

# **Ofcom's Second Public Service Broadcasting Review**

## **Phase 2**

### **Response by British Sky Broadcasting**

**December 2008**

#### **Introduction**

Sky welcomes the opportunity to contribute to Phase 2 of Ofcom's second review of public service broadcasting. However, we are disappointed that the options presented in the latest consultation document have failed to take account of the growing role of commercial funding models in delivering public service content. Ofcom's analysis continues to present an institutionalised picture of public service broadcasting that we do not recognise, and we doubt that any of the solutions presented in Phase 2 will deliver a better overall experience for viewers or represent value for money.

#### **Summary**

- As set out in our response to Phase 1, we believe that there is no evidence of an impending crisis in the general availability of public service content. The UK has a dynamic and competitive entertainment and communications marketplace that is delivering real benefits to consumers. Viewers enjoy more choice and experience greater plurality than ever, and have access to a vast and growing array of content that meets Ofcom's definition of public service purposes and characteristics.
- One of the most dynamic and fastest growing parts of the marketplace is the pay TV sector. In Phase 2 Ofcom identified that people are willing to pay more for public service content. The pay TV model allows that to happen because it is able to respond to viewers' willingness to pay by offering a range of content that meets their individual tastes and interests, thereby generating revenue which facilitates further investment in content.
- Where there are instances of genuine market failure, the starting point for addressing these must be the BBC. With guaranteed income from the licence fee in excess of £3.5 billion a year, it clearly has the resources to respond to such failure. The key issue that needs to be addressed as part of the PSB review is prioritisation – how to ensure that the BBC focuses on those areas that deliver greatest public service benefit, addressing gaps in provision and providing content that is genuinely distinctive rather than duplicating what the commercial sector provides.
- In addition, Ofcom continues to have regulatory leverage over ITV, Channel 4 and Five (based on the value of the privileges they enjoy as PSBs), which can be used to ensure alternative provision to the BBC in those limited areas where fully commercial models appear unlikely to invest (for example, regional television news).

- Given the choice already provided to the viewer through commercial means, the scale of existing intervention from the BBC and the regulatory levers that remain available to Ofcom, we do not accept that there is justification for any further intervention.
- We do not believe that Ofcom should attempt to set in stone a long term institutional model for public service broadcasting. The best way of guaranteeing that viewers get the content they want is to create the right conditions for the commercial sector to deliver.

## **1. Commercial models are delivering more choice**

Viewers have access to a greater array of content with public service characteristics than they have ever had before, much of it provided by new channels and platforms. As we have consistently pointed out, the debate about public service content in the UK has failed to take proper account of the way in which the experience of viewers has been transformed by multi-channel television and the internet. Additionally, the vast majority of investment in high quality original programming made by the commercial PSBs is as a result of commercial incentives – responding to the demands of viewers and advertisers – not regulation or public subsidy.

As we argued in our submission to Phase 1, the problem with Ofcom’s approach is that it underestimates the availability of public service content because it only measures the amount of public subsidy available to public service broadcasters, rather than the amount of content that is actually available to viewers. This mistake is repeated in Phase 2, following Ofcom’s final analysis that there is a gap of £145-235 million required by 2012 to fund public service programming beyond the BBC. This is a measure of inputs, i.e. the amount of public subsidy going into the system. Whereas, little or no analysis is conducted of outputs, i.e. the public service content that is produced by the commercial sector, without subsidy, which is many times the value of the gap identified by Ofcom, and is growing.

The commercial sector will continue to deliver more of this content because it is responsive to viewers’ demands, and a diverse range of high quality programmes is what viewers want. Commercial models already deliver a range of different types of content. For instance, the advertiser funded model that supports ITV, Channel 4 and Five, remains very successful at delivering high-quality, original UK programmes with mass appeal and in maximising audience reach and share. However, we also recognise that pressures on this model have resulted in some genres becoming under-served.

## **2. Pay TV makes a significant contribution**

The pressures on the advertiser funded model should place a premium on the contribution made by the most vibrant and dynamic part of the marketplace – the pay TV sector. The growing range of tailored content and choice available on multi-channel pay TV has driven consumer demand, with just under half of all homes now taking some form of paid service. While we do not suggest that subscription will replace

advertising or the licence fee as the sole means of funding public service content, it has the potential to be a significant contributor to the broad mix of sources of high-quality content with public service characteristics. ITV, Channel 4 and Five will continue to invest in high quality original content because that is what their viewers demand and their advertisers require. But the pressure for ratings is pushing the advertising funded channels further towards the mainstream and away from some genres. As more gaps open up, it creates the opportunity for subscription channels to respond. Expanding customer choice is the central driver of all pay television and, over time, multi-channel pay broadcasters have filled in the gaps in free-to-air terrestrial content provision, often in genres that clearly have public service characteristics. Sky started 20 years ago by addressing the gaps in provision of news, sports and movies on the PSB networks, and today we see a similar opportunity in the arts. We now have 3 dedicated Sky Arts channels broadcasting 36 hours of arts programmes every day, more than the PSB networks show in a month. Many other multi-channel broadcasters such as Nickelodeon, Discovery, National Geographic, History and UKTV have all made a commercial success of genres that have clear public service characteristics, and where there is a gap or deficit in free-to-air terrestrial provision.

In its Phase 2 document Ofcom says it identified that three quarters of people would be willing to pay up to £3.50 per month on average to fund public service alternatives to the BBC. Subscription television can turn the willingness of such viewers to pay into revenue and thus enable the creation of programmes that would not otherwise be made by a traditional advertising funded broadcaster. We do not understand why Ofcom excludes content that is not “free-to-view” in its “principles of availability for public service content” (Phase 1). In the current environment, a model that is based entirely on consumer choice rather than relying on support from taxation or advertisers has many attractions. After all, the freedom of people to choose how much they wish to spend on one news or entertainment product over another works well in newspapers, music, cinema, fine art and literature. With the industry facing economic uncertainty, the pay TV sector will make an ever greater contribution to the provision of public service content, and excluding it from the calculation of available content exacerbates the problem that Ofcom is trying to solve.

### **3. Start with the BBC**

That is not to say that commercial models can and will provide everything that viewers want. We agree with Ofcom that the BBC should be the cornerstone of publicly funded public service provision. By implication that means that the starting point for any review of public service broadcasting must be to define what programmes and services the BBC should provide, and an assessment of the extent to which it is currently delivering these.

With £3.5 billion to spend annually from the licence fee, the BBC has more than sufficient funds to do everything required of it. It is, therefore, imperative to ensure that the BBC uses that money for the greatest public service benefit and prioritises investment in areas where the commercial sector is failing to deliver. For instance the BBC could immediately fill half the ‘PSB funding gap’ identified by Ofcom by redirecting the £100 million it spends every year on acquired programming to areas identified as being at risk from declining provision on the commercial PSBs.

#### **4. Other regulatory levers**

We do not have a view on Ofcom's specific proposals in Phase 2 for ITV1's public service obligations, but we note that it is apparent from Ofcom's own analysis that there is a residual value to the ITV licences. It must be right for Ofcom to prioritise the obligations it requires from ITV in return for the enduring value of the regulatory assets and to keep those priorities under review. Similar arguments apply to Five. Channel 4 also enjoys the benefits of enduring regulatory assets and, as it is a publicly owned institution, it can be required to act in a way that is not solely profit maximising. Ofcom should therefore set priorities for Channel 4 to deliver public service programmes that are not catered for by any other channel (including, potentially, areas previously served by ITV). Ofcom should also require Channel 4 to demonstrate that it does not set its commercial priorities at the expense of its public service requirements, for example by spending £150 million per year on acquired programmes, or involving loss making new ventures.

#### **5. No justification for further intervention**

Beyond the BBC and the existing regulatory levers available to Ofcom, we do not believe there is any case for further intervention. From the perspective of the viewer, commercial models are providing ever more public service content from a wide range of sources, ensuring plurality and offering an alternative to the BBC. Multi-channel television is filling in many of the gaps left by commercial PSBs, and the BBC is in a position to reprioritise spend to ensure that any remaining gaps in the content that viewers require are addressed. We remain optimistic about the ability of commercial incentives to meet the needs of viewers. Advertiser funded PSBs and pay TV channels will continue to deliver more of the content that people want, so long as the correct incentives are applied and the commercial sector is given the freedom to innovate and invest.

#### **6. Long term model for public service content**

Sky does not accept that any of the models or funding options proposed in Ofcom's Phase 2 consultation is the right way to strengthen the quality of public service broadcasting. There is likely to be continuous change in the way that the marketplace operates and in the commercial models that fund public service content, so that no single model of public service broadcasting can be guaranteed to deliver the same kind of content for ever. The best way of guaranteeing that viewers will continue to receive the content they want is for the commercial sector to be given the greatest opportunity to invest and for existing intervention to be focused on priorities and to be directed to cause the least distortion possible.