

Response of Channel 5 Broadcasting Ltd (Five) to *The Digital Opportunity*, Phase One of Ofcom's Second Public Service Broadcasting Review

Five is pleased to be responding to this first phase of Ofcom's Review of Public Service Broadcasting (PSB). Ofcom's document *The Digital Opportunity* raises a number of issues of critical importance - to the future of PSB in general and to the future of Five as a public service broadcaster in particular.

As Ofcom is aware, Five is proud to be a public service broadcaster. We were created as a PSB for the digital age, and have always had to deliver public service objectives in an increasingly competitive multi-channel environment.

We believe Five makes a real and continuing contribution to the purposes of public service broadcasting. In particular, we provide a well-resourced and accessible daily news programme, a strong commitment to original children's programmes, a range of specialist factual programmes both in peak and outside it, and a substantial contribution to original UK production.

Ofcom's own extensive research shows viewers continue to value highly the programming provided by the public service broadcasters. We continue to believe that maintaining a system of public service broadcasting, which has served UK viewers well and - in spite of current commercial pressures - is still capable of delivering a range of public service outcomes, is far preferable to replacing it with an untried alternative with inherent problems.

In this paper, we put forward our arguments in response to Ofcom's analysis and set out the case for Five's continuing PSB contribution.

CONSULTATION QUESTIONS

Section 3. How well are the public service broadcasters delivering public purposes?

- i) *Do you agree with Ofcom's assessment that television continues to have an essential role in delivering the purposes of public service broadcasting?*

One of the most striking features of the extensive research carried out by Ofcom is the extent to which audiences continue to value the five terrestrial channels in general and their role in delivering the purposes of public service broadcasting in particular. As Ofcom says, "Television still plays a central role in delivering the purposes of public service broadcasting"¹.

¹ Ofcom, *The Digital Opportunity*, paragraph 3.17

Ofcom's research showed that "audiences want public service programming to be widely available" and that they think "there are benefits from public service content being widely and freely available"². It also "established the importance of the five main channels"³ in people's lives. The research commissioned by Ofcom also showed "there is broad public satisfaction with the amount of PSB currently available on the main five channels"⁴ and found that the vast majority of viewers believed that even after digital switchover "the main five channels will remain key destinations for PSB content"⁵.

Therefore, we believe there are considerable strengths in the current PSB system - whatever the challenges it faces - because it has huge reservoirs of support among viewers and is widely perceived to be delivering public service purposes.

Five recognises that, as the youngest and smallest of the five main public service channels, our contribution is likely to be perceived as less substantial than that of the other four. Nevertheless, we believe that, given our resources and market position, we both "punch above our weight" in delivering public service outcomes and make a real contribution to the range and depth of PSB. We were encouraged by how much participants in Ofcom's research acknowledged our public service contribution and the extent to which they found our programmes straightforward and accessible.

We were also impressed that the genres of programmes that viewers themselves were most likely to classify as PSB were those on which Five concentrates its PSB offering: news, current affairs, serious factual programmes, and (among parents) children's programmes⁶.

Ofcom's research also highlights the high value audiences put on plurality of provision, particularly in news and other key public service genres, including children's programmes. We agree that maintaining plurality is key; the strength of the UK system of public service broadcasting is based on a range of provision by different broadcasters that has encouraged competition for quality and led to a far greater range of outcomes than would have been achieved by a single broadcaster, however well-funded.

We also believe that, in parallel with the development of on-line and on-demand media, linear television will continue to play a leading role in people's lives. It is notable that, in spite of the take-up of new media, the amount of time people spend watching television is the same now as it was ten years ago⁷, while authoritative predictions of future TV viewing suggest that even among younger viewers the average time spent watching television will fall no more than marginally⁸. As a result, we believe the five main terrestrial channels will continue to have the reach and

² ibid, paragraph 3.16

³ ibid, paragraph 3.25

⁴ Ipsos MORI, *The audience's view on the future of Public Service Broadcasting* (Annex 5 to the Ofcom document), Page 8

⁵ ibid, Page 9

⁶ ibid, Page 41

⁷ Advertising Association Advertising Statistics Yearbook

⁸ Attentional, 2012 UK Television Forecasts, February 2008

impact necessary to deliver significant amounts of public service broadcasting for the foreseeable future.

ii) Do you agree that UK-originated output is fundamental to the delivery of public service broadcasting purposes?

In our second pre-consultation submission⁹ to Ofcom Five set out at length how we contribute to the four purposes of PSB, in particular through our news, specialist factual and children's programmes. We also pointed out that since we launched in 1997, we have invested over £1 billion in UK production and employed over 1,000 different independent production companies.

We accept that the purposes of PSB are best realised through the commissioning of programmes from a primarily UK point of view. Viewers clearly enjoy programmes from the United States, Australia and elsewhere – but public service broadcasting should be focused on making programmes about Britain and for British audiences.

This is most clearly true of news programmes, where a UK perspective is crucial not just for coverage of events taking place in Britain but for making many international events relevant to a UK audience. It is also relevant for children's programmes, as demonstrated by Ofcom's own research, which found that just over three quarters of people – and 85% of parents - think it important for children's programming to be made in the UK¹⁰.

However, Ofcom should bear in mind how TV production is changing, with an increasing reliance on international co-production finance. As a result, many programmes are not being made solely for the UK market. This does not mean such programmes cannot contribute to the purposes of PSB – commissioners and producers from the UK are heavily involved in shaping them, and need to make them appeal to UK audiences.

One consequence is that in future Ofcom may need to entertain a more flexible approach to such issues as the definition of original production – so that programmes commissioned for audiences in several countries, including the UK, are still seen as contributing to the purposes of PSB here. Today's rigid definitions may actually hamper the creation of UK content in the future.

Section 4. The changing market environment

i) Do you agree with Ofcom's conclusions about the way that other digital channels and interactive media contribute towards the public purposes?

Five like the other terrestrial broadcasters has developed new digital services that both complement our primary channel and provide new ways in which content produced for it can be seen. We are keen both to keep up with our viewers' changing

⁹ Further Submission by Channel 5 Broadcasting Ltd (Five) to Ofcom's Second Review of Public Service Television Broadcasting, February 2007, Pages 2-6

¹⁰ Ofcom, *The Digital Opportunity*, paragraph 3.36

exposure to newer technologies and to ensure our content is available over as many platforms as practical.

To that end, in 2006 we launched two digital channels (Fiver, formerly Five Life, and Five US) and a download service. We are currently in the process of a major re-invention of the five.tv website and are about to greatly expand our video on demand service with the launch of Demand Five.

Our digital strategy is not aimed exclusively at driving on-line use to Five's own outlets but at making Five's content widely available. One example of is *Five News* on MySpace. Since last March a short, bespoke bulletin of *Five News with Natasha Kaplinsky* has been produced every day for the UK version of the MySpace social network site.

We are committed to extending our broadcast content on-line and on-demand, with key Five properties, from *CSI* to *Milkshake!*, being available on new media platforms.

The growth of digital television over the last decade has seen a huge increase in viewer choice with the launch of many new channels. However, as Ofcom points out, the growth in audience share of such channels has not seen a significant increase in their investment in original UK content, and they tend to be highly dependent on programmes acquired from UK terrestrial broadcasters and from overseas for the great majority of their schedule.

We recognise some channels - such as Sky News (which makes *Five News* for us) and National Geographic and Discovery (with which Five regularly enters into co-production deals) - do contribute to PSB purposes. But such channels do not have the reach and impact of the terrestrial channels and in many cases are not free to air, and so are not universally available. The existence of such channels alongside the main PSB channels does not undermine the case for a system of Public Service Broadcasting; in some ways it reinforces it, as the PSBs set the benchmark for their production values.

The internet makes vast amounts of audio-visual material widely available – including TV content, through video on demand services. It also provides a range of material that competes with television – such as the websites of newspapers. And as the research carried out for Ofcom reveals, many websites provide material analogous to the purposes of PSB.

However, Five believes it would be a mistake to see the internet as a substitute for linear television in meeting PSB purposes. Television and the internet should be seen as complementary, not rivals. While the internet is an excellent and growing resource for all sorts of public and niche interests, it does not have the reach and impact of linear television. And although broadband is now available in over half UK households, it does not have the universal availability of free-to-air television.

Section 5. Prospects for the future delivery of public service content

- i) *Do you agree with Ofcom's assessment of the implications of different economic scenarios for the UK TV market for the future prospects for delivery of the public purposes?*

Ofcom is right to stress the uncertainty of trends in the provision of media and in its take-up and consumption. As we have pointed out already, linear television is proving remarkably resilient and Ofcom should be wary of predictions that consumers will turn away from it in significant numbers.

We recognise there are going to be continuing economic pressures on commercial broadcasters, because of increasing audience fragmentation and the rise of new technologies. But it would be wrong to assume that broadcasters will be passive victims of these trends; in the same way that the PSBs have built families of digital channels and developed on-demand services, they will be able to use their positions as developers and retailers of quality content to respond positively to new market conditions.

Five believes the commercial PSBs will be able to continue delivering significant public value for many years hence, although not necessarily at present levels.

- ii) *Do you agree with Ofcom's analysis of the costs and benefits of PSB status?*

Five remains confident of being able to deliver PSB outcomes in the years running up to digital switchover and beyond. We engaged with Ofcom over its cost/benefit analysis, and broadly agree that the benefits we derive from being a public service broadcaster balance the costs and obligations we incur.

This does not mean Five will deliver exactly the same schedule in five or ten years time that we deliver today. Some parts of that schedule may become less viable. We also believe there will need to be some targeted regulatory relief that mitigates some of the current costs to Five of being a PSB. However, we have a long term commitment to a mixed schedule that includes UK-originated news, specialist factual programming (in peak and daytime) and children's programmes – as well as a broader range of factual programming, sport and entertainment, all commissioned for a UK audience. With the appropriate regulatory framework, we believe the underlying economics will continue to make that schedule commercially viable.

Section 6. Meeting audience needs in a digital age

- i) *Do you agree with Ofcom's vision for public service content?*

Our major concern with Ofcom's vision is that it tries to encompass both television and on-line media in a single model derived from the experience of TV. To deliver public service content to mass audiences, only free-to-air linear television is likely to meet the four criteria Ofcom has correctly identified of impact, reach, availability and cost-effectiveness.

There is much valuable content of a public service nature made available on-line. But as over 40% of households do not have broadband, digital-only media are not able to compete with television's near-universality. And television is in the business of reaching large audiences: a programme watched by half-a-million people is small in terrestrial ratings terms – but many times the audience typically reached by content available only on-line.

In addition, on-line content is not covered by the same robust regulatory regime as linear television content, so the cornerstones of factual accuracy, due impartiality and a clear distinction between commercial and editorial interests are not in place. On-line content may be engaging, but it does not have to meet the high standards expected by television viewers and policed by Ofcom. As Andy Burnham said recently, "With so much of the online world untrusted, I feel we should preserve standards of accuracy, impartiality and trustworthiness, rather than dismantle them. people use the internet and TV for different reasons and with different expectations"¹¹.

Ofcom should not confuse the broad issue of how to fulfil the purposes of public service broadcasting – of making a wide range of programming available to a large audience – with specific government and community initiatives. For example, Teachers TV is a new way for the educational establishment to communicate with a major education constituency (teachers), but is no different in kind from the broadcasting of Open University programmes to a different specific education constituency (students) three decades ago.

Digital media clearly have an important role in delivering public service purposes – but it is a role complementary to TV, not substitutional.

Similarly, pay channels often include content of a public service nature – but as less than half the population has chosen to have the opportunity to watch that content, it is difficult to see the justification for diverting to it implicit or explicit subsidy that could be used to help underpin free-to-air television available to everyone.

Nonetheless, we believe there is merit in looking at how definitions of original production might be amended to encourage a greater degree of co-production between free-to-air and pay channels.

Five believes Ofcom should be wary of proposing that the current system of public service broadcasting be wound down in favour of an untried medley of offerings from on-line media and pay TV channels that would fail to deliver the same quality, range and impact.

¹¹ Speech by Secretary of State for Culture Media and Sport to the Convergence Think Tank, Wednesday 11 June 2008

ii) How important are plurality and competition for quality in delivering the purposes of public service broadcasting, and in what areas?

Public service broadcasting in the UK comprises a plurality of different types of broadcasters with different histories, outlooks and constitutions – such plurality is central to the idea of a PSB system. The BBC is the cornerstone of that system – but there are limits to what the BBC can achieve on its own, and without competition, it is likely to deliver less in terms of both quality and public service outcomes.

A great advantage of the current PSB system is that it delivers plurality in all three ways detailed by Ofcom, with each of the commercial public service broadcasters delivering these outcomes in different ways. For example, the accessible and straightforward tone of *Five News* makes it a valuable contributor to the overall diversity of news programming. *Five* extends the range of specialist factual programmes available to viewers by scheduling such programmes in peaktimes. And our programmes for younger children provide direct competition to the BBC's CBeebies channel.

Plurality means delivering a range of outputs from a range of sources to a range of audiences. So *Five News* extends the range of broadcast news to which viewers have access. In one month alone¹², six and a half million people watched at least some of the 7pm edition of *Five News*; and 11% of these did not tune into any other early evening national news broadcast on a rival terrestrial channel. This suggests the overall audience for news is bigger with *Five News*; and, at least in part, this is attributable to its distinct editorial approach.

Five accepts that in the future it may not be sustainable for every broadcast genre to be delivered by more than one provider. But we still believe that a PSB system, in which commercial PSBs provide a range of programming in a range of genres, is still of considerable value.

iii) In maximising reach and impact of public service content in the future, what roles can different platforms and services play?

The PSB system tended historically to assume all the commercial broadcasters would deliver in all the significant genres: news, drama, current affairs, children's, education, arts, etc. As pressures on the commercial PSBs grow, it may be appropriate to think about what each is best able to contribute. If the commercial PSBs had more explicitly defined roles, they could complement each other while competing with the BBC.

It might also be sensible to review the nature of the channels' commitments, with a view to replacing some existing "Tier 3" commitments with more explicit "Tier 2" quotas. *Five* would be prepared to enter into a commitment of this nature in respect of its children's programmes, thereby safeguarding plurality of provision for younger children.

¹² April 2008

Five is also happy to maintain our existing Tier 2 commitments in respect of news and current affairs. As we have indicated, we believe *Five News* adds to the range and diversity of TV news. We will maintain daytime current affairs, currently represented by *The Wright Stuff*, which we believe plays a valuable role as a daily programme that discusses and dissects the issues of the day.

We are also committed to providing a range of specialist factual programming in peak. Five has an established reputation for accessible science programmes through such strands as *Extraordinary People*, series like *Child in a Million* and *My Brilliant Brain*, popularising initiatives like the annual Royal Institution Christmas Lectures and programmes about technology led by *The Gadget Show*. We have a long-standing commitment to popular history programmes through our *Revealed* strand and one-off live events on sites such as Stonehenge and Pompeii. We are committed to a range of topical programming such as *Paul Merton in China*, *Banged Up Abroad* and Donal MacIntyre's investigations into crime. And we will continue to show both traditional documentary such as *Hidden Lives* and enlightening constructed documentary series such as *So You Think You Can Nurse* and *How the Other Half Learn*.

Five recognises there are some types of PSB programmes we are unlikely to be able to produce on a regular basis, including drama and scripted comedy. One of the advantages of a more differentiated PSB system is that the responsibility for delivery of such programmes can be seen as the responsibility of the PSBs "taken together"¹³, rather than of all of them individually.

Five also believes Ofcom should consider other ways in which the public service broadcasters might be encouraged to complement rather than simply compete with each other. Such ideas might include:

- The BBC using some of its promotional airtime to cross-promote PSB programmes on commercial channels
- Updating the definition of original production, to encourage more co-productions within families of channels and between PSB and pay channels
- The PSBs working together to explore production efficiencies and to exploit their content in international markets

We hope that, in the months ahead, Ofcom will discuss with the PSBs how these and other ideas might be taken forward.

We also believe Ofcom should consider carefully all applications for regulatory relief that will enable the commercial broadcasters to deliver PSB more effectively. In Five's case, we would ask Ofcom to look at:

- Sustainable origination quotas, to allow us to invest in quality programming without having to make perverse commissioning or scheduling decisions, including allowing greater flexibility over origination in peak
- Relaxation of the Ofcom rules governing our terms of trade, so we can commission across our family of channels and retain essential new media rights

¹³ Communications Act s264 (6)

- Reduction in spectrum pricing (from 2014), to help pay for the costs of public service broadcasting.

We look forward to discussing these proposals with Ofcom in more detail.

We note Ofcom's suggestion for some existing channels and services (such as More4 and ITV Local) to be able to acquire PSB status. We would expect criteria similar to those governing the existing PSBs about the reach, impact, availability and cost-effectiveness of their services, and the level of any benefits they accrued, to be satisfied first.

iv) Do you agree that the existing model for delivering public service broadcasting will not be sufficient to meet changing needs in future?

Five disagrees fundamentally that the existing PSB model is "not fit for purpose in responding to the opportunities and challenges that lie ahead"¹⁴. We believe this conclusion sits oddly with the view, stated earlier in Ofcom's document, that "television still plays a central role in delivering the purposes of public service broadcasting"¹⁵.

The existing PSB system is clearly going to be challenged in the years ahead. On the other hand, more content of a PSB nature will be provided on a range of platforms by both the market and public bodies, independently of the PSB system.

We believe it would be a mistake to contemplate discarding the current PSB system, as it still delivers significant outcomes and has the capacity to continue doing so. Instead, Ofcom should look in more detail at how it can be adapted for the post-switchover age. (We suggested some possible approaches in reply to the previous question)

If Ofcom and government believe it is important for a specific genre or service to be provided not only on the BBC but elsewhere as well, and that the commercial PSBs will definitely not deliver it, then there may be a case for an additional form of intervention. We believe the need for such involvement may well prove exceptional; and any intervention should be precisely targeted, with clear appreciation of any market impact. We agree with the view of the Culture Select Committee: "the Government and Ofcom should ensure that any decision to intervene is evidence-based, that the intended policy outcome is clear and measurable, and that the costs of intervention are transparent to consumers"¹⁶.

¹⁴ Ofcom, *The Digital Opportunity*, paragraph 6.58

¹⁵ ibid. paragraph 3.17

¹⁶ House of Commons Select Committee on Culture, Media and Sport, *Public Service Content*, First Report of Session 2007-08, Paragraph141

Section 7. Future models for funding and providing public service content

i) What are your views of the high-level options for funding public service broadcasting in future?

As we indicated above, Five is sceptical about the merits of additional public funding of public service broadcasting. We believe the PSB system will continue to deliver substantial public value, and remain to be convinced Ofcom is correct to recommend “new funds should be found to replace the current declining implicit subsidy”¹⁷.

However, if additional funding were to be contemplated, we have clear views on its potential sources.

Five is opposed to using any part of the licence fee to fund broadcasters other than the BBC. We believe the licence fee is a unique revenue source widely accepted by the public because of a clear and transparent link between what people pay and what they get – they pay the licence fee and they get the BBC. For the licence fee to be used to fund some other broadcaster(s) would cloud this accountability and potentially undermine the BBC.

It would create new forms of conflict between the BBC and commercial broadcasters. The two halves of the PSB system have competed successfully against each other for audiences but not for revenue. For the licence fee to be used to support a commercial broadcaster would undermine that system – it would be similar to allowing the BBC to take advertising.

We are not convinced of the concept of “excess licence fee revenues”¹⁸, which is a bit like the talk about a “peace dividend” at the end of the Cold War – because public funds are currently being used for one purpose of finite duration does not mean they are available for redistribution when that purpose is fulfilled. There are too many pressures on public funds and the wider economy to assume that money allocated specifically to assist the process of digital switchover can be seamlessly reallocated to some other, unrelated broadcasting purpose.

We are also opposed to any form of industry funding. There is already one form of levy linked to broadcasting (the licence fee) – it would be confusing for there to be another one. There would be potential conflicts in levying a tax on one set of content providers or distributors in order to help fund others; commercial businesses would not take happily to financing their rivals. Both current and future investment in the UK by media companies could also be affected.

The least problematic option would be some form of direct public funding. In addition to its direct funding of S4C and the Gaelic Media Service, Government already finances directly or indirectly a range of audio-visual media that could be defined as public service, from DCSF-funded Teachers TV to arts projects like tate.tv. If there are new public purposes that government believes should be met, it should pay for them from public funds.

¹⁷ Ofcom, *The Digital Opportunity*, paragraph 7.16

¹⁸ ibid. paragraph 7.21

Five is surprised to see “regulatory assets” included in a list of “new funding sources”. By and large these are assets held already by the public service broadcasters under the terms of their licences. So the only way to allocate these assets for new public service purposes would be to first remove them from existing public service broadcasters – in other words, to undermine the current system in order to finance some hypothetical new one.

We believe such a course of action would be extremely dangerous, as it would risk destroying at least part of the current system that is still delivering public service outcomes.

The existing regulatory assets are of crucial importance in guaranteeing Five’s future as a public service broadcaster. As we discussed with Ofcom when helping prepare its cost benefit analysis, guaranteed DTT spectrum and appropriate prominence on EPGs are vital to our business. We believe such assets have considerable value, and can help underpin PSB in the future.

We agree that Ofcom can provide some further regulatory relief to help safeguard PSB in the future. In particular, we believe a strong case can be made for reducing the level of spectrum charges planned for 2014 to help public service broadcasters meet the costs of fulfilling their public service obligations. As we said at the time Ofcom was considering its spectrum pricing regime, “Spectrum price waivers could form part of a basket of incentives to maintain a certain level of commercial public service broadcasting”¹⁹.

We also agree that advertising rules can have a substantial impact on the commercial health of public service broadcasters. But as we argued in our response²⁰ to Ofcom’s current review of the RADA rules, any increase in the total allowance of advertising minutes would lead to a further reduction in the price of airtime and a fall rather than an increase in overall advertising revenues. We believe it is crucial that Ofcom agrees an outcome of the RADA review process that underpins rather than undermines the economics of all the PSBs.

ii) Are the proposed tests of effectiveness for future models for public service broadcasting the right ones?

Five believes the seven tests are reasonable and appropriate, as far as they go. However, we believe four other criteria should be considered as well:

- Cost-effectiveness. If part of the underlying problem is a lack of resource for PSB, then it is essential for any new system to be value for money
- Efficiency of delivery. There needs to be clarity about how efficiently new forms of PSB can be delivered to their intended audience

¹⁹ Response of Channel 5 Broadcasting Ltd (Five) to Ofcom’s consultation on the future pricing of spectrum used for terrestrial broadcasting, October 2006

²⁰ Second Response of Channel 5 Broadcasting Ltd (Five) to Ofcom’s Review of Television Advertising and Teleshopping Regulation, June 2008

- Trustworthiness. The providers of any new form of PSB must be readily trusted, and will need to be acceptable to a large audience
- Lack of disruption. Because people are used to the present PSB system, there would be disruption costs in introducing a radically new system – a new system might deliver the same outcomes, but the audience might be less prepared to accept it. The risks of such disruption need to be weighed in assessing the merits of inventing a model from scratch

iii) Of the four possible models for long term delivery of public service content, which, if any, do you consider the most appropriate and why? Are there any alternative models, or combination of models that could be more appropriate, and why?

Five is fully committed to being a PSB, so the only one of these models we favour is Model 1.

We believe the present PSB system retains huge strengths, not least because of the position the five main channels occupy at the heart of viewers' experience of television. There is also considerable strength in a PSB system made up of broadcasters that see themselves as PSBs and have a history of delivering PSB. It is a system that guarantees plurality, reach and impact. And all of the PSBs are in the process of reinventing themselves for the digital age and making content available across a range of platforms.

We accept the current system will not deliver the same range of outputs as it has done historically. But we also believe there are ways to revitalise the system and improve its outcomes. These may include greater differentiation of roles between the PSBs; the BBC using promotional airtime to cross-promote PSB programmes on commercial channels; updating definitions of original production; reductions in spectrum tax; benign advertising rules; and other ideas touched on in this paper.

We are open to Ofcom's suggestion that Five "have more explicit ongoing obligations in areas such as children's and factual programming"²¹.

However, we are outraged at the suggestion²² that Five's PSB status should be confiscated and our "regulatory assets" distributed between ITV and Channel 4. This would be tantamount to putting us out of business – not only would we lose crucial assets essential to our business model (in particular, access to DTT spectrum), our two major commercial rivals would be able to profit directly at our expense. It would also remove one of the public service broadcasters from the mix altogether – at a stroke diminishing the range and plurality of PSB on offer. We do not see how such a move could be portrayed as part of an "evolution" strategy designed to preserve the PSB system.

Five's shareholder RTL has invested in our business on the basis of a legislative and regulatory regime that provided an opportunity to apply for renewal of Five's licence

²¹ Ofcom, *The Digital Opportunity*, paragraph 7.41

²² ibid. paragraph 7.42

after 2014. The government and Parliament decided explicitly at the time of the 2003 Act to allow Five and the Channel 3 licensees to re-apply for their licences, and foreswore other options such as auctioning them. It would be discriminatory in the extreme to allow our major rivals the option to re-apply for their licences but deny it to Five.

Model 2 would destroy the current PSB system but not replace it with anything. The BBC would be weakened, as in many PSB genres it would face no competition. The plurality that characterises the existing system would end. Implementing this model would involve taking away from the PSBs regulatory assets they currently hold, and putting nothing in their place. We do not see how this can be reconciled with Ofcom's statutory duty to conduct a PSB review "with a view to maintaining and strengthening the quality of public service television broadcasting"²³.

Model 3 would dispense with the PSB contributions of ITV1 and Five, thereby reducing plurality, reach and impact - and put the overwhelming burden of providing competition to the BBC on Channel 4's shoulders. We question whether Channel 4 has the scale effectively to compete with and complement the BBC across all genres. One of the reasons for Channel 4's unique success as a PSB is that it has not had to take on the BBC on all fronts; traditionally, ITV1 competed with BBC1 and Channel 4 took on BBC2. If ITV1 and Five are withdrawn from the PSB system, the weight of expectations on Channel 4 will become huge – and capable of overwhelming it.

Providing public funding to Channel 4, and turning it into a dual-funded broadcaster, would raise a complex set of governance issues. Firstly, the public (through whatever bureaucratic or regulatory body deemed appropriate) would need to be assured its money was going on the intended public service objectives and not used to help finance other activities or subsidise programmes that would be made anyway. Secondly, Channel 4's commercial rivals would require a transparent system to ensure public money was not being used to subsidise commercial activity. This process would be complicated further by Channel 4 requiring money not just to pay the costs of certain programmes but to cover the opportunity costs of not scheduling more profitable programmes instead.

We believe Model 4 is based on a misconception – the idea that PSB outcomes can be delivered through a series of renewable contracts. For Five, being a PSB is part of how we approach the world, an aspect of our identity. If we became wholly commercial, we would become a different sort of broadcaster, interested solely in the commercial return we could make. The only reason we would bid for public funds would be if they delivered a better financial return than commercial activity. Therefore, any system of contestable funding would need to offer contracts sufficiently lucrative to tempt us, which would mean paying us not only the cost of production but also the opportunity cost of displacing other programmes from our schedule. The same outcomes could almost certainly be offered for less by a publicly funded body like the BBC.

²³ Communications Act, s264 (3) (b)

Such an arrangement would be less trusted, flexible, innovative and cost-effective than the current model. In place of a system of PSB, based on established institutions valued by viewers, there would be an untried and unstable patchwork of providers, with varying levels of access to market.

Section 8. Options for the commercial PSBs

- i) *What do you think is the appropriate public service role for Channel 4 in the short, medium and long term? What do you think of Channel 4's proposed vision?*

Channel 4 represents a major achievement of broadcasting policy, and has made a considerable contribution to the richness and diversity of UK broadcasting. But we are highly sceptical of the case Channel 4 has made for public funding. As we said at the time of Ofcom's review of Channel 4's financial position, "Five continues to believe Channel 4 is a strong business capable of prospering financially while continuing to deliver significant public service outcomes. We see no case for immediate or early public intervention"²⁴.

We found the *Next on 4* document an impressive statement of ambitions. But it lacked any clarity as to how those ambitions would be paid for, apart from changing radically the Channel 4 funding model by providing it with ongoing subsidy. Channel 4 chose to devise a vision for itself that could only be met by being given public funding, rather than developing a vision based on living within its means.

We believe Channel 4 will be able to continue making an important contribution to public service broadcasting irrespective of whether it obtains public subsidy. As Ofcom has identified, its public status means it is able to deliver relatively more public service outcomes than broadcasters that need to deliver a return to their shareholders.

Five's principal concern is that, in the event of Channel 4 being given public subsidy, stringent governance arrangements would need to be put in place to ensure that money was spent on the purposes for which it was intended and not used to compete unfairly with Five and other commercial broadcasters. As we stated in our discussion of Model 3, the public would need to be assured its money was going on the intended public service objectives and not used to help finance programmes that would be made anyway – and Channel 4's commercial rivals would require a transparent system to ensure public money was not being used to subsidise commercial activity.

We would find it perverse if one consequence of Channel 4 receiving public subsidy was for Five to find it harder to fulfil our public service obligations. Incidentally, we do not believe that increasing advertising minutage for the public service broadcasters would benefit Channel 4 as suggested²⁵, for the reasons set out in our response to Ofcom's RADA review²⁶.

²⁴ Submission by Channel 5 Broadcasting Ltd (Five) on the first phase of Ofcom's Financial Review of Channel 4, Page 5, May 2007

²⁵ Ofcom, *The Digital Opportunity*, paragraph 8.24

ii) Which of the options set out for the commercial PSBs do you favour?

Five is committed to a future as a public service broadcaster, and wants to play a significant role in a public service broadcasting system, which also comprises ITV and Channel 4, together providing plurality and competition for the BBC.

Ofcom reports that "audiences value Five's contribution and think that it has a distinctive voice"²⁷. We agree. Five makes an important and individual contribution to the overall delivery of PSB, which is sustainable over both the medium and long term.

We have already set out in this paper what we see as the key elements of Five's public service contribution going forward: accessible news, specialist factual programmes both in peak and outside, and programmes for younger children. We would be happy to discuss further with Ofcom how this contribution can be refined and, if appropriate, made more explicit.

We believe it is commercially viable for us to maintain such programme commitments up to 2014 and beyond. In order to ensure this remains the case, we need some modest variation in our regulatory requirements, including more sustainable origination quotas, relaxation of the rules governing our terms of trade, a refining of the definition of original production and a reduction in spectrum pricing from 2014.

We also need congenial advertising regulation, including maintenance or tightening of the rules governing advertising minutage and a strengthening rather than weakening of CRR²⁸. Advertising is our single most important source of revenue. Major changes to advertising regulation could reduce substantially our income and hence our continuing ability to invest in public service broadcasting.

Section 9. Scenarios for the UK's nations, regions and localities

- i) To what extent do you agree with Ofcom's assessment of the likely future long term issues as they apply to the nations, regions and localities of the UK?*
- ii) Which model(s) do you think will be most appropriate in each of the nations and in the English regions in the long term, and why?*

Five recognises the important role programmes made for the nations and regions, especially news programmes, play in people's lives, and acknowledges the importance of trying to preserve a plurality of provision of such programmes. Only ITV, for which the provision of such programmes has been a major public service contribution, has the infrastructure and scale needed to deliver a comprehensive service throughout the nations and regions. We are conscious that, in the fully digital age, it would prove challenging for ITV to continue to maintain that contribution at its current levels.

²⁶ Second Response of Channel 5 Broadcasting Ltd (Five) to Ofcom's Review of Television Advertising and Teleshopping Regulation, June 2008

²⁷ Ofcom, *The Digital Opportunity*, paragraph 8.29

²⁸ For further details on this, see: Submission by Channel 5 Broadcasting Ltd (Five) to the Oft/Ofcom Review of the Contract Rights Renewal Undertakings

iii) What are your views on short/medium-term issues referred to, including the out of London network production quotas?

Five has consistently exceeded our ten per cent quotas for both programme spend and hours transmitted, as the Table below demonstrates. A considerable proportion of our programmes is made outside the M25 and we are committed to maintaining that. Given our size and scale, we believe we make a material contribution to out-of-London production.

Proportions of relevant programme hours and spend, 2004-7		
	Hours made outside M25	Value of spend outside M25
2007	16.6%	33.1%
2006	22.4%	21.3%
2005	30.3%	23.9%
2004	22.8%	14.7%

We would be reluctant to see an increase in our quotas. Bringing our quotas nearer our actual levels of delivery would not increase regional production, and would give us less flexibility. Given the size of Five relative to the other PSBs, there would need to be very substantial (and hence unsustainable) increases in our quotas for the total number of programmes made outside the M25 to be affected significantly.

We would oppose strongly any prospect of having to comply with out-of-England quotas. Given our scale and our current quota requirements, the benefit to production in Scotland, Wales and Northern Ireland of such a micro-quota would be minimal. But fulfilling such a quota would give us considerable difficulties: we have no history of sourcing a large number of programmes from these countries, nor (unlike all the other PSBs) do we have a permanent presence outside London.

We do not believe increasingly our regional production quotas would be a cost-effective way for Five to deliver more PSB value.

iv) What are your initial views on the preliminary options set out relating to ITV plc's regional news proposal?

We recognise the public service role ITV fulfils through its programmes in the nations and regions, but we can also see the economic imperatives that have led it to propose this reshaping of its contribution.

Section 10. Prospects for children's programming

- i) Do you agree with our assessment of the possible short term options available relating to children's programming; are there any other options available?

Five is a major broadcaster of children's programmes. We broadcast 22 hours of programmes for children every week, predominately²⁹ original production made in the UK and programmes made originally for a UK audience. We have built up an enviable reputation for our *Milkshake!* brand, which is widely acknowledged as the main competitor to the BBC's CBeebies. The only reason there is not a perceived crisis in the provision of programmes for younger children (similar to the perception of a crisis around programmes for older children) is because of Five's contribution.

We have commissioned Perspective Associates to carry out an assessment of the contribution made by Five's children's programmes. Their report is appended to this paper.

Perspective's conclusions are:

- Although the BBC is pre-eminent in children's television, in terms of investment in new programming and overall audience share, Five's *Milkshake!* brand is a strong competitor, originating more hours of pre-school children's production than CBeebies and achieving similarly very high levels of parental and child satisfaction
- The BBC and Five have very different approaches to commissioning content. The BBC's system is centralised and formal whereas Five has a more informal and collaborative approach. These two styles encourage very different sets of producers, with the BBC's system favouring larger independent producers whereas many smaller independents express a real gratitude towards Five and the support that it has provided.
- The benefits created through Five's involvement can be summarised into four broad areas:
 1. The distinctive voice that Five's younger children's television provides and the value that parents and children place on this PSB programming;
 2. The creative challenge that Five's output provides to the BBC. Both broadcasters express an admiration for each others' content and strive to win children. Interestingly this has not led to both adopting the same type of programming but instead attempting to build on their respective strengths;
 3. The plurality within the production sector which Five is critical in supporting. Five has supported the establishment and growth of numerous small firms, who would not have been able to successfully

²⁹ About two-thirds of Five's children's programme hours are commissioned material. In the twelve months to the end of May 2008, 67% of *Milkshake!* hours were original production; and a considerable proportion of the rest was British-made series first shown on other UK broadcasters such as *Rupert the Bear* and *Fireman Sam*.

- pitch to the BBC. Many of these firms are now pitching for work with other broadcasters and Five has enabled them to do so; and
4. The income within the UK production sector which depends upon Five's commissioning spend. This might be above £15m, (of Five's £6m total spend on children's television, over £4m a year goes to the UK production sector in direct revenues, supporting £11m in secondary revenues).
 - A simple focus on the financial benefits to producers derived through Five's commissioning is misleading. Much of the vibrancy of the younger children's TV production market noted by Ofcom can be attributed to Five's active involvement in this arena. As the head of a large children's independent producer noted in an interview conducted for this report: "Five is an unsung hero, it has been responsible for energising the younger children's market".

As we have made clear throughout this paper, and in our pre-consultation submissions to Ofcom, we see the provision of children's programmes as an important part of Five's PSB identity now and in the future. We are interested in discussing with Ofcom a more explicit commitment to Five's provision of children's programmes as part of a long-term PSB settlement that would entrench our commitment within the PSB system.

We are disappointed Ofcom's document made so little acknowledgement of Five's role in its discussion of short-term responses to the position of children's programmes, and hope that further dialogue can help fashion an agreed way forward.

Other ideas for safeguarding children's programmes were discussed in the document. We would favour some form of tax breaks for producers, although it must be recognised that assistance to producers is of little value if broadcasters are not committed to commissioning children's programmes in the first place. We already co-produce a number of programmes with S4C, such as *Hana's Helpline*, and remain interested in extending this collaboration where it is mutually beneficial. Channel 4's commitment to providing programmes for 10-15 year olds is welcome; but, unlike Five's commitment, is dependent in the medium to long term on external funding.

Section 11. Timetable for implementing a new model

i) Do you agree that new legislation will need to be in place by 2011 in order to ensure continued delivery of the public purposes in the medium and long term?

Five is keen to have certainty about the future well before our current Licence ends in 2014. Therefore, we would prefer any new legislation to be in place at an early opportunity.

However, if government decides to follow Ofcom's Model 1 ("evolution") and roll forward the current PSB system without significant changes, then new legislation might not be necessary.

Even if new legislation is required, the present licence fee settlement runs until April 2013 and the current PSB licences run until the end of 2014. Therefore, the window for any new legislation to be in place is slightly longer than Ofcom suggests; it would be possible, if not desirable, for new legislation to be delayed until 2012.

CONCLUSION

Five believes the present system of public service broadcasting should be preserved. Even though the commercial public service broadcasters are unlikely to be able to deliver the same range and volume of public service outcomes in future as they have in the past, we believe the system is capable of adapting so it can still deliver significant public value for the foreseeable future.

Ofcom should consider refashioning the PSB system. In this paper, we have discussed some ways in which this can be done:

- A greater differentiation of roles between the commercial PSBs, with each playing to its strengths
- More explicit commitments in some genres (including explicit quotas for Five's children's programmes)
- Congenial advertising regulation serving the interests of *all* the PSBs, including maintaining or tightening minutage rules and strengthening rather than weakening CRR
- Reductions in the spectrum charges proposed for 2014
- Setting origination quotas at sustainable levels
- Relaxation of the rules governing terms of trade, at least as they affect publishers/broadcasters
- Updating the definition of original production, to encourage more co-productions within families of channels and between PSB and pay channels
- Using BBC airtime to cross-promote PSB programmes on commercial channels
- PSBs to work together to explore production efficiencies and exploit their content in international markets

Five is proud to be a public service broadcaster and wants to continue contributing to PSB in the years ahead. The main planks of our PSB offering now and in future are:

- an accessible and distinctive news service
- specialist factual programmes, both in peak and out of peak
- a major commitment to programmes for younger children
- a substantial contribution to original UK production

Since Five was launched over eleven years ago we have been contributing to public service broadcasting, delivering real value to the UK's citizens and consumers. We believe we can continue to provide value well into the future.

Channel 5 Broadcasting Ltd

June 2008