

Question 1: Do you agree that public service provision and funding beyond the BBC is an important part of any future system?:

1. We strongly believe that public service (PS) provision and funding beyond the BBC is vital for the future of our broadcasting system. This entails the need for PSB pluralism and thus for PSB providers beyond the BBC.
2. We note, in the analysis of responses to the Phase 1 consultation, that 'there was no virtually no support for a BBC only model' (para 4.11). We share the view of virtually all respondents on this model ie that it does not provide enough choice and alternative perspectives; that certain audiences (eg the young) would be less likely to access BBC; that it would not be flexible enough to respond to future changes; and that it would lead to lack of plurality in the nations' news (4.21).
3. We further note that Ofcom's own research has indicated that 'audiences do not want the BBC to be the only provider across most areas of PS content' (3.52); that audiences value alternative perspectives (3.54); and that they believe 'competition between providers drives up quality' (3.59).
4. We equally strongly believe that the BBC should remain the 'cornerstone' of our PSB system - but this in itself implies a broader structure to support. The BBC - only model could in the long term (as we indicated in our Phase 1 response) lead to the Corporation evolving into a niche broadcaster such as PBS in the US, with the market providing all other programming. But the market is incapable of providing programming of the range and quality offered in a PSB system. Ofcom's own research confirms that 'in the short term there is no evidence to suggest that the market contribution [of PS content] will grow sufficiently to fill the gap left as pressures on the commercial PSBs intensify' (3.23); and that 'the market will not provide sufficient competition for the BBC in a number of areas highly valued by audiences'. (3.106).
5. Nor is new technology - such as on-demand TV, mobile TV, interactive TV - remotely capable of filling any potential PSB gap. Such digital technologies tend to generate more interest (including, in our view, from Ofcom) than their performance warrants. Most programming will continue to be viewed as broadcast via a TV screen for the foreseeable future.
6. In summary, PSB pluralism is and should remain an essential part of our broadcasting system - with properly funded PSB providers in addition to the BBC and a plurality of funding sources.

Question 2: Which of the three refined models do you think is most appropriate?:

7. We note that based on the Phase 1 models but discarding a BBC-only approach, Ofcom puts forward 3 refined models for the future provision of PSB:
 - Evolution
 - BBC/Channel 4, with limited competitive funding
 - Competitive funding

8. In line with our response to Phase 1, we continue to favour evolution as the only effective model for maintaining a plural PSB system; and to oppose the other two models.

9. In supporting the evolution model, we firstly strongly endorse Ofcom's view that 'the BBC should remain the cornerstone of PS content and its core programme and services budget should be secure' (3.106) - with the proviso only that we may differ on the extent of the essential 'core budget'. We further note the recent PriceWaterhouseCoopers study, which indicates that the BBC contributes £6.5b per year to the wider economy.

10. Ofcom correctly characterises (4.47) our support for the evolution model as based on beliefs that:

- Changes in technology will have relatively little impact on audiences' behaviour and what they want from PSB (which further leads us to take the view that Ofcom generally pays far too much attention to data-gathering on digital developments and too little to its core role of 'maintaining and strengthening' PSB).
- Existing institutions are best placed to meet audiences' needs.
- Maintaining these institutions is more important than opening up funding to new providers (especially, as the BBC has pointed out, because PSB institutions offer scale, space to innovate and greater independence from political interference as well as the ability to attract people motivated by PSB and to facilitate the transfer of creative skills).

11. The key characteristic of the evolution model is that 'most of the existing commercial PSBs would retain PS obligations and benefits' (4.47) - and this specifically includes ITV, Channel 4 and Five.

12. We note Ofcom's more detailed proposals (4.48-4.51) within this model, including:

- High levels of UK origination and news on ITV/C3.
- An innovative and distinctive remit for C4.
- An emphasis on UK origination and children's programming on Five.
- Additional funding for ITV/C3 national/regional services and for C4.
- A simplified licensing structure for C3.

13. We can give immediate support to all but the last of these. In respect of the proposed restructuring of C3 licences, we address that in response to the separate question below.

14. Overall, we strongly support evolution as the means of retaining a pluralistic PSB system, with a specific role for the commercial PSBs. A clear commitment to ITV's future as a PSB is urgently needed, removing any incentive for ITV to hand back its PSB licence.

15. We oppose the BBC/C4 limited competitive funding model for the same reasons as set out in our response to Phase 1:

- A significant loss of PSB plurality (ie commercial PSBs).
- The danger of PSB evolving into a niche market along the lines of PBS.
- The highly problematic competitive funding regime with extra bureaucracy.
- The linked possibility of partial top-slicing of the BBC licence fee.

16. We have a root and branch opposition to the broad competitive funding model:

- It includes all the problems of the 'BBC only' approach.
- It requires additional bureaucracy in the form of a new funding body.
- It introduces an extra layer of wasteful competition and high transaction costs into our PSB system.
- It would probably led to a net reduction in PSB programming overall and a long-term threat to BBC funding.
- It borrows from market-oriented funding regimes which have proved in many ways damaging and divisive to the delivery of our public services; and ignores the negative lessons - from other countries such as New Zealand - of contestable funding regimes in the media.
- At a time when free-market ideology has lead to such drastic consequences for the international economy, there is no sensible justification for introducing market-oriented solutions into our PSB system.

Question 3: Do you agree that in any future model Channel 4 should have an extended remit to innovate and provide distinctive UK content across platforms? If so, should it receive additional funding directly, or should it have to compete for funding?:

17. We strongly support a remit for C4 to innovate and provide distinctive UK content on PSB platforms. We flatly oppose privatisation and we accept that C4 requires additional public funding.

18. We note that the exact funding mechanisms are addressed later in the Consultation paper. At this point we are happy to indicate a general preference for direct rather than competitive funding for C4.

Question 4: Do you think ITV1, Five and Teletext should continue to have public service obligations after 2014? Where ITV1 has an ongoing role, do you agree that the Channel 3 licensing structure should be simplified, if so what form of licensing would be most appropriate?:

19. It follows from our strong preference for the evolution model that we believe ITV1, Five and Teletext should continue to have PS obligations after 2014.

20. In respect of Ofcom's proposals on the C3 licensing structure (eg 4.50), we consider that the detailed case for such changes has not yet been made and that further and better information is required, including the issue of how viewers would gain from this, as compared to the current structure.

Question 5: What role should competition for funding play in future? In which areas of content? What comments do you have on our description of how this might work in practice?:

21. We have set out in paragraph 16 above our view on the dangerous implications of adopting a competitive funding model. Underpinning this, we believe that Ofcom appears in many ways predisposed to the consideration of market-influenced models rather than strong regulatory models for the future of PSB. This, in our view, is not a sign of rigorous thinking but of intellectual weakness on the part of the regulator - which raises questions as to the extent to which Ofcom is fit for the purposes of maintaining and strengthening PSB.

Question 6: Do you agree with our findings that nations and regions news continues to have an important role and that additional funding should be provided to sustain it?:

22. We strongly agree that nations and regions news continues to have an important role and that additional funding should be provided.

23. We note the overwhelmingly supportive evidence from Ofcom's own audience research.

- 88% 'thought it important that the main TV channels provide nations and regions news' (5.4).
- 'There were high levels of agreement' that 'it was important for ITV1 as well as the BBC to provide nations and regions news programmes' (5.4).
- 'Respondents in each English region and devolved nation believe that nations and regions news provision cannot be left solely to the BBC' (5.6).

24. In summarising this evidence, we note that Ofcom seeks to distinguish views in the devolved nations from those in the English regions. However, on the core issue of whether ITV1 should continue to provide nations and regions news, viewers in the English regions clearly agree and at the same time overwhelmingly disagree that BBC should be the sole source of such news. We believe that Ofcom's overemphasis on a distinction in views and underplaying of the degree of agreement is linked more to Ofcom's proposed short-term regulatory decisions in this area (discussed later in the paper) than to a dispassionate analysis of the evidence.

Question 7: Which of the three refined models do you think is most appropriate in the devolved nations?:

25. As already indicated, we strongly favour the evolution model. We note that this is the clear preference of audiences in the devolved nations. In respect of the alternative models, we agree with Ofcom that 'the weakness of all competitive funding models is the cost involved in achieving anything like the reach and impact currently achieved by ITV (5.43); and that C4 'has no culture or heritage in delivering nations content'.. and this 'would add significantly to its funding requirement at a time when its delivery of its remit already faces challenges' (5.45).

26. However, in respect of the proposed restructuring of C3 licences, our view - as indicated in paragraph 20 above - is that the detailed case for such changes has not yet been made. It follows that this is also our attitude to the specific proposals for splitting the Border (5.27) and ITV Wales (5.28) licences.

27. We do not favour an affiliate model, since as indicated (5.38-5.39) such a model poses additional public funding demands. This, in our view, would be unsustainable at a time when funding for our basic PSB structure is already under strain.

28. Our views on specific national issues, based on our approach already indicated in Phase 1, are that:

- We would strongly oppose any diversion of BBC funding to any new Scottish channel.
- We are not opposed to the discussion of a proposed new Scottish channel (as put forward, for example, by the Scottish Broadcasting Commission) - but only if this is not funded at the expense of other PSB providers (eg in terms of priority allocation of spectrum auction proceeds).
- We continue to support a strong PSB role for BBC Wales, ITV Wales and S4C while opposing any devolution of funding responsibilities for the Welsh Assembly (which we fear would lay PSB open to competition for funding with essential public services).
- We continue to believe that the evolution model is particularly appropriate in Northern Ireland, where UTV is well placed to continue its role in our PSB system, with possible additional scope for all-Ireland initiatives.

Question 8: Do you agree with our analysis of the future potential for local content services?:

29. We note the potential funding problems of local PSB. However we support the specific initiative of BBCLocal. We regret that self-interested lobbying by local press and media interests appears to be hindering this development.

Question 9: Do you agree with our assessment of each possible funding source, in terms of its scale, advantages and disadvantages?:

Please see response to Question 10.

Question 10: What source or sources of funding do you think are most appropriate for the future provision of public service content beyond the BBC?:

30. We accept that there is an impending shortfall in PSB funding against a background of the growth of digital multichannel broadcasting which does not itself replicate the amount, range or quality of existing PSB provision. We note Ofcom's estimate that the potential shortfall in commercial PSB provision could be £145m-235m by 2012 and £170m-280m by 2015 (6.18).

31. We note that Ofcom identifies 4 possible sources of funding:

- Regulatory assets
- The licence fee
- Industry levies
- Direct government funding

32. Our view is as expressed in Phase 1. We favour regulatory assets and industry levies as sources of funding. We fundamentally oppose using licence fee and direct government funding.

33. In terms of regulatory assets, we note that these, according to Ofcom, encompass privileged access to spectrum; relaxation of PSB advertising minutage; EPG prominence; and must carry status.

34. In terms of spectrum:

- We support the continuation of gifted spectrum for commercial PSBs and note that this will be worth an estimated £120m by 2012/13 (6.27). We further note that this is easily enforceable and would be supported by audiences.
- By the same token, we would oppose any application of spectrum charges to the commercial PSBs under the proposed AIP system, noting that charges for the current spectrum allocation could be £16-34m (6.36).
- We advocate the reservation of spectrum for HD (high definition) PSB services on DTT, noting that the estimated benefits of such a policy would far outweigh the opportunity costs (as indicated in Indepen Consulting's review of Ofcom's impact assessment); and that without such a measure, Freeview's HD offering would be 'fossilised' at the level of 3 or at most 4 channels.
- In respect of PSB-HD we therefore call for an urgent review of Ofcom's market-based proposals for spectrum allocated by auction (and we have set out our arguments in more detail in our submissions to Ofcom's consultations on spectrum issues). Without such a reconsideration, Ofcom's proposals on spectrum will have pre-empted a key aspect of the PSB review.
- Furthermore, we believe that consideration should be given to allocating a suitable proportion of the proceeds of any spectrum auction (above and beyond that affecting PSB-HD) to bridging the funding gap for commercial PSB and providing vital resources for investment in digital programming.

35. We would also support proposals for increased advertising minutage (as allowed under the AVMS Directive), while accepting that any increased revenue is likely to be increasingly offset by the increased competition from digital channels.

36. Finally, we support EPG prominence and must carry rules but recognise their limited value. We recognise that the use of regulatory assets generally may not be sufficient to match the PSB funding gap without additional funding sources.

37. There is, however, a further regulatory asset which Ofcom consistently fails to mention. This is the position of independent producers - who hold a lucrative and privileged position as suppliers to PSB with fixed terms of trade (arguably heavily loaded in independents' favour) and a protected quota. Independent production has long ceased to be characterised by small, innovative, creative production houses and

is now dominated by large highly profitable corporations. Most of the 'fat cats' of British broadcasting sit not in ITV but in the boardrooms of the large independents - and a number of whom have rewarded themselves with notoriously large levels of remuneration. Why has Ofcom failed to even consider intervention in this area?

38. Ofcom should take immediate action:

- it should end its habitual reluctance to interfere with this over-privileged sector, which is parasitic on PSB.
- it should use its influence to seek a renegotiation of the terms of trade and thereby to end the independents' practice of profiteering from PSB.
- failing this, it should actively consider a reduction in the broadcasters' independent quota obligations.

39. In respect of the licence fee, we are fundamentally opposed to opening up licence fee funding to other PSB providers. The BBC licence fee settlement is already inadequate - as evidenced by large consequent job losses at the Corporation - and in our view should be renegotiated upwards. It should not be reduced even further by siphoning off essential BBC resources to other institutions - especially when there are alternative means of providing funding for commercial PSBs.

40. Top-slicing the license fee will weaken the BBC (thereby running contrary to Ofcom's own view of the BBC as the cornerstone of our PSB system); redirect public resources to private profit (including the subsidisation of programmes that might have been made anyway); impose a chaotic and wasteful system of competitive funding with high transaction costs; and, we believe, lead to a net overall reduction in original PSB production.

41. The same arguments apply to top-slicing the so-called digital excess license fee. There is no excess in the system. Siphoning-off this amount to commercial PSBs would dilute the connection between licence fee payer and BBC; erode public support for the basic licence fee; and set a precedent for future top-slicing of the core license fee. The proposal fails to acknowledge the BBC's vital and ongoing digital role, which will continue beyond 2012, and will be required in additional areas such as extending broadband connectedness and building the DAB network.

42. The loudest arguments for top-slicing the licence fee come from commercial interests and free market fundamentalists who are deeply opposed to such a successful non-commercial broadcaster. Ofcom should not collaborate with these views.

43. In contrast, we note that the BBC have set out a series of proposals for sharing ideas and expertise with other PSBs - as in the areas of digital technical standards, regional news, an enhanced Freeview platform, R&D and online availability of PSB. We believe, with Ofcom, that these partnership proposals should be explored further. We believe that constructive collaboration of this kind rather than top-slicing the licence fee is the best long-term model for relations between BBC and other PSBs. However, we believe such proposals - which have resources implications for the BBC - are only feasible if the Corporation retains the licence fee in its entirety.

44. In respect of industry levies, we strongly support the exploration of this significant

potential funding source. We note, with Ofcom, that a principal justification would be 'that content distributors and aggregators were benefiting from access to high quality UK content for which they were not paying' (6.66). We believe this is indeed the case and is borne out by the pitifully low level of UK original content relative to overall revenue that characterises non-PSB content providers.

45. We note that Ofcom's own research indicates that viewers are favourable to this option and to the arguments that 'this would be a charge on those organisations benefiting from the charging marketplace' and 'would be a fair way to fund PSB by taking money from industry to reinvest into industry' (6.71).

46. Our sole proviso in advocating industry levies is that these should be new and additional funding streams - and should not cut across or compete with existing levy-based funding streams benefiting individual creators on the basis of their IP or neighbouring rights.

47. We note that there are a number of potential forms of levy, including those on recording equipment/blank media; retransmissions; non-PSB broadcasters and new media. We set out below some estimated revenue streams, based on research commissioned by BECTU/NUJ from IPPR (Institute for Public Policy Research).

48. In respect of recording equipment/blank media levies:

- We note that recording equipment can encompass VCRs; DVD players/recorders; digital TV decoders; audio equipment; computers.
- We further note that blank media can encompass audio media, DVDs and videocassettes.
- Levies/sales taxes on a number of such items have been introduced in a range of countries, including Belgium, Finland, Netherlands, Sweden and Canada. However, we note that such funds are often earmarked for copyright holders and potential revenues (eg from a 1% levy on the retail price) are relatively limited (especially if audio and computer items are excluded).

49. In respect of retransmission levies:

- We note that these are used in 30 European countries; that they apply to cable/satellite platforms broadcasting material for which no direct fee is paid to the original content provider; that the relevant international agency AGICOA collected 95 million euros in retransmission levies in 2007.
- Using BSkyB and Virgin Media as examples of such platforms in the UK, a £5 annual levy per subscriber could yield an estimated £63m (£45m from Sky and £18m from Virgin). This reflects such companies' growth in subscription income during a period when free-to-air PSB revenue streams have been in decline.
- We note, however, that the retransmission levy system in Europe is geared to compensating copyright-holders rather than investing in PSB.

50. In respect of levies on non-PSB broadcasters:

- We believe that such a levy system could apply to the same companies/platforms as would any retransmission levy, but would be based on company revenue rather than

subscribers.

- Based on company annual reports for 2007, IPPR estimates that a 1% levy on broadcasting revenues would yield £45m from BSkyB and £25m from Virgin Media (consumer cable division). A 3.4% levy would in itself bridge Ofcom's entire estimated PSB funding gap of £235m.

- These figures are purely illustrative but they indicate that an eminently justified levy on non-PSB broadcasters (which produce negligible original UK content relative to revenue) could yield very significant resources with which to address the PSB funding gap.

51. In respect of new media levies:

- We note that this could encompass levies on internet service providers (in respect of the access to broadcast material via broadband internet) and telecom/mobile phone companies (in respect of access to video material over internet-enabled mobile phones).

- While not supporting the broader changes being introduced to the French PSB system, we note that such levies are due to be introduced in France (apparently at a level of 0.9% of relevant company revenue).

- For purely illustrative purposes, we note IPPR's estimate that a £5 per subscriber levy on households with broadband access could raise an annual yield of £71m (although our own preference would be for a levy geared to company revenues rather than subscribers).

- We further note that companies such as Google and You Tube derive large revenues from online advertising and that an online advertising sales tax would be another potential source of funding for original UK content.

52. We call on Ofcom to give detailed consideration to industry levies - especially those on non-PSB broadcasters and new media platforms (which do not compete with existing income streams to rights-holders). Ofcom should not be diverted from a detailed exploration of these options by the anticipated objections from non-PSB companies which are gaining immensely from the digital marketplace but which contribute a totally insignificant amount of original UK content. Nor, in the light of the European Commission's Protocol on PSB should Ofcom be dissuaded from this course by fear of potential EC state aid arguments.

53. Industry levies offer the opportunity to use significant new income streams to address the PSB funding gap. They are eminently justified. A regulator committed to maintaining and strengthening PSB is, in our view, duty bound to pursue these options.

54. In respect of direct government funding, we oppose this politically vulnerable method of finance, with its negative implications for editorial independence and creative freedom. This, in our view, would potentially be extremely unpopular with the public and would place PSB in competition with other calls on public funding. It should not be given further consideration.

55. In summary, we strongly favour exploring the options of industry levies (especially on non-PSB broadcasters and new media) and of regulatory assets (especially gifted spectrum for PSB-HD and possible auction proceeds). We

completely oppose the use of licence fee income outside the BBC and we do not favour direct government funding.

Question 11: Which of the potential approaches to funding for Channel 4 do you favour?:

56. We recognise that Channel 4 faces a future funding gap and note Ofcom's analysis that by 2012 C4 could require additional funding of £60-£100m to deliver its existing remit, let alone any additions to this.

57. It follows from our views on the range of PSB funding models, that we do not favour a number of the listed potential approaches for funding C4. Specifically, and for the reasons set out above, we do not favour direct government funding, top-slicing the licence fee or inheriting ITV/Five regulatory assets (ie in the event that they relinquish any PS role).

58. We favour, and again for the reasons set out above, use of an industry levy and indeed of regulatory assets such as privileged spectrum access and increased advertising minutage.

59. We favour some form of collaboration with BBC Worldwide but we are opposed to any partial or complete transfer of Worldwide ownership or profit from BBC to C4. Since Worldwide profits are an essential revenue stream which is redirected back into BBC programme production, such a transfer of BBC assets would be equivalent to top-slicing ie supporting C4 only at the direct expense of the BBC. For the reasons set out above, we would oppose this.

60. Instead, we believe C4 could benefit considerably from Worldwide's distribution resources and expertise (and possibly from commercial joint ventures). Indeed it is possible that other PSBs more generally could benefit from such a constructive collaboration with Worldwide - and additional resources generated in this way could be diverted back either directly (eg to C4) or indirectly via a trust accessible also to other PSBs.

61. Finally, we would support consideration of cross-promotion of C4 by the BBC - without at this stage directly supporting this proposal.

Question 12: Do you agree that our proposals for 'tier 2' quotas affecting ITV plc, stv, UTV, Channel TV, Channel 4, Five and Teletext are appropriate, in the light of our analysis of the growing pressure on funding and audiences? priorities? If not, how should we amend them, and what evidence can you provide to support your alternative?:

62. We note ITV's unilateral announcement of cuts of £40m in its regional news budget and its further proposals for cuts in other areas - with its consequence of reduced output, merged regions and severe proposed job losses. We note Ofcom's collaboration in this process by approving - with minimal amendments - this fait accompli.

63. BECTU's view, as already publicly expressed, is one of active opposition to these proposals which undermine ITV's previous PSB commitments and Ofcom's previous indication that it would not make further concessions to ITV in the current licence period.

64. This is a fundamental - potentially terminal - erosion of ITV's distinctive characteristic of a strong regional structure. It will result in a regional news structure which is meaningless to viewers (with regions extending, for example, from Penzance to Worcester and Dumfries to Yorkshire). It flies in the face of consistently and strongly expressed audience preferences - as indicted in Ofcom's own research - for a high value on regional news output and a plurality of supply of that output. In the long term, this 'encumbrance-free' model for ITV makes a takeover all the more likely - by new owners positively attracted to a stripping out of PSB obligations.

65. This whole process is ultimately a comment on Ofcom's failure to act as a strong regulator committed to 'maintaining and strengthening' PSB. Ofcom facilitated the original creation of ITV plc and is now facilitating the erosion of its regional character. Light regulation has in effect become deregulation.

66. There has been no attempt to hold ITV to its PSB commitments - pending the provision of additional funding from the sources outlined earlier in this paper. ITV is still fundamentally a profitable and viable company. We strongly believe that it should be required to maintain its existing regional commitments - with the promise of additional funding prior to any point at which its PSB licence is no longer commercially viable. That point has not yet been reached. The regional cuts are therefore in our view completely unjustified.

67. On a similar basis, we do not agree with the proposed permanent reduction in the programming obligations of STV and UTV. We accept these companies face an impending PSB funding gap. But this should be remedied by measures to provide funding not by the permanent weakening of PSB obligations. We note Ofcom's contrasting approach to Channel 4, where 'new long-term funding arrangements' are linked to an increase in C4's out-of-London production quota.

68. We welcome the strengthened commitment to children's programming indicated by BBC, Channel 4, S4C and Five.

Additional comments:

69. We hope Ofcom will take note of our views, especially:

- Support for the evolution model, with a plurality of PSB providers, including BBC, ITV, STV, UTV, Channel Four, S4C and Five.
- The need for Ofcom to reconsider the regulations governing the over-privileged independent production sector.
- Strong opposition to top-slicing the licence fee.
- Support for the use of industry levies (especially on non-PSB broadcasters and new media) and of regulatory assets (especially gifted spectrum for PSB-HD and possible auction proceeds).
- Strong opposition to any short-term reductions in ITV's regional programming

obligations.

70. More generally, we think Ofcom should reconsider its own role:

- Ofcom's preference for a default position of light touch regulation and market-oriented solutions is as inappropriate in broadcasting as it has proved to be in the global financial system.
- Support for market-influenced solutions is a sign not of intellectual rigour but of intellectual weakness. Ofcom appears to lack a strong and coherent regulatory ideology; to underestimate the strong non-economic social, cultural and democratic benefits of PSB; to adopt a position of excessive deference to commercial interests; to underestimate the damaging consequences of market failure and corporate greed; and to fail to recognise that strong regulation, not market forces, underlies the success and popularity of PSB.
- After a generation of free-market triumphalism - with private, commercial solutions preferred wherever possible to public regulation and provision - we now face the drastic economic and social consequences. Light touch regulation never was appropriate in broadcasting and it is particularly inappropriate now. We need a regulator which recognises this - not the light-touch, lightweight approach favoured by Ofcom.