Driving investment and growth in the UK's TV content industries

Response to Department for Culture, Media and Sport discussion paper

September 2012

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Section 1

Introduction

1.1 Ofcom welcomes the publication by the Department for Culture, Media and Sport (DCMS) of the discussion paper to accompany its seminar on the TV content sector on 14 July 2012. We were also happy to contribute to and participate in that seminar.

1.2 In this response to the discussion paper, we set out some of the issues which we believe warrant consideration in the Communications Review. We do this with reference to possible market developments and possible associated regulatory changes.

1.3 The UK has a successful content sector, delivering a mixed ecology of public service and commercial output. The regulatory regime continues to provide important interventions to secure desirable public service content and there are increasing global opportunities for UK companies to exploit UK content, building on the strength of UK brands and a healthy and thriving production sector.

1.4 Our duties in regard to this sector are set out in the Communications Act 2003[1], and include:

- our principal duty under section 3(1) to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition;
- a duty under section 3(2) to secure the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
- a requirement under section 3(4) to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK;

1.5 Encouraging investment in the UK's creative sectors to support growth and innovation will bring benefits to consumers, making maximum use of the UK's creative strength.

[1] http://www.legislation.gov.uk/ukpga/2003/21/contents

Section 2

The market context

2.1 In this section we outline key market metrics and trends as context for any discussion around growth in the TV content industries.

2.2 The revenue required to invest in UK content comes from a number of different sources:

a) The television licence fee

b) Commercial ad-based revenue

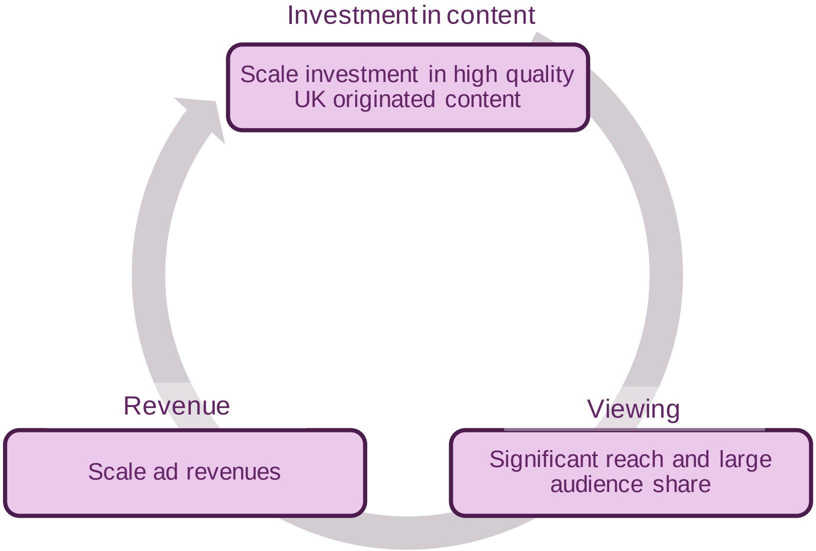
c) Commercial subscription-based revenue

d) Commercial public service broadcasters (PSBs), who combine ad-based revenue with value extracted from regulatory assets

2.3 Content production in the UK has historically been underpinned by the public funding of the BBC, complemented by granting benefits to commercial PSBs to deliver programming that may not be delivered by the market alone. In addition, pay TV subscription models are now beginning to deliver direct investment in UK content.

2.4 The traditional commercial model of funding investment in content was based on a 'virtuous circle' of reach and large audience share driving scale advertising revenue which in turn produced scale investment in high quality UK content.

Figure 2.1 Virtuous circle of commercial content investment

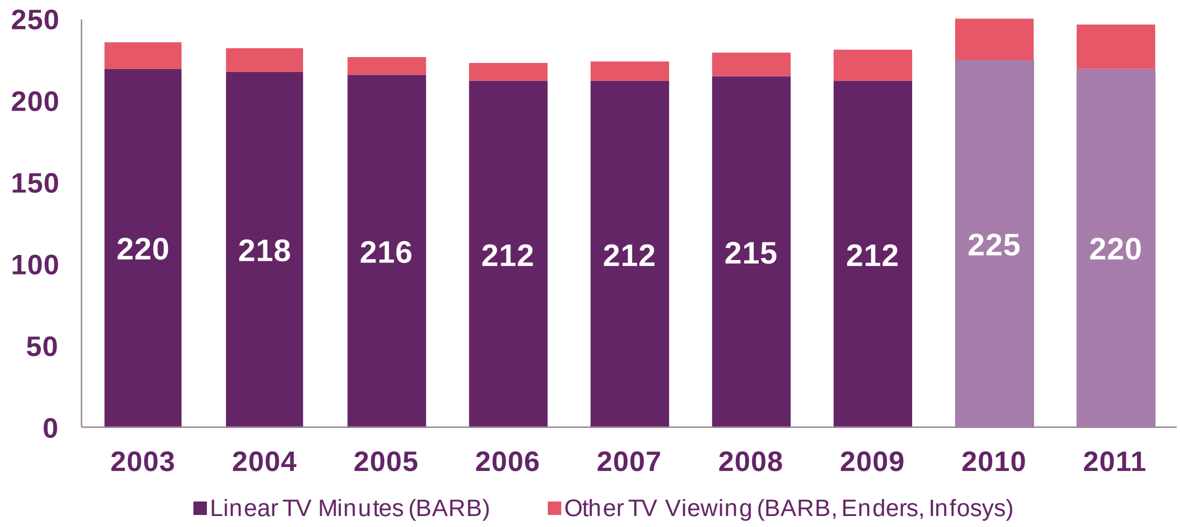


2.5 The success of the current commercial content system continues to be a result of these three interlinking factors. However, future developments in the industry may challenge this virtuous circle.

Television consumption is fairly stable at present, with changes in viewing habits only at the margins

2.6 Viewing is broadly flat. On average in 2011 viewers watched 4 hours of TV per day, which has remained stable year-on-year. At present, linear viewing still dominates, with less than 10% of viewing being on-demand across all homes (figure 2.2). Even homes with access to a multitude of on-demand content do not use these services as the main mechanism for watching TV.

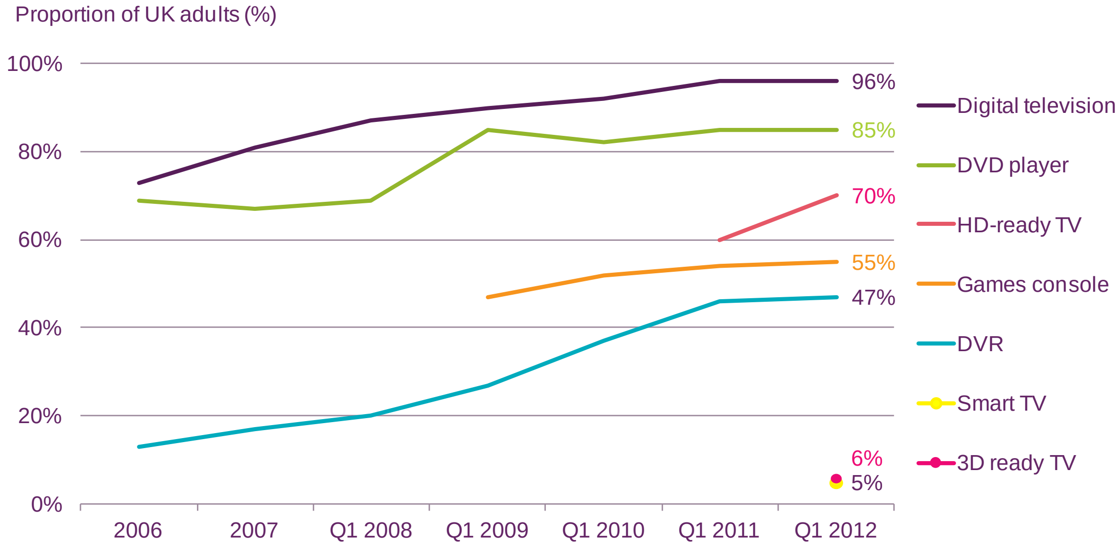
Figure 2.2 Average minutes of television viewing per day by type



Source: BARB/Enders/Infosys. Note: New BARB panel introduced in 2010. As a result, pre- and post-panel change data must be compared with caution.

2.7 There are, however, more ways for viewers to access and consume content than ever before. Device penetration of new services is increasing – half of UK homes have a digital video recorder (DVR). Just under a third (29%) of UK adults use catch-up TV services online. And Smart TVs are on the increase – available in 5% of homes and representing one fifth of all TVs sold since 2010.

Figure 2.3 Take-up of audio-visual devices, 2006 – 2012 Q1



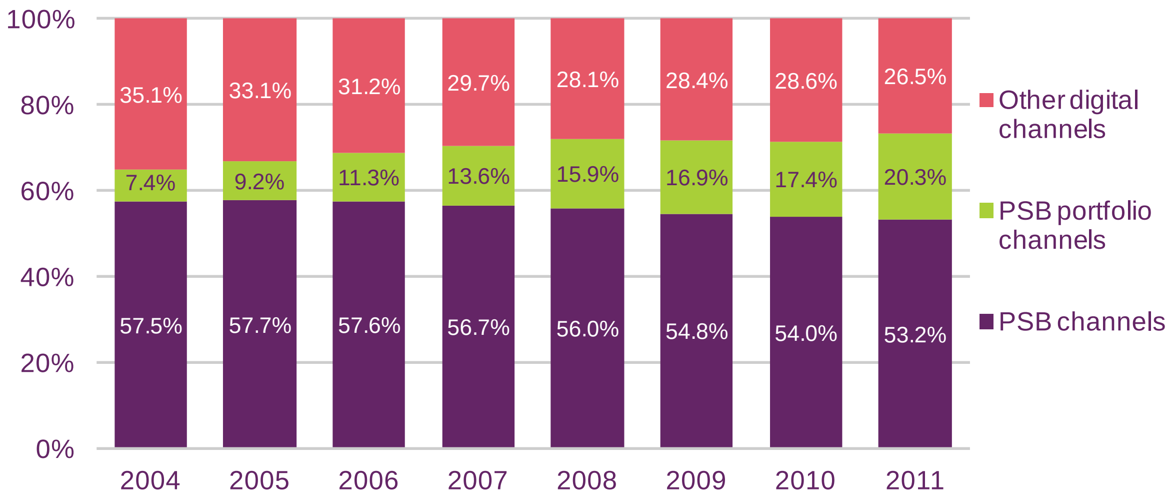
Source: Ofcom Communications Market Report (CMR) – Ofcom Technology Tracker survey. Note: The question wording for DVD Player and DVR was changed in Q1 2009, so data are not directly comparable with previous years.

PSB channels have lost share, but their overall portfolios are actually increasing

2.8 The main five PSB channels still account for 53% of TV viewing. While still high, this represents a significant decline over time. The change in the share of viewing held by the PSBs has been affected by Digital Switchover (DSO) increasing the availability of multichannel TV.

2.9 PSBs have adapted very well to the digital age – the rollout of new digital channels such as ITV2 and E4 has limited the overall impact of DSO, and these broadcasters have been largely successful in retaining audience share within their multichannel families (figure 2.4).

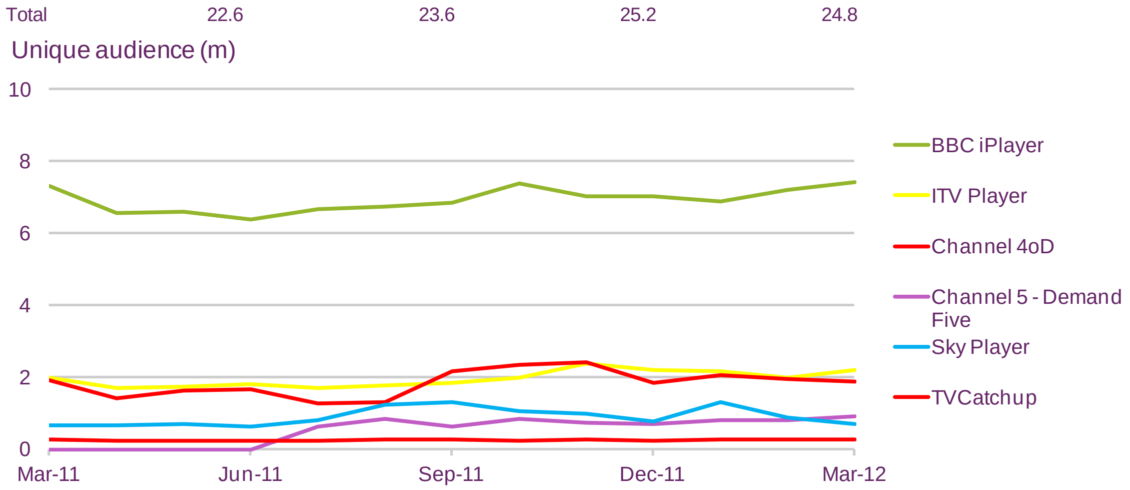
Figure 2.4 PSB and portfolio channel share in multichannel homes



Source: Ofcom CMR – BARB. Note: New BARB panel introduced in 2010. As a result, pre- and post-panel change data must be compared with caution

2.10 This success is matched in the time-shifted/on-demand world as well, where PSB output is the most requested content. The BBC iPlayer is by far the most used catch-up service, followed by ITV player and 4oD.

Figure 2.5 Unique Audience to online catch-up TV services



Source: Ofcom CMR – UKOM/Nielsen, home and work panel.

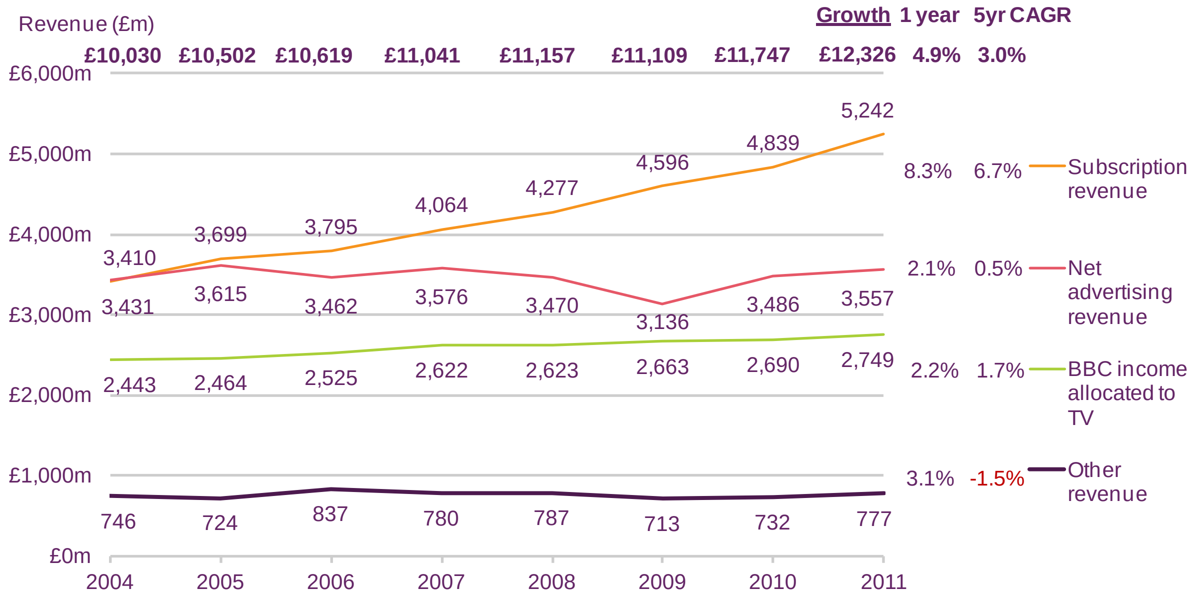
The TV industry is growing overall – driven mainly by subscription, with stabilising ad revenue

2.11 The UK television industry generated £12.3bn in revenue during 2011, an increase of £579m (5%) on 2010 in nominal terms, driven by an increase in the advertising market, coupled with continued growth in subscription revenue.

2.12 TV broadcasters experienced a 2.1% increase in net advertising revenues (NAR) in 2011, up £72m year on year, to £3.6bn. The advertising industry is showing steady growth, following the sharp decline in 2009 as a result of the economic downturn. Growth in pay-TV subscriber revenue also increased year on year; by 8.3% to £5.2bn in 2011 – the highest level recorded since we began tracking this data.

2.13 We estimate that the BBC spent £2.7bn on its television services in 2011, an increase of 2% on 2010, although its share of total industry revenue remained broadly consistent, at 22%.

Figure 2.6 Total TV industry revenue, by source

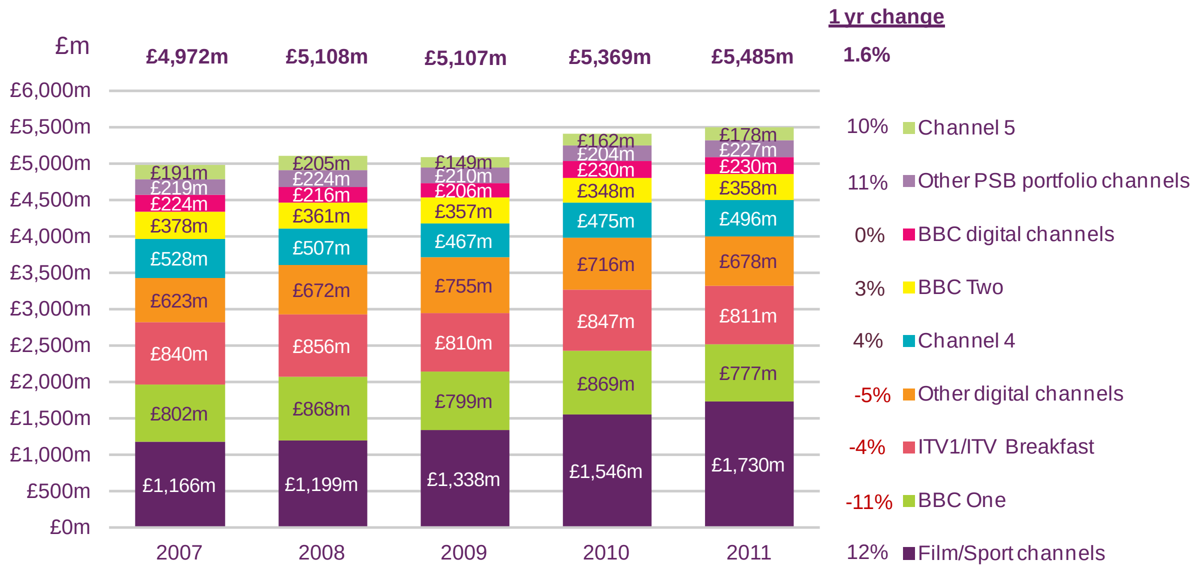


Source: Ofcom CMR – Ofcom/broadcasters. Note: Figures expressed in nominal terms

Spend on UK TV programmes is increasing, but the relative mix of spend by channels is changing

2.14 In 2011, film and sport channels have continued to show increases in spend, while the most-watched channels, BBC One and ITV1, decreased in spend. Expenditure on non-PSB channels that are not sport or films declined slightly to £678m.

Figure 2.7 Spend on network TV programmes: 2007-2011

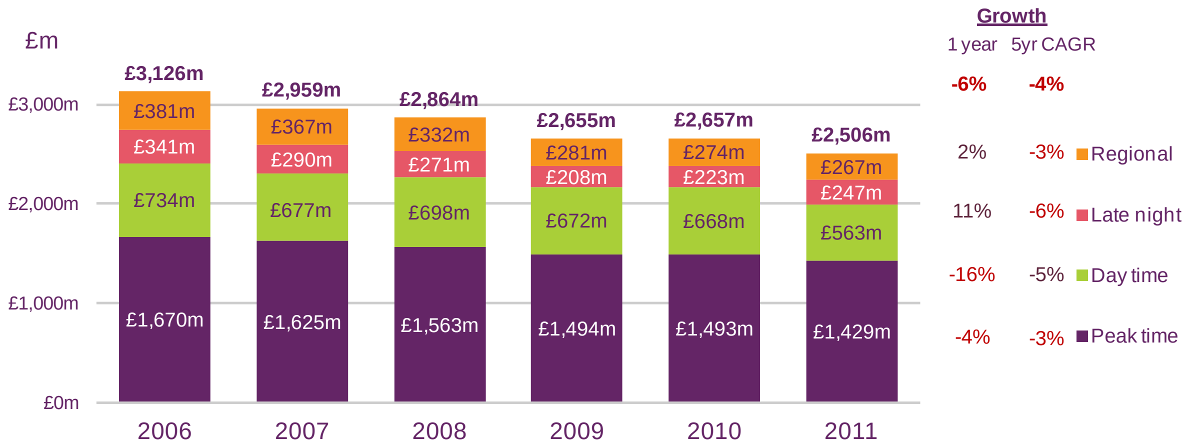


Source: Ofcom CMR – Ofcom/broadcasters. Note: Figures expressed in nominal terms

2.15 Spending on originations for the five main PSB channels decreased by 6% in 2011, continuing several years of gradual decline dating back to 2006. However, the year-on-year decline is driven in part by the fact that 2010 figures include output related to the FIFA World Cup and the Vancouver Winter Olympic Games - by comparison

2011 was a relatively quiet year for sport, with less spend on first-run originated content in this genre.

Figure 2.8 Spend on first-run originated output on the five main networks



Source: Ofcom CMR – Ofcom/broadcasters. Note: Figures are expressed in 2011 prices.

2.16 It is worth noting that these figures do not take account of funding for originations contributed by independent producers. For some programmes, independent funding can be significant.

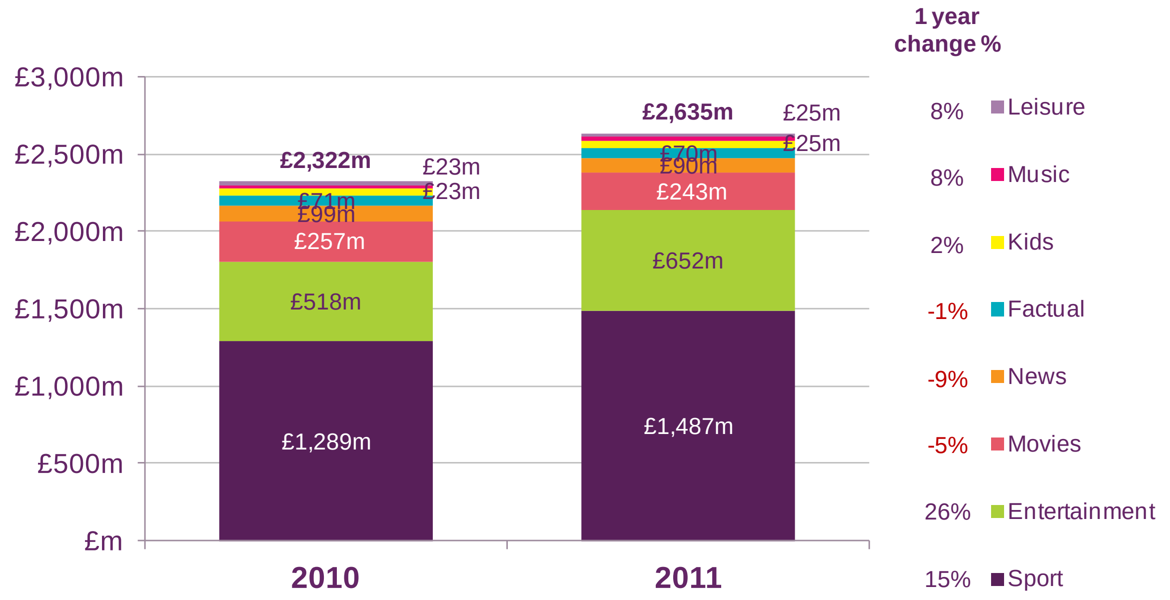
2.17 The independent production sector has grown through secondary revenue streams. PACT estimates that the independent production sector as a whole saw revenues increase by 2.3% in 2011, to nearly £2.4bn[2]. This growth was driven primarily by an increase in international sales and UK rights income.

2.18 Commercial multichannel broadcasters in the eight mainstream genres spent £2.6bn on programming in 2011, a 13% year-on-year increase. At £1.5bn, sports programming represented more than half of the total multichannel spend, up 15% year on year, while investment in Entertainment channels rose by 26%.

2.19 News had the biggest proportional decrease in content spending over the same period (-9%). Spending on news by commercial multichannels stood at £90m in 2011, down from £139m in 2008.

[2] Pact Independent Financial Census and Survey 2012, http://www.pact.co.uk/support/document-library/financial-census-and-survey-2012/

Figure 2.9 Content spend by commercial multichannels in key genres: 2010-2011



Source: Ofcom CMR – Ofcom/broadcasters. Note: Excludes BBC digital channels.

Output is broadly stable in the short-term, although first run originations are at a lower level than 5 years ago

2.20 Although spending by the PSBs on originations decreased slightly in 2011, total broadcast hours of originated programming increased by 2%. Network hours of first-run originations in peak were relatively stable, increasing by 0.5%.

Figure 2.9 Hours of first-run originated output on the five main channels

Source: Ofcom CMR – Ofcom/broadcasters. Note: Figures include ITV Breakfast but do not include the BBC's digitalchannels. Regional hours exclude Welsh and Gaelic-language programming but do include a small proportion of Irish-language programmes.

Section 3

Key drivers of change in the sector

3.1 In this section, we examine how the business models for content investment might evolve over the period during which a new Communications Act might operate.

3.2 In particular, we focus on whether future developments in the industry may challenge the virtuous circle of commercial content investment that we identified in section 2, examining possible changes in commercial consumption, revenue and investment.

Changes in consumption

3.3 As outlined in section 2, linear viewing is robust at present. But a move by viewers towards different methods of consumption (i.e. time-shifted, on-demand viewing) might disrupt the current content ecosystem.

3.4 The biggest change in consumption may come from evolutions in content navigation and discovery. This has the potential to be disruptive to models of securing investment in content.

The penetration of devices and services that deliver and manage content is increasing

3.5 New types of technology are now available which allow content services to be consumed and sold to audiences in different ways. From new 'over-the-top' (OTT) services like Netflix and Lovefilm to connected platforms such as YouView, there are more ways for viewers to access the content they want to watch.

3.6 The take-up and use of these technologies varies, as does their growth in share of viewing. Consumption of non-linear content is likely to grow as suitable devices become ubiquitous, and take-up of broadband services increases.

3.7 Timeshifted viewing represents the majority of non-linear viewing, and is mostly done through DVRs. Catch-up services are the next biggest and fastest growing form of non-linear consumption, but these are still small in relation to DVR use. Smart TVs – which mix several different types of functionality – are an emerging market.

The factors that drive linear TV will still be relevant in the future

3.8 Despite the emergence of technologies which give users greater choice as to when and what they watch, there are good reasons to believe that linear viewing will remain the mainstream method of consuming content in the medium term.

3.9 Certain factors that drive linear viewing currently will continue to be relevant during this period, even as non-linear delivery becomes more mainstream and available. These factors include:

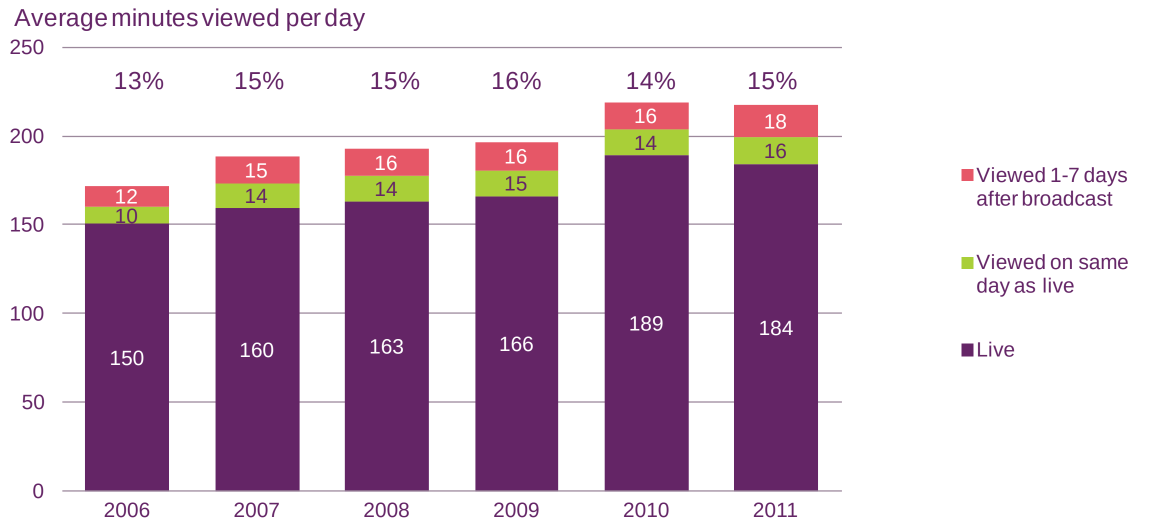
- *The 'water-cooler' effect*: Discussing TV shows with friends and colleagues relies on a linear TV schedule. This is reflected by the fact that 50% of timeshifted viewing actually takes place on the same day as the live broadcast. Services such as social networks which enable instant communication have the potential to further reinforce the importance of live linear viewing.

- *Event TV*: Some TV programmes (such as sport, entertainment show finals and events of national importance) will always be predominantly viewed live. New methods of distribution might actually expand the number of event broadcasts – for example, either through more extensive coverage of high-profile events (such as the additional services offered by the BBC during the London 2012 Olympic Games), or content from new providers who have experimented with live broadcasts online (such as the Royal Opera House).

- *'Lean back' consumption*: Accessing on-demand content has often required users to make active choices (either to record a programme in the first place, or to search for the content they want to watch). The linear TV schedule will continue to prove popular with consumers who want a more passive viewing experience.

3.10 In addition, it is worth highlighting that technology which enables non-linear viewing has been available for a number of years (for example, Sky+ was launched in 2001). Households that have adopted these technologies do not appear to have markedly changed their behaviour, with linear viewing still the predominant method of consumption.

Figure 3.2 Live versus time-shifted viewing, DVR homes



Source: Ofcom CMR – BARB, DVR owners, all homes. Note: New BARB panel introduced in 2010. As a result, pre- and post-panel change data must be compared with caution

3.11 It is possible, therefore, that linear TV will remain the primary method of consuming content for the foreseeable future, with only incremental shifts towards non-linear viewing as penetration of devices and services continues to increase.

3.12 While current measures suggest that linear TV will remain robust, it is also possible that disruptive factors could challenge this, particularly if a combination of changes at various levels of the value chain occurred. Similar disruptions have occurred in other media markets, such as book publishing and music recordings.

3.13 Possible disruptive factors to the current system could include:

- Independent content producers seeking to abandon the broadcast window and develop their own linear/non-linear service direct to market.

- Superfast broadband services being rolled-out across the UK with high take-up, enabling new methods of mainstream distribution.
- New devices which makes use of existing video-on-demand (VOD) technology in a mainstream manner.
- A significant change in consumer habits in terms of viewing.
- A shift in advertiser attitudes away from mass market campaigns in favour of targeted (but lower reaching) approaches.

3.14 Although the likelihood of such changes may be limited, there is a still an obvious need to take these into account when considering policy and regulatory options in the future.

The biggest consumption change is likely to be in how consumers discover content

3.15 To date, DVR devices such as Sky+ and Virgin Media's previous offerings have tied timeshifted viewing of recordings to linear discovery and linear distribution. Users select the programmes or series they wish to record from the same electronic programme guide (EPG) that they use to navigate live linear TV schedules.

3.16 Other types of on-demand services (e.g. Netflix) are different – viewers do not access a traditional linear EPG to identify and select content, but are instead presented with other methods of navigation.

3.17 As devices and services evolve, this trend could increase. Alternative methods of navigation could develop which differ markedly from existing linear EPGs. These alternatives might include:

- My-EPG: There are clear user benefits to an EPG which displays "favourite shows" based on viewing behaviour. TiVo already offers this, presenting favourites alongside sponsored content promotions. This could present new targeted revenue opportunities, but may reduce users' likelihood of stumbling across content which differs from their established preferences.
- The App-EPG: Apps are now fully understood by consumers due to smartphone and tablet take-up. Use of apps as a discovery tool by both content providers (OTT services) and platform operators is increasing.
- The Social EPG: third-party apps like Zeebox allow users to sort channels according to the live audience among Zeebox users, or among their own social network.

3.18 Although all of these examples already exist, if consumers do begin to discover content in different ways *en masse*, this could in turn impact on the prominence of UK content and the virtuous circle of commercial content investment.

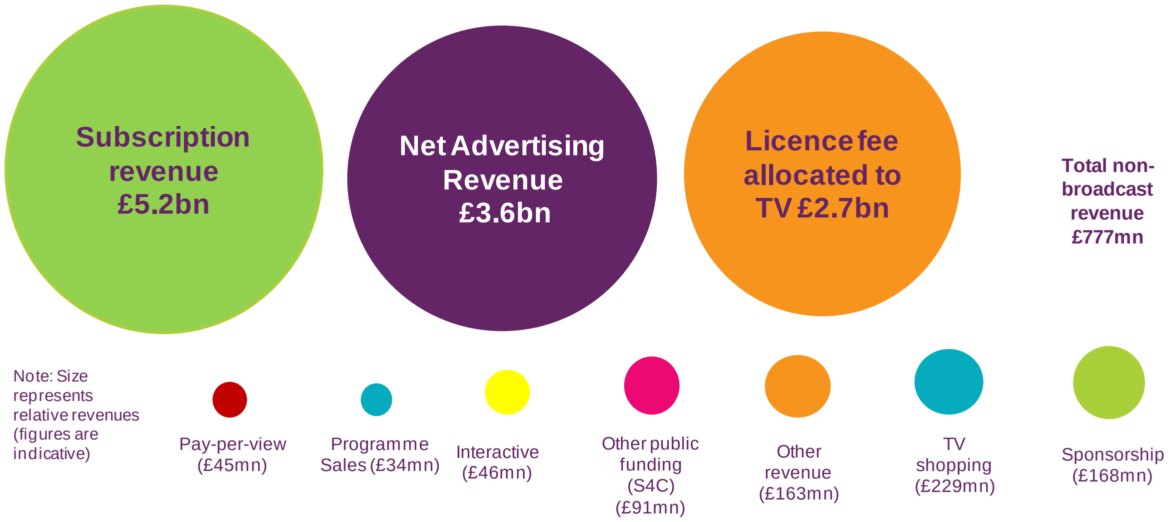
Changes in revenue

3.19 As highlighted, the TV sector as a whole continues to grow, driven in the main by an increase in pay-TV subscription alongside stable advertising revenue and public funding.

3.20 Changes in technology, regulation and distribution have enabled a range of new models to generate income from content exploitation (including VOD, pay per view, TV shopping, sponsorship etc)

3.21 However, they remain small relative to advertising, subscription and the licence fee and are complementary to these sources rather than representing a viable alternative income stream.

Figure 3.3 Sources of revenue for the UK TV industry – 2010/11



Source: Ofcom CMR – Ofcom/broadcasters. Note: Totals may not equal the sum of the components due to rounding.

3.22 Any significant change in the major sources of revenue would have a clear impact on the virtuous circle of content investment.

Certain factors indicate that TV advertising could remain relatively stable, despite challenges

3.23 The rise of the internet has had a profound effect on the UK advertising market. The ability of businesses to provide targeted, bespoke information to consumers who are looking for particular products has revolutionised the way in which advertising operates.

3.24 This change has come at the expense of existing media, and particularly the print media. Internet advertising in categories such as search and classified have taken share from print advertising in particular over the past decade.

3.25 To date, the effect on TV has been less marked. TV's share of total UK advertising spend in 2011 (29%) is at a similar level to 2005 (30%)[3]. This suggests that the key strengths of TV advertising such as the mass reach it delivers are viewed by advertisers as unique, and complementary to more targeted online offerings.

3.26 The ability to deliver reach as audiences continue to fragment will be key to TV's future appeal to advertisers. Big brands building awareness are likely to continue to demand this form of mass reach.

[3] Advertising Association

Growth in subscription revenue will have consequences for non-PSB content spend

3.27 As noted, the sector itself is growing overall because of an increase in subscription revenue. Since 2005, subscription revenue has been the largest source of TV industry revenue and now represents 42% of total sector income.

3.28 As a consequence, multichannel spending on UK originations has grown rapidly, albeit from a low base. Should subscription revenue continue to rise, this trend can be expected to continue, which is a very positive force in creating a dynamic, mixed UK broadcasting ecology.

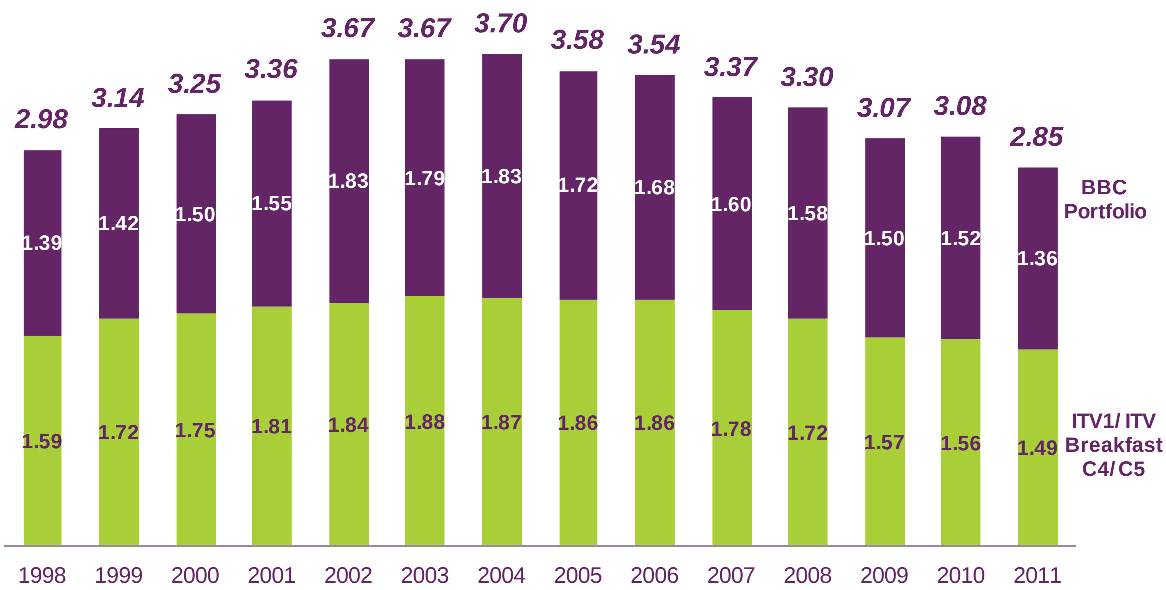
Changes in content investment and production

3.29 As noted, spend on UK TV programmes is increasing, but the relative mix of spend is changing, with the multichannel sector and independent producers now playing a much more significant role. Future changes in content investment will, in part, be driven by developments in the other aspects of the virtuous circle – viewing habits and revenues.

The PSBs have had to deal with pressures on their content spend

3.30 As highlighted, PSB spend on UK content has been under pressure in recent years. In real terms, total PSB spending has declined since 2004, while in nominal terms, PSB investment in content over the last eight years has been broadly flat.

Figure 3.4 PSB overall network spend (£bn)



Source: Ofcom PSB Annual Report 2012 – Ofcom/broadcasters. Figures are expressed in 2011 prices.

3.31 The story is broadly similar in terms of first-run originations. After a rapid increase in investment between 1998 and 2004, content spend in this area was broadly flat in nominal terms until being affected by the recession.

3.32 Absent significant changes to the viewing of PSBs and their portfolios or material shifts in revenue, this trend is likely to continue.

The independent production sector is a key part of the content ecosystem

3.33 The independent production sector is continuing to grow, despite declines in PSB commissioning revenue. To make up this shortfall, indies have increasingly contributed additional ‘deficit funding’ themselves and are, of course, also benefitting from increased investment from non-PSB companies in UK content.

3.34 Deficit funding is comprised of:

- gap finance (where the primary commission is less than the direct costs of the programme),
- co-production (where a foreign broadcaster jointly funds production) and
- research and development (where investment is received to generate ideas and proposals for programmes)

3.35 Deficit funding effectively spreads the risk of commissioning or producing new creative content across multiple parties. Independent producers may take on greater financial risk in return for the ability to sell the secondary rights, or the PSBs could look to spread the costs of production with foreign broadcasters.

3.36 The flexibility to secure alternative sources of funding has enabled more investment to flow into the content on UK screens despite cyclical pressures on advertising revenue and the flat licence fee.

3.37 Co-production finance brings international funding to content producers in return for local rights. Typical deals involve US broadcasters funding an element of production costs in return for the first run rights in their local market.

3.38 This is not a new source of income but it is growing. PACT estimated it to be worth c. £100m in 2011.

3.39 The increasing prevalence of such financing arrangements has led to some concerns that a co-production partner may influence the editorial look and feel of the content such that it is in line with consumer expectations for their local market.

3.40 The ability of the independent production sector to exploit new sources of revenue could be fundamental to encouraging growth in the TV content industries. The consequences of this trend – both economic and social – may merit further consideration.

Growth in non-PSB spend is very positive for the UK content sector

3.41 As noted, growth in TV content spend has been driven primarily by Pay-TV sport and movie channels. These channels now represent 31% of total spending, up from 23% in 2007.

3.42 In recent years, Sky has differentiated itself by increasing its investment in both US acquisitions and UK originations. It has committed to increasing UK production spend to £600m by 2014. This excludes sports rights, but includes production on sports programming as well as Sky Arts and other Sky originations.

3.43 A recent report released by the Commercial Broadcasters Association (COBA) suggested that its members invested more than £600m in UK content in 2011 (of which nearly £500m was first run), and that investment in UK content has increased by more than £140m since 2009. The report also found that over a third of originated content investment was spent with the independent production sector.

Section 4

Driving growth through regulatory change

4.1 In this section we give consideration as to whether the legislative and regulatory framework in place at present presents opportunities for growth in the sector, whilst continuing to deliver the content consumers want.

4.2 We have had particular regard to the two issues that the DCMS discussion paper invited comment on – those of EPG prominence and conditions of carriage consent for broadcasters and on broadcast platforms.

Summary of the current regulatory system

4.3 The current regulatory system is focused predominantly on PSBs. This approach creates institutions with scale and mass market reach that have the delivery of PSB programming as a key objective. The present system has supported a growing content ecosystem with good levels of funding flowing into content creation.

4.4 The most significant intervention in the market remains the BBC, which continues to be the biggest investor in UK original content.

4.5 The BBC is supported by the commercial PSBs. These licensees, in return for specific benefits, are subject to a number of licence conditions not placed on other television licensees. These additional obligations are designed to ensure that, in return for their special status, the PSB licence holders contribute to the purposes of public service broadcasting.

4.6 The obligations that commercial PSBs are subject to can be grouped into two categories – programme obligations, which require the screening of certain types of content, and production obligations, which require that this content is created in a particular manner.

4.7 PSBs also have obligations to make their services available on a near universal basis. This includes measures designed to ensure that services are carried on all platforms with a 'significant' number of end-users, and that coverage of the digital terrestrial television (DTT) multiplexes extends to 98.5% of the UK population.

4.8 The PSBs receive a variety of benefits in return for these obligations, including:

- Guaranteed access to spectrum, with reserved capacity on DTT multiplexes.
- The option of additional DTT capacity (for example, PSBs have the option for reserved capacity to allow them to operate HD channels on DTT).
- 'Appropriate prominence' on EPGs.
- Other intangible benefits such as goodwill and brand prestige.

EPG prominence

4.9 In the discussion paper, DCMS invited comments as to whether the current rules on the allocation of EPG places and prominence are fair, effective and sustainable, and whether they could be updated in a way that would incentivise increased investment in original UK content.

4.10 To aid this discussion, DCMS also commissioned and published research by Technologia on the value and optimal management of channel position on prominence on EPGs.

Our role in EPG prominence is established in statute

4.11 We are required by section 310 of the Communications Act to draw up an EPG code obliging providers to give appropriate prominence to PSB channels. The Secretary of State may add to, or subtract from, the list of relevant channels (recently adding local TV, for example).

4.12 Our Code is not prescriptive, as there are many possible ways in which EPGs could display information about linear PSB broadcast channels. The general principles are:

a) EPG providers should ensure that the approach they adopt to the requirement for appropriate prominence is objectively justifiable and should publish a statement setting out their approach;

b) We will have regard to the interests of citizens and the expectations of consumers in considering whether a particular approach to listing public service channels constitutes appropriate prominence; and

c) In giving appropriate prominence to PSB channels, EPGs should enable viewers in a region to select the appropriate regional versions of those channels through the primary listings for those channels provided the PSB in question has secured services that enable this.

A change in the prominence regime merits further consideration, given the possible evolution of EPGs

4.13 EPG prominence is valuable to broadcasters. Being placed on the first page of the EPG means that channels are easily accessible to viewers. There may be a significant benefit associated with this right, since without EPG prominence fewer viewers may watch the programmes on prominent channels.

4.14 As discussed in section 2, an evolution could occur in the way that content is:

a) discovered, as more EPGs offer multiple routes, social media is used to promote content and links to content are provided outside EPGs;

b) consumed, as on-demand services become more popular, viewing on user-generated content grows, and content delivered by OTT services becomes easier to access.

4.15 Given these potential changes, the prominence regime as currently constructed may not continue to deliver the public policy aims it was designed to achieve. If viewers move towards different methods of consumption and navigation, then the public policy goal of ensuring that public service content can be easily discovered and accessed by viewers may be at risk. This will impact, potentially significantly, on the ability of PSBs to provide continued high levels of funding for UK content.

4.16 Careful thought needs to be given to the construction of any new regime to ensure that it:

a) does not stifle innovation;

b) does not impose significant costs on broadcasters or platform operators; and

c) is workable and practicable in legal and regulatory terms.

4.17 If securing prominence for public service content remains a public policy objective, it could be necessary to adapt the current regime, possibly by extending it to the various different ways of discovering content increasingly made available within EPGs, and to content made available on-demand. Otherwise, the value of EPG prominence to PSBs may decline, and the legislation will fail in its intention to ensure that this content is prominent for viewers.

4.18 Consideration will also need to be given to which platforms a new regime would apply to. To help drive innovation, one option would be to only apply any new regime to those platforms responsible for a significant amount of viewing, therefore allowing flexibility in nascent content delivery markets.

4.19 Reform of the prominence regime in this manner would be unlikely to deliver *more* value to PSBs than they currently enjoy unless it resulted in an increase in the PSB share of viewing by consumers. Rather, it would seek to retain the existing level of value which the PSBs currently enjoy as a result of this benefit against prevailing trends that may erode it.

Using prominence to incentivise additional content spend may be challenging

4.20 The Technologia report commissioned by DCMS explored whether EPG prominence could be used to incentivise investment by non-PSB channels in UK content and/or public service content.

4.21 We note that broadcasters and platform providers largely favoured the status quo, expressing doubt that options that favoured channels with significant volumes of UK content would work in practice. Some respondents highlighted that channels would need certainty for a significant period if they were to give up channel positions with which viewers were familiar, but for commercial reasons, would be reluctant to make investment commitments for the same period.

4.22 A prominence regime which varied the benefits available depending on a shifting output might be challenging in a number of aspects. Defining the criteria for qualification would require careful thought, and there would be a danger that providers would drift in and out of regulation on a year-by-year basis, depending on the criteria which were adopted, creating uncertainty for both consumers and broadcasters.

4.23 Similarly, there might be a danger that any such changes would undermine the key benefit that prominence provides – supporting large-scale investment by key institutions.

4.24 Additionally, under the current rules, the Secretary of State has the power to add services to the list of channels which benefit from EPG prominence. This could be an alternative means of offering incentives to channels for additional investment in UK content.

Conditions of carriage consent for broadcasters and on broadcast platforms

4.25 There is currently a debate concerning the balance of payments made between the PSBs and the platforms over which their channels are distributed. The arrangements governing these payments, often generically referred to as "retransmission fees", in principle encompass two types of payment:

- Payments from platforms to broadcasters for the right to carry their content ("retransmission fees"); and
- Payments made by broadcasters to platforms as a contribution to platform service costs (for example, providing listings in an EPG, or regionalisation of services which ensure that viewers receive the appropriate version of the channel for their geographic region).

4.26 In addition to commercial considerations, there are specific obligations on PSBs and platforms which may have a bearing on these payments:

- Must-offer requirements on PSBs (and in addition to this, the BBC's public purposes requiring universality).
- Sky's charges for technical platform services on its satellite platform, which are subject to regulation requiring these charges to be set on a cost-recovery basis and be fair, reasonable and non-discriminatory.

4.27 Alternatives to the current regulatory and legal framework have been suggested, including the possible imposition of a 'must carry' requirement on platforms or the removal of 'must offer' obligations on PSBs, or the adoption of a US-style 'retransmission' consent regime. Any changes in this area could affect the balance of payments between PSBs and platforms, potentially to the benefit of PSBs.

4.28 In this context, the Government commissioned a report from Mediatique on the issue. This report sets out proposals for a "carriage consent" regime which removes 'must-offer' requirements on PSBs with the intention of strengthening their negotiation with platforms and with the dual objectives of (i) leading to an increase in PSB originations and (ii) being deregulatory.

There are legitimate questions to be asked of the must-offer/must-carry obligations

4.29 There is merit in considering the Mediatique proposal from a deregulatory point of view. In particular the scope of 'must-offer' of PSB channels warrants consideration, with the original policy intention of the intervention being interrogated. Is the aim to ensure that public service content is available in all homes, or rather on all platforms and devices? Given technological advances, the two objectives may no longer be fully aligned, and the latter has the potential to land PSBs with greater costs.

4.30 Similarly, it is worth considering whether and how any future must-offer regulation should take account of possible trends towards mainstream consumption of on-demand content. The availability of PSB VOD services is more varied than linear channels. But most of the major broadcast platforms that are able to serve VOD content are making efforts to add PSB content/services of their own accord.

4.31 It is worth remembering that the must-offer and must-carry requirements have, for the most part, remained unused. Arguably, this is because incentives are usually aligned between platform operators and broadcasters, both of whom want high quality content to be made available on consumer devices and services.

There could be drawbacks to fundamental change of the balance of payments between PSBs and platform operators

4.32 There are complex regulatory underpinnings to the balance of payments made between PSBs and platform operators. Removing or amending this regulatory framework could impact on the current flow of funds. While this might be to the benefit of the PSBs in terms of their main channels, it is equally possible that broadcasters as a whole would experience no net gain or indeed a loss by virtue of changes in commercial contracts elsewhere (e.g. a change in the balance of payments for their portfolio channels).

4.33 Furthermore, there would be no guarantee that, in the event of the balance of payments providing a net benefit to the broadcasters, this additional revenue would automatically translate to increased spend on UK content.

4.34 Finally, the 'ultimate sanction' of withholding a PSB channel from a platform would not be in the interests of consumers, effectively denying viewers access to the public service content which is the focus of the policy intervention.

Regulation of the independent production sector

4.35 The discussion paper notes the role that regulation has played in establishing a successful independent production sector, through the independent production quota and the 2003 Codes of Practice. The paper invites evidence from the sector as to whether changes should be made to the current framework.

4.36 We agree that the current Terms of Trade regime remains very important to the independent production sector, and is very well understood as a mechanism by all parties. As has been highlighted, co-production funding plays an increasingly important role in content funding and the secondary rights model that stems from the Terms of Trade underpins that funding.

4.37 We note that consolidation in the market has led to the ownership of smaller players by larger 'super-indies', and that some stakeholders have questioned if the regulatory framework still meets its original rationale of supporting diversity in the independent production sector given this development.

Tax incentives for high-end TV

4.38 DCMS has proposed possible tax incentives for high-end television programmes as a measure to further investment in production in the UK. Currently production companies seek to film in other countries that offer tax breaks, e.g. Canada.

4.39 Clearly tax incentives are a measure that sits outside our regulatory remit. Nevertheless, we welcome any measure that is likely to result in the production of a wide range of high quality programmes which bring benefits to UK consumers.