing data and collaborating on the construction of market models where appropriate;
- Attempting to minimise the risks that the PVA and the MIA are built on assumptions and inputs that are not easily reconcilable at a later stage; and
- Working to ensure that the PVA and the MIA cover all relevant issues.

Identification of affected products and services

A2.22 Ofcom should consider the potential impact of the GDS proposition on the following products and services:

- independently produced Gaelic TV programmes
- other Gaelic programming on radio and television
- Gaelic print and on-line material
- Gaelic education services
- TV platform and network services

A2.23 This list is not necessarily exhaustive. Ofcom has discretion to examine the impact on other products and services that it considers relevant in the course of conducting the MIA, subject to agreement by the JSG.

A2.24 The MIA will identify the services for which the proposed GDS service is likely to be a direct substitute or complement (the “primary” services), as well as other related services upon which the proposed GDS service is likely to have a significant indirect impact (the “secondary” services).

Timetable for completion

A2.25 Ofcom is required to deliver the MIA to the BBC Trust by 26 September 2007⁹. It is anticipated that the results of the MIA will be published alongside the BBC Trust’s Public Value Assessment in Autumn 2007. However as stated above, if consultation responses or further Ofcom analysis highlights significant issues or concerns regarding the launch of the proposed service, then Ofcom will need to consider

⁹ As referred to in 1.12 a three week extension to the MIA was agreed which put back this date to 31 October 2007.

whether the simplified approach is still appropriate or whether a full MIA is required which would require an extension to the timetable.

A2.26 In the event of unforeseen circumstances, or delays caused by the unavailability of data, Ofcom may ask the JSG to approve amendments to the MIA timetable. In such cases, the JSG would make clear its reasoning and revised timetable for production of the MIA report¹⁰.

A2.27 Agreed by the Joint Steering Group on Tuesday 14 August, 2007.

¹⁰ As referred to in 1.12, a three week extension to the simplified MIA was agreed with the final date for the Trust decision now scheduled for January 2008.

Annex 3

List of Respondents to Consultation

SMG –on behalf of STV Central Ltd and STV North Ltd

SDN

Highlands and Islands Enterprise

Scottish Screen

Comhairle nan Eilean Siar

Comunn na Gàidhlig

Eyeline Media Ltd

West Highland Animation

MacTV

TeleG

Pact

MnE Media

Sorbier Productions Ltd

Bòrd na Gàidhlig

Tobar an Dualchais

Sabhal Mòr Ostaig

Responses from individuals (2)