

# Hypothetical tender document for a Public Service Publisher

**Issued by Ofcom**

**Consultation document**

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## Section 1

# Introduction

- 1.1 This document is a hypothetical or shadow tender document for the creation and operation of a public service publisher (PSP). Respondents are invited to review the contents of this tender, and submit any comments that may arise.
- 1.2 In producing a shadow tender, Ofcom is not seeking to contract with external parties for the provision of any services illustrated herein. Rather, this process forms part of the work programme for Phase 3 of Ofcom's review of public service television broadcasting (PSB Review).
- 1.3 Specifically, we are using this process to gain input from interested parties on the key question of how the PSP concept can be operationalised. A version of this document has been sent to a number of external parties who have been invited to present their thoughts at a seminar in December 2004.
- 1.4 Views are also sought from all interested parties. Any responses – including outline ideas for running the PSP, and any ideas on the format and content of this tender document – should be submitted to Ofcom as soon as possible, and certainly no later than 24 November 2004 – which marks the end of the consultation period on the PSB Review Phase 2 report.
- 1.5 Responses to this document should be sent – ideally as an email attachment– to:

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## Contents of this document

- 1.6 This document addresses three main sets of issues:
  - Section 2 provides the background to this tender, setting out why we have proposed the establishment of a PSP.
  - Section 3 contains guidance for respondents – covering the possible organisation of a PSP, and proposals regarding its remit, budget and operational principles.
  - Section 4 then summarises the information required from respondents, and the key questions that we would like respondents to consider in framing their proposals.

## Section 2

# Background to a Public Service Publisher

2.1 Phase 2 of Ofcom's review of public service television broadcasting (the PSB Review) has put forward the idea of a competition for public funding to run a new service, a Public Service Publisher or PSP. The idea is based on five core principles.

### **I. There is an enduring rationale for PSB**

2.2 PSB gives us the sort of television, across a wide range of genres, which the market will tend to under-provide. Public service broadcasting can keep us informed, stimulate our interest in new topics, strengthen our cultural identity and make us aware of other cultures and viewpoints. It can aspire to the highest possible standards of programme-making.

### **II. The current model of commercial public service broadcasting will break down at switchover, if not before.**

2.3 In the current model, we exchange a tax discount on a scarce and valuable asset – analogue spectrum – for a set of PSB requirements. After switchover, we will not have any such valuable assets to exchange. In a world of many channels, commercial broadcasters will be able to find alternative routes to market that do not depend on their accepting licences heavy with PSB obligations. They may even choose to go down such a route before the process of switchover is completed, in 2012. And Channel 4, faced with increasing competition, may find it harder to maintain its current mix and range of PSB programming.

### **III. Plurality should be sustained**

2.4 If we do nothing, over time the BBC will become a near-monopoly provider of PSB. That is not a desirable outcome. Plurality – the maintenance of a range of different providers – is an important part of our broadcasting system. It drives competition for quality and makes sure there are a range of different approaches to PSB content, with a range of alternative perspectives aired.

### **IV. Funding for PSB should be maintained at roughly the current level.**

2.5 There is very little evidence that public funding 'crowds out' private funding – international comparisons show that the key determinant of advertising and subscription revenue tends to be GDP. Moreover, there is strong evidence of widespread public support for the idea of PSB, the level of current funding and the principle of the licence fee.

### **V. Digital technologies are changing the way TV programmes are sold and consumed.**

2.6 Broadband is making possible new on-demand services. PVRs (digital personal video recorders) pose a threat to idea of pre-determined schedules. Public

service broadcasting needs to make innovative use of those new technologies if it is to prosper in the television market of the future. It needs to adapt to changing audience needs.

## Implications

- 2.7 The proposal for a PSP brings all these strands of analysis together. If plurality is going to disappear from the PSB system, we need to find a way to protect it. The best way of doing that will be to introduce a new service that is part of the digital revolution, rather than trying to fight against it.
- 2.8 So a PSP will be expected to distribute content in new ways across a range of digital platforms and networks. To generate the most innovative ideas – both for content and for distribution – there will be an open competition for the right to run the PSP service for a fixed period. The PSP will be given the security of a fixed stream of public funding, and that should prevent any confusion of commercial and PSB objectives.
- 2.9 Over the years, new entrants to the broadcasting market – from ITV to Channel 4 to Sky – have tended to have a substantial and positive impact on public service broadcasting. A PSP could make the same sort of impact. It would have the same certainty of funding and freedom to innovate that Channel 4 was given in the 1980s. Alongside a publicly-orientated BBC, and a more commercially-focused Channel 4, a PSP could be a core part of a properly-functioning PSB system in a digital world, as a spur to quality and creativity.

## Section 3

# Guidance for respondents

3.1 This section provides guidance for respondents about the role that Ofcom expects a PSP to fulfil. It addresses four broad questions:

- What form of organisation will a PSP be?
- What will its remit be?
- What will be its funding and other benefits?
- What are the important issues regarding governance, regulation and contractual arrangements for a PSP?

3.2 In addressing these questions, we identify the aspects of a PSP about which we have clear views, and also highlight those areas in which we welcome further proposals from bidders. Section 3 sets out more detailed questions relating to each of these areas.

## Organisation

3.3 As set out Section 2 of this document, the PSP will be a new entity, commissioning high-quality audio-visual content from a wide range of external producers and distributing that content over a wide range of digital platforms.

3.4 A tender process will be held to select the organisation most suitable for running the PSP. After that process, the winning bidder will be given a contract to run the service for a given period, tied to a guaranteed stream of public funding. We welcome bids from a range of organisations – whether existing broadcasters, producers, media companies or content providers. Bids may come from individual business, or from consortia of companies.

3.5 Content distributed by the PSP must be widely available throughout the UK, with at least near-universal availability. We do not specify which distribution technologies and platforms must be used by a PSP, with the choice of appropriate modes of distribution a matter for bidders.

3.6 No organisation will be excluded from the tendering process, aside from the BBC, but a licence will only be awarded to fit and proper persons.

3.7 In order to ensure a strengthening of production centres across the UK, the PSP should be based outside London. It will also be expected to distribute content made in different parts of UK.

3.8 The majority of the content distributed by a PSP must be made in the UK, and externally sourced from a range of different production sources throughout the UK.

3.9 The term PSP is not a brand. Rather, it is a description of a proposed service. Individual bidders will be free to assign their chosen branding to the service.

## Remit and content

3.10 The PSP will be expected to provide content that makes a significant contribution to fulfilling the broad purposes of PSB, as defined by Ofcom:

- To inform ourselves and others and to increase our understanding of the world through news, information and analysis of current events and ideas
- To stimulate our interest in and knowledge of arts, science, history and other topics through content that is accessible and can encourage informal learning
- To reflect and strengthen our cultural identity through original programming at UK, national and regional level, on occasion bringing audiences together for shared experiences
- To make us aware of different cultures and alternative viewpoints through programmes that reflect the lives of other people and other communities, both within the UK and elsewhere

3.11 The PSP will be one of a number of different public service broadcasters. It need not, therefore, provide every genre of programming. Although it needs to cover each of the four purposes mentioned above to some degree, it is not expected to cover every single aspect of every purpose. Nor need a PSP simply replicate the types of PSB programming which other broadcasters are likely to cease to provide in the future (e.g. non-news regional programming).

3.12 In addition, content should demonstrate the following characteristics:

- widely available
- high quality
- innovative
- challenging
- engaging

3.13 Finally, content should be created, promoted and distributed in such a way as to maximise its impact amongst its target audience. For example, while the operator of a PSP might seek digital television capacity, bidders are encouraged to consider the use of other digital distribution systems – such as broadband, networked PVRs, and mobile networks.

### **Funding and other benefits**

3.14 The PSP should be a not-for-profit service, although it will be entitled to cover its costs including management fees. In awarding the contract, account will be taken of the level of administrative and other operating costs proposed, and the effectiveness with which bidders can channel available funds into content production and distribution.

3.15 From the date of launch, the PSP will have access to a stable stream of annual public funding. Our initial calculations suggest that a budget of £300m would be appropriate, but we seek views from bidders on the appropriate quantity and use of funds. The operator of a PSP will need to ensure that it delivers strict value for money in the use of this funding.

3.16 If a PSP is operated by an existing commercial business, we seek proposals for securing an effective ring-fence around the PSP operation and finances. These proposals should aim to ensure that that public funding is used purely to provide the public service, while at the same time allowing the PSP operation to realise the benefits of being associated with an existing business.

- 3.17 We have not ruled out allowing a PSP to have access to streams of revenue additional to the direct public funding, although we have concluded that a PSP can not earn revenue from advertising or subscription for the PSP service. Aside from these exclusions, we invite views from bidders about whether a PSP should have access to additional revenue streams to allow it to maximise the value generated from its funding. Such additional streams could include, for instance, co-production funding and ancillary revenues from secondary content sales.
- 3.18 If the operator of a PSP makes a case for distributing content via a digital television service, it could be given access to DTT spectrum. Such capacity could take one of the following forms, although the precise nature of any available capacity is subject to wider policy decisions in Ofcom:
- A core network feed to the proposed new network of local digital television stations.
  - Capacity equivalent to that of a full channel on a PSB multiplex.
- 3.19 Again, we are interested in the views of bidders as to the importance of such capacity and how it might be used by them.
- 3.20 In addition, bidders are encouraged to negotiate carriage arrangements with any existing DTT broadcasters (for example for the transmission of a branded bundle of content). Carriage on other distribution systems would be a matter for commercial negotiation, and we would expect bidders to demonstrate that such negotiations are concluded on a fair and transparent basis.
- 3.21 If the PSP does utilise DTT capacity, it could also receive appropriate prominence on electronic programme guides (as is applied to current public service TV channels by Section 310 of the Communications Act 2003), and would benefit from must-carry rules, were they to be invoked on the cable networks.

### **Governance, regulation and contractual arrangements**

- 3.22 The Governance structure for a PSP has yet to be decided. However, the PSP will be obliged to report annually to Parliament on performance against its objectives, and on the provision of value for money.
- 3.23 Content regulation will be undertaken by Ofcom, and will involve an annual review of the performance of the PSP against its objectives for content provision.
- 3.24 The PSP management will be expected to put forward an annual statement of content policy. They will assess their own performance against this promise, and Ofcom will validate that assessment.
- 3.25 The first licence to operate a PSP will run from six months prior to the beginning of the process of digital switchover in 2008, and will terminate at the end of 2016. An eight year period has been chosen to allow the end of the first PSP contract to coincide with the next review of the BBC's Royal Charter. At the end of the eight-year period, the contract to run the PSP will be re-tendered.



- 3.26 There will also be a mid-point review of performance, funding and purposes, to ensure that the PSP operator is meeting its contractual commitments. A break-point will be included in the contract. This would allow for the licence to operate a PSP to be re-tendered at an earlier stage if the mid-point review finds that there is a significant shortfall in the performance of the PSP operator.

## Section 4

# Information requested from respondents

## Our evaluation criteria

- 4.1 All submissions to this tender process will be reviewed by a panel of external industry experts, supported by advice from Ofcom. An important factor will be the experience, skills and capabilities of the bidder, including any members of a proposed consortium.
- 4.2 In reviewing your proposal, we will have regard to the extent to which your proposed service meets the goals set out in Section 3. We will focus in particular on the following issues:
  - How effectively will the service meet the purposes and characteristics of PSB? This will include an assessment of the contribution the proposed service will make to the overall system of public service broadcasting.
  - How clear is the proposal about target audiences, and how well does the proposal address the challenges of reach and impact?
  - Is the proposal likely to promote innovation in content, using a full range of approaches made possible by new production technologies and consumer equipment?
  - Does the proposed service demonstrate innovation in the use of different distribution technologies and platforms?
  - Is the proposed service consistent with the need to deliver value for money, for example by extracting maximum leverage from the funding available?

## Your response

- 4.3 Any parties interested in responding with initial ideas and proposals are invited to submit a written response to Ofcom before 24 November 2004. Such a response could include ideas on how a PSP could be run.
- 4.4 Respondents are also invited to consider the following questions when framing their responses. These are detailed questions that could be asked of bidders in a full tender exercise. Therefore, while thoughts on the key issues raised in the questions are welcomed, we are not requesting a detailed response addressing each question in turn.
- 4.5 More generally, comments on the content and form of this shadow tender document are also invited.

## Organisation

4.6 And bidder wishing to make a proposal should include:

- A description of your organisation. If appropriate, set out the likely members of your consortium, as well as information on any partnerships, joint ventures and alliances you expect to pursue
- Information on how you intend to source the content that will be distributed through your service, including any planned co-production arrangements
- A summary of your corporate governance arrangements, including the likely composition of your Board, and any other key individuals you expect to be involved.

## Remit and content

4.7 Please provide:

- A description of the amount and type of content you will focus on, including clarity on how the proposed content addresses the PSP remit, and information on the balance between broadcast and non-broadcast content
- An indication of the level of investment you intend to make in content (e.g. in terms of cost per hour for any planned programme content)
- Please include two or three examples of key content initiatives planned for your first year of operation
- Information on the audiences you intend to target through the content. For instance, will you target the whole population, or audiences segmented by demographic groups?
- Related to the above, an explanation of whether you intend to produce and distribute content on a UK-wide basis, or whether you will focus part of your services for particular geographic or other communities

## Distribution, marketing and promotion

4.8 Please provide:

- A description of how you will maximise reach and impact with your target audience
- Include a discussion of the distribution technologies and platforms you will use, and your proposals for marketing and promotion of your service
- Information on any arrangements you propose to put in place with existing broadcasters, telecoms companies (whether fixed or mobile), or any other distribution platform operators. Comment on any synergies that might be realised with any of these businesses

## Financing

4.9 In this area, your proposal should consider:

- An outline breakdown of the running costs of your service. Specifically, how will you spend your annual budget (of, for instance, £300m plus other revenue streams as appropriate). At this stage, we are not seeking detailed business plans and evidence of available finance, but more detailed financial projections would be needed for a full tender process.
- Your response should include a breakdown of costs in the following main categories:
  - content costs (including any commitments you are willing to offer on the level of content costs as a proportion of total costs)
  - marketing & promotion
  - transmission
  - distribution
  - your likely administration costs
  - any proposed management fee
  - your view on start-up costs, and proposals on how these will be financed
- If applicable, explain your proposals for striking an appropriate balance between ring-fencing the PSP operation from your existing commercial business(es), while at the same time benefiting from the synergies with those businesses.
- A discussion about whether you intend to supplement any public funding with additional streams of revenue. If so, explain how you will do so; how your activities in this area will help you fulfil the remit of a PSP; and how all financial flows will be kept transparent.

## Governance, regulation and contractual arrangements

4.10 In this area, explain the steps you will take to ensure accountability, transparency and good governance

4.11 In addition, you should explain how you will ensure that audience views are properly accounted for in the assessment of your performance – including, for instance, your plans for audience consultation and research, processes for receiving and taking on board feedback, and plans for any wider consumer participation.