

Consultation on the Future of Public Service Media

Response from ViacomCBS

16 March 2021

ViacomCBS welcomes the opportunity to respond to this consultation on the Future of Public Service Media.

For three decades ViacomCBS has been the most successful international supplier of pay-TV channels to the UK market, in particular MTV, Nickelodeon, Comedy Central, BET, and the Paramount Network, as well the Pluto TV service offering over 100 free-to-air channels. The purchase of Channel 5 in 2014 not only extended the ViacomCBS footprint into free-to-air public service commercial television, it represented a step-change in our ambitions for our UK business: to invest in more local original programming from across the UK, to create synergies between our pay and free channels, and to export more programmes and formats globally.

Since 2014 Channel 5 has successfully carved a position in the market as a destination for factual programming, as well as drama, kids, news and current affairs. The channel now offers audiences a high-quality, locally-produced schedule, with a major focus on the domestic UK social agenda.

Please find our considered views set out below.

Public Service Broadcasters remain critical to delivering public value

Public Service Broadcasters (PSB) are the cornerstone of a vibrant broadcast sector for UK producers and viewers. The primary objective of any future regulatory overhaul of the PSB system, including the introduction of a broader category of Public Service Media (PSM), should be to strengthen and maintain their position and to protect the unique and world-class system of PSB provision in the UK.

Whilst there has been some decline in viewing to linear TV, particularly among younger audiences, PSB channels and their associated on-demand services remain highly valued by consumers and account for the majority of their viewing. As Ofcom research has identified, “85% of people continue to watch broadcast content every week and we expect digital terrestrial broadcasting to continue to play a significant role for at least the next decade”¹.

¹ Ofcom, ‘*Small Screen: Big Debate Consultation – The Future of Public Service Media*’, 8 December 2020, p19

As Ofcom also recognises, PSBs are the engine for creative innovation and economic growth within the TV industry, making the largest and most significant investment in UK production right across the country. Despite challenging market conditions they invest £2.5Billion each year on first run UK originations² compared to £1Billion spent by the entirety of the commercial broadcasting industry³ of which 90% is news and sports programming⁴.

Further, hours of first-run original UK content on the five PSB channels and the BBC's other public service channels⁵ combined has remained stable at approximately 32,000 hours per year since 2014, despite market challenges. This compares to 210 hours of UK-produced content available on Netflix & Amazon Prime⁶. The success of the UK production sector is rooted in investment by PSBs that have supported small, regional and independent producers that have gone on to work with commercial broadcasters and the global SVOD players. We comment further on the role of PSBs and their support for UK production in our response to Ofcom's separate consultation on the regulation of the independent production sector.

The success of the UK independent production sector has been underpinned by the 2003 Communications Act which imposes terms of trade and quota obligations on the PSBs, the UK has become a significant global player in TV and film production in part due to the creativity and investment by PSBs.

PSBs are also a safe, reliable and easily-located home for viewers seeking content that reflects their own culture and values. The Covid-19 pandemic has underlined the importance of PSB for UK audiences as they seek information and guidance on their response to the virus, as well as entertainment for themselves and their families at home. Without the established PSB eco-system it would have been far more challenging to sustain a collective sense of responsibility and mutual support through the crisis.

Channel 5 is delivering more public value than ever before

As one of the UK's two commercial PSB, Channel 5 has a substantial set of programming quotas which it is required to deliver as part of its licence agreement. These cover news and current affairs, UK first-run original, independent production, regional production, and access services. It is also subject to terms of trade rules in its dealings with independent producers and is subject to more restrictive advertising regulation.

Whilst historically the channel was focused on US acquisitions and set piece reality TV shows for prime-time audiences, since 2014 there has been a significant change its content offering, including a greater emphasis on UK original content, and fewer acquisitions of international

² Ibid.

³ Ibid.

⁴ Ofcom 2020, PSB Review, Ofcom, 27 February 2020

⁵ The BBC's other public service channels are BBC Three, BBC Four, CBBC, CBeebies, BBC News and BBC Parliament. BBC Three ceased broadcasting as a television service on 31 March 2016.

⁶ Ofcom, February 2020, 'Small Screen: Big Debate – a five-year review of Public Service Broadcasting (2014-18)'

series. Channel 5 has carved a position in the market as a major factual channel alongside investment in drama, kids, news and current affairs.

Factual, Current Affairs, and News

Finding creative talent and investing in factual and documentary programming has been a highlight of Channel 5's changed programming schedule. Its varied offering in just the last year has included *Ben Fogle's New Lives in the Wild*, *Our Yorkshire Farm*, *GPs Behind Closed Doors*. Channel 5 also devotes many hours of content, beyond its licence obligations, to deliver feature-length documentaries on important issues to a UK audience including the RTS award-winning film '*Raped: My Story*', and the Grierson award-winning film '*Suicidal: In Our Own Words*'.

Channel 5 aired over 500 hours of accessible, popular current affairs last year including the popular *Jeremy Vine*, nearly four times its public service quota of 130 hours, covering a wide variety of subjects of interest to our viewers. It airs over 280 hours of news programming every year, with a significant proportion of its audience skewing female.

Children's TV

Channel 5 is the only commercial PSB to offer a dedicated, branded block of programming for children on its primary linear channel each morning – this is a key element of Channel 5's brand differentiation compared to the other PSBs. *Milkshake!* reached 17.4 million viewers in 2020 and is the brand-leader for pre-school television in the UK.

Channel 5 has committed to Ofcom to broadcasting 600 hours of children's content annually and commissioning 50 hours of UK originated children's content each year.

Milkshake! offers a wide range of high-quality programming including world class animation, live action factual, music-based entertainment and wildlife documentaries and is behind some of the UK's most popular pre-school shows including *Peppa Pig*, *Thomas & Friends*, *Bob the Builder*, *Milkshake! Monkey*, *Shane The Chef*, *Noddy & Friends*, *Digby Dragon*, *Fireman Sam*, *Floogals* and *Ben and Holly's Little Kingdom*, *Daisy and Ollie*, and BFI YACF supported *The World According To Grandpa* and *Go Green With The Grimwades*. While always entertaining, its programming covers healthy eating, keeping fit, science, history, geography, wild-life, pets, social and religious festivals, communities, family life, as well as reading initiatives, music, dance and hobbies.

Milkshake! also provides over 1000 episodes and 130 hours of content on My5 and over 400 short-form episodes and 23 hours of content on You Tube for viewers to continue their viewing after the linear blocks finishes.

Regional programming

Channel 5 invests heavily to support production outside the M25 and the creative economy in the nations and regions of the UK, which it sees as a key point of differentiation. This corresponds with significant viewership for the channel outside of London, particularly in Yorkshire, North West, Border, and Eastern Regions of the UK. *5 News* specifically is very

popular in Scotland and this is reflected in it having a dedicated Scottish correspondent. *Jeremy Vine* also indexes higher for audiences in Wales, Scotland, the North West, and Yorkshire regions compared to other current affairs programmes such as *Panorama* and *Dispatches* which have a larger audience in London and the South⁷.

My5

Our BVOD platform My5 is experiencing exceptional growth because of the ongoing investment in content Channel 5 has made over the past five years. It allows viewers to catch up on their favourite soaps, find entertainment for their children, or watch gripping drama. As My5 moves from being about catch-up to destination viewing, VOD is a key consideration in our commissioning decisions alongside investment in data to support the user and advertiser experience.

My5 is a key priority for Channel 5 for the coming year as we re-vitalise its offering by making it more personalised and curated to increase accessibility for those viewers for whom the PSBs are their home due to the breadth of programming and unique tone it offers.

A shift to PSM should have PSBs at its core

Ofcom asks in question 1. whether PSM delivery should be less service specific in terms of delivery and more focused on outcomes, which we understand to mean the distribution of UK originated content. We agree that there is a need for flexibility in any future framework that allows PSBs to collaborate with commercial partners, make better use of digital distribution, and find innovative ways to deliver public value. Further, a system of regulation that ensures accountability, as referenced in Chapter 2 and question 2 of the consultation, is to be welcomed provided it does not place undue burdens on PSM providers. But, a regulatory regime that focuses only on outcomes risks fragmenting the delivery of PSM over too wide and diverse group of broadcasters/publishers making it more difficult for consumers to identify and access public value content.

There are a group of stakeholders adamant that PSM outcomes can be delivered not just by a group of designated broadcasters, but across other broadcasters in the market that make UK originated content, including those behind a paywall or with subscription models as well as via free online channels such as YouTube.

In question 7 Ofcom ask whether channels such as these could be used for the delivery of PSM. We do recognize that some channels do contribute public value, for example Sky News, Sky Arts, Discovery, History Channel, Nickelodeon and a very niche group of YouTube Channels. These channels do not however have the reach and impact of PSBs, and in many cases are not free to air or universally available. Nor are they subject to the rigorous application and scrutiny of programme quotas, terms of trade, advertising limits, and other licence obligations placed on PSB services.

⁷ BARB, 2019

An approach that is completely service neutral and focuses only on outcomes (i.e. the creation of UK originated content) as suggested in Q1⁸. may in fact lead to a weakening of public service value to consumers. To guard against this we believe that there are four principle points for policy makers to consider:

1. PSB is more important than ever in a PSM environment and should be protected accordingly. The proliferation of market entrants, due to technological revolution increasingly fragments audiences and potentially erodes the public service value in the media world. Maintaining the safe space offered by PSBs in the UK will serve to maintain and raise standards across all media.
2. A PSM approach must not dilute the content offering across a range of channels so large that it leaves viewers without an easily identifiable and accessible place where they know they can find UK drama and children's programmes, accurate and impartial news, current affairs and documentaries.
3. Any policy shift that pushes programming behind a paywall or via IPTV only must consider the loss of benefit to vulnerable viewers and the lowest socioeconomic groups that may not be able to access this content. It should be noted that one in eight adults do not use the internet at home, "this includes not only older people, but also 15% of working-age adults in the lowest (DE) socio-economic groups"⁹.
4. All UK content investment should be welcomed and has public value but it shouldn't be confused with delivering public service outcomes. Currently PSB is a space for telling stories that directly reflect British lives across a range of genres, local stories about real people on important issues produced without focus on global or secondary rights. These stories that would not be commercially viable outside of the current PSB framework – global streaming services by their very nature create content designed to have appeal to global audiences, not reflect the specific social and cultural interests of audiences in specific countries.

As noted above, whilst we encourage flexibility and new ways to support innovation that is beneficial to viewers, the principles that sit at the heart of the current PSB system must also sit at the heart of a new definition of PSM. If they do not then the powerful role that PSBs play in sustaining UK society, culture and creativity risks being undermined.

Prominence must be a key component of 'PSM availability'

In questions 3 and 4 Ofcom asks what might be included in the 'PSM offer', and on what terms should this be made available to consumers through third party technology platforms that now act as a gateway to viewing for a significant proportion of viewers. Underpinning this is

⁸ Consultation question 1: Do you agree that a new regulatory framework for PSM delivery should support a more flexible 'service neutral' delivery approach that is more outcomes focused? p 39

⁹ Ofcom, '*Small Screen: Big Debate Consultation – The Future of Public Service Media*', 8 December 2020, p19

Ofcom's assessment that prominence must be a feature any new framework for the regulation of PSM¹⁰.

Public service content relies on easy access for people to consume it and the existing prominence rules were put in place over 15 years ago to support this objective. Unfortunately, the current prominence regime has not kept pace with market change, with rules only applying to the linear EPG but not catch-up or on-demand content, search, or recommendation features. Other TV apps such as Netflix or Amazon are able therefore to purchase prominence over PSB content, for example the Netflix button on some remote controls, and through the prominent placing of their apps.

Without a regulatory intervention there is a significant risk that public value content will be harder to find for audiences, not because those PSB services are not valued and popular but simply because global players are able to purchase prominence on platforms that are presently unregulated.

We therefore welcome Ofcom's July 2019 Ofcom recommendation for the establishment of 'A new framework of legislation and regulation that would ensure that viewers can continue to find and access the PSBs' linear and on-demand services, across a range of connected devices (smart TVs, set-top boxes and streaming sticks)', and further that 'PSB content should also be given protected prominence within TV platforms' recommendations and search results'¹¹. We also support Ofcom's reiteration of the need for a regulatory regime that supports prominence for core PSM services i.e. the PSBs. We remain frustrated that the Government is yet to act upon this recommendation, and recommend that legislation underpinning a new prominence regime is proposed in the next Queen's Speech.

As outlined in the joint PSB submission to Ofcom, we support a regulatory intervention designed to secure significant prominence for PSB channels and qualifying VOD players to the major TV distribution platforms and user-interface providers alongside guaranteed supply to platforms of these services according to regulated terms.

- **Prominence:** The law should place a requirement on Ofcom to set out how it will assess 'significant prominence' within its guidance, to ensure that PSB channels and players are at least as prominent in user interfaces as a whole as linear channels are today within current EPGs.
- **Inclusion:** The new prominence regime must ensure easy access for audiences to PSB channels and qualifying players on all major TV distribution platforms, ensuring that PSB can continue to flourish and is not undermined by tech providers.
- **Fair value:** For the commercial PSBs, there should be a requirement for each to make available a regulated core service overseen by Ofcom. Beyond this core service, PSBs

¹⁰ Ofcom, '*Small Screen: Big Debate Consultation – The Future of Public Service Media*', 8 December 2020, p35

¹¹ Ofcom, 2019, 'Recommendations for a new legislative framework for PSB prominence', 4th July 2019

and platforms should be free to negotiate fair commercial terms on any additional content the PSB may provide or additional functionality platforms may wish to offer.

Small interventions to create additional funding of PSM should be considered

In questions 5 and 6 Ofcom asks about the future funding of PSM and how collaboration and innovation can support PSB.

The current blended model of PSB funding which includes licence-fee funded, commercial not-for-profit, and fully commercial models in the same market is unique to the UK. This model has underpinned the incredible creative diversity and innovation by broadcasters that has made the sector world-beating. We see no reason to change the funding model for these core PSM services.

However, in addition to a revised prominence regime, we do believe new funding models that are additive to the current regime should be considered by policy makers. Specifically, we are of the view that there is a funding gap for key public value genres of UK content.

As Ofcom is aware PSB funding of content on public service channels is more substantial and spread across a broader range of genres than those of commercial broadcasters¹². Commercial broadcasters in turn invest in a broader range of genres than the global SVOD players whose UK offering is primarily focused around high-end drama and comedy¹³.

We are of the view that there must be support for other important genres that struggle to attract investment because of their limited value in the secondary rights market. In particular, we would see value in contestable funding for current affairs programming as well as British documentaries and other forms of specialist factual, along similar lines to the BFI The Young Audiences Content Fund (YACF) model for original British children's content.

The YACF is a contestable fund blueprint that could be used for a new form of targeted intervention that could be applied to other forms of PSB content¹⁴. By altering the financial dynamics of content creation in the children's TV market it has allowed several previously unfeasible UK programmes to be made. 76 projects received funding in year one of the programme, with Channel 5 securing funding for 10 commissions to date that will enrich Milkshake's content offer and contribute towards the 50 UK originated hours planned from 2021. These include regional live action series such as *Mimi's World* and *Meet the Experts* that would not have been economically viable otherwise.

¹² Ofcom, 'Small Screen: Big Debate Consultation – The Future of Public Service Media', 8 December 2020, p10

¹³ Ibid.

¹⁴ The YACF is a £57Million fund managed by the BFI to support the development and production of distinctive high-quality children's content. The BFI can award up to 50% of the production budget for projects which have secured a broadcast commitment from a free-to-access, Ofcom-regulated service with significant UK-wide audience reach. Further, the YACF can provide funding for project development.

The challenges identified in the children's TV market are the same as those faced by current affairs, documentary, and specialist factual programming. Consequently, we recommend policy makers created an expanded contestable fund with additional funding for these key genres.

Conclusions

In summary, we believe Ofcom's consultation has correctly identified the crucial role that PSBs play for viewers and the wider UK broadcasting and production sectors. Updated regulation is needed, particularly to ensure prominence and accessibility of PSB within the new PSM framework, and to find new funding streams for less commercially viable content genres. Regulatory change should not be for its own sake, but based on the preservation of core PSB principles and values, and the important role these play in UK society and culture. We hope that Ofcom will consider these points as it deliberates its final recommendations.
