

Introduction

1. The Commercial Broadcasters Association (COBA) is the UK industry body for multichannel broadcasters in the digital, cable and satellite television sector, and their on-demand services. COBA members operate a wide variety of channels, including news, factual, children's, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay-TV platforms, as well as on-demand.
2. COBA members are arguably the fastest growing part of the UK television industry, and are increasing their investment in jobs, UK content and infrastructure, largely without public support, direct or indirect.
 - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, helping establish the UK as a leading global television hub.¹
 - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.²
 - UK production: In addition, the sector has increased investment in UK television content to a record £725m per annum, up nearly 50% on 2009 levels.³

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2014 Census, Oliver & Ohlbaum Associates for COBA

Response to consultation

1. We stress that COBA views the BBC and the licence fee as one of the cornerstones of the UK broadcasting ecology, and of course the BBC should be able to evolve in line with audience expectations where appropriate. However, at the same time, the BBC and Ofcom must be mindful of its unique competitive advantages, as well as its immense scale, and of course the cost to the licence fee payer of any expansion in its services.
2. In our view, the proposals will clearly have a significant market impact, both in on-demand and linear. Given the short timeframe for responses to this consultation, it is difficult to be precise, but we broadly agree with the areas that Ofcom has identified that will be impacted. Our two caveats are that it is in our view unquestionable rather than just likely that the proposals will damage linear viewing, both for the BBC and other broadcasters. Indeed, a change of this scale could accelerate the migration of younger audiences in particular to on-demand, and away from linear, and create audience expectations of a 12-month window for all on-demand services.
3. We also believe that there will be an additional impact to the BBC, which will have to forgo important third-party funding for its commissioning if it restricts access to secondary rights or reduces their value. This will inevitably occur if the BBC extends its on-demand window as proposed.
4. Given the potential impact, it is regrettable that external stakeholders have only had two weeks to respond to Ofcom. This is compounded by the fact that the BBC Board has throughout the preceding PIT process failed to provide sufficient information to external stakeholders, including to licence fee payers, about the real cost of these proposals, or any real details about its proposals other than the headlines.
5. COBA highlighted this omission to the BBC in our response to the PIT consultation, but it has been largely ignored. There is still no credible information about the costs that the BBC anticipates from acquiring additional windowing rights, forgoing co-production or other third-party funding as a result, or where this funding would come from. This is a major concern at a time when the BBC has stated that its finances are under substantial pressure due to free licence fees for over 75s.
6. It is deeply concerning that the BBC continues to claim that it has support from licence fee payers for its proposals, when it has not made it clear to them that there will inevitably be a cost that may lead to cuts in other areas. We

note that audience research published by the BBC as a conclusion to its PIT consultation continues to omit any reference to their being a cost. Indeed, the BBC's audience research indicates that audiences believe there will be no additional cost.⁴ While this specific slide refers to there being no increase to the licence fee, it suggests audiences are completely unaware that the BBC will have to meet increased costs somehow.

7. This raises questions about BBC governance on matters of market impact. The BBC Board is required under the Charter Agreement to ensure that “the public value of the proposed change justifies any adverse impact on fair and effective competition.”⁵
8. The Operating Framework, overseen by Ofcom, details how this should be achieved, stating that the BBC should consult on the potential impact and that the consultation: “should also be sufficiently detailed to allow third parties to understand the proposal fully and to be able to provide constructive input.”⁶
9. Crucially, the Framework also requires the BBC to be clear about costs, saying: “We expect the BBC's public interest test to clearly articulate the...costs involved.”⁷
10. Overall, the impression is that the Board has not conducted a balanced consultation. The lack of details about market impact or costs has skewed responses in support of the proposals, and makes it extremely difficult for industry to engage properly.
11. We therefore ask Ofcom as part of this BCA to consider whether the Board has met its duties to be impartial, transparent and rigorous under the Charter and the Operating Framework. This is a crucial issue given the prospect of a mid-term Charter review of the functioning of these matters.

⁴ <http://downloads.bbc.co.uk/aboutthebbc/reports/consultation/iplayerpit/mtm-audience-research.pdf> page 52

⁵ BBC Charter Agreement, 8 (1) c

⁶ Assessing the impact of proposed changes to the BBC's public service activities, Ofcom, 4.16

⁷ Assessing the impact of proposed changes to the BBC's public service activities, Ofcom, 4.18