

Channel 4 response to Ofcom consultation on Channel 3 and Channel 5

programming obligations: definition of peak-time viewing

Introduction

1. Channel 4 is a publicly-owned, commercially-funded public service broadcaster with a statutory remit to be innovative, experimental and distinctive. Unlike the other commercially funded broadcasters, Channel 4 is not shareholder-owned. This not-for-profit status ensures that the maximum amount of its revenues are reinvested in the delivery of its public service remit, including high levels of investment in content commissioned from around the UK and across a range of genres.
2. Alongside the BBC and Channel 4, Channel 3 and Channel 5 form an essential part of the UK's public service broadcasting ecology. At a headline level, therefore, Channel 4 welcomes the decision from the Government to renew these licences for another 10 years (subject to final negotiations with Ofcom) to ensure they can continue fulfilling this important role. Channel 4 itself is committed to its status as a publicly-owned, commercially self-sufficient, not-for-profit public service broadcaster that is focused on the delivery of its public service remit – and looks forward to engaging with Ofcom going forward to secure the renewal of its own licence.
3. Channel 4 recognises that the subsequent process to agree the terms of renewal is primarily a matter for Channel 3 and Channel 5. It therefore does not intend to comment on all of the specific points of detail covered in Ofcom's consultation document. However, Ofcom has explicitly asked for wider stakeholder views on one particular issue– the definition of peak-time viewing. Amending the definition would have significant implications for all other public service broadcasters, including Channel 4, as outlined below. Our response is therefore limited to comments on this specific issue.

Extending the definition of peak-time

4. Ofcom has asked for views on the proposal from STV and UTV to extend the definition of peak-time, as it relates to PSB programming obligations, to up to 11pm. In practice, this would mean that opt-out news programmes scheduled by STV and UTV at 10.30pm could still contribute towards delivery of their peak-time news quota.
5. While Channel 4 recognises the specific sensitivities around broadcasting in the devolved Nations, it believes that making any changes to the definition of peak-time would prove extremely problematic, for the reasons acknowledged by Ofcom in their own consultation document. In particular, because the different PSB licencees all have different PSB commitments and plan their schedules and delivery of these commitments in different ways, amending one aspect of the definitions for the purposes of making it easier for some licencees (such as UTV and STV) to meet some of their obligations (such as peak-time news) could have the unintended consequence of reducing other broadcasters ability to deliver different aspects of theirs. Channel 4's strong preference would therefore be to maintain the current definition of peak-time, so as not to upset this delicate ecology.

Implications of extended definition for Channel 4's PSB obligations

6. Channel 4 would be concerned if the extended definition were to be applied to its own PSB obligations – as it could unnecessarily restrict the flexibility it has to deliver its licence obligations and wider PSB remit while maintaining a competitive programming schedule. Such flexibility is essential to Channel 4’s ability to operate as a not for profit, commercially self-sufficient public service broadcaster with a wide range of public service commitments.
7. In particular, Channel 4 is concerned that the extended definition would impact the volume of “peak-time originations” it delivers. Channel 4’s strategy is to maximise the impact of its original commissions by focusing them in the hours that achieve the largest audiences (Ofcom’s graph on page 36 of the consultation document shows these hours as being between 8pm and 10.30pm for Channel 4). As a result, the 10.30pm-11pm slot can often feature acquired programming. Extending the definition of peak-time to include this slot would therefore have the unintended consequence of reducing the overall percentage of Channel 4 originations that would be delivered in ‘peak-time’. This can be demonstrated with the breakdown below of how it would impact our originations figures over the last 3 years.

Originations (%)	Quota	C4 2012 delivery	Adjusted with extended definition
2012	70	79	78
2011	70	79	77
2010	70	77	75

8. At present Channel 4 maintains a sufficiently high level of originations that it comfortably exceeds its peak-time originations quota – and in 2012 delivered such a proportion of originated content in the 10.30pm slot that the extended definition did not have a significant impact on these final figures. However, it did have a more significant impact in 2010, when there was considerable uncertainty around the advertising market - and were economic circumstances to change in the future, Channel 4 would want to ensure it had maximum flexibility to ensure it was able to preserve its peak-time schedule whilst responding to economic pressure – for example, by putting more acquisitions into the 10.30pm slot. Extending the peak-time definition to include this slot would reduce this flexibility and essentially make it harder for Channel 4 to deliver its peak-time originations quota. Channel 4 is therefore opposed to any application of this definition for its own PSB commitments.

Implications of STV/UTV receiving more flexibility

9. Ofcom’s historical approach has been to maintain a consistent definition of peak-time for all PSB’s. This has had the benefit of ensuring consistency and clarity across all licenced PSB channels. However, in its consultation Ofcom suggests than an alternative approach could be to set individual peak periods for each of the Channel 3 licencees for their respective regional programming obligations.
10. While Channel 4 would prefer Ofcom to pursue an option where it made changes on a very narrow basis over applying an extended definition to all PSBs, Channel 4 does not believe that this solution would be in the interests of the PSBs or of viewers either. Indeed, Ofcom itself states that adopting different peak-time definitions could “*make scheduling difficult, limit the access of viewers to some networked programming, and discriminate against those licencees who did not benefit from more relaxed (and commercially beneficial) definitions.*”
11. From Channel 4’s perspective, if Channel 3 licencees were to be given more scheduling flexibility, this could open the door, for example, for the ITV network to move their network

news programme from 10pm to 10.30pm. As Ofcom recognise, this could be negative in terms of PSB impact, as a later programme is likely to reach fewer viewers, as well as commercially harming the other PSBs if they then had to compete with a 10pm entertainment programme on ITV rather than news.

12. Furthermore, even if Ofcom were to apply this extended definition to only the relevant Channel 3 licencees in the devolved Nations, Channel 4 still believes this decision could have unintended commercial consequences for the other public service broadcasters. Channel 4 provides regional advertising opt-outs for advertisers in Scotland and Northern Ireland – and therefore any scheduling flexibility that STV/Ulster receives that could increase their commercial impacts could potentially impact negatively on Channel 4’s own revenue. For example, 2012 Channel 4 generated more than £7m worth of revenue from advertising targeted specifically at viewers in the Scotland and Northern Ireland macro regions. If STV and Ulster were able to increase their commercial impacts as a result of more flexible regulations, particularly by optimising their 10-11pm schedule which is currently an important slot for Channel 4 commercially in these regions, this is likely to lead to lost revenue for Channel 4. As this revenue is discrete to these regions, Channel 4 would be unable to mitigate it with revenue from other advertisers in other areas.
13. Channel 4 operates on a commercially self-sufficient model, where all of its revenues can be reinvested back into content. In challenging economic times, Channel 4 must maximise any opportunities to generate commercial revenue in order to invest as much as possible in its PSB remit, and therefore would urge against any regulatory decisions that could weaken this ability.
14. Channel 4 recognises the specific needs and concerns of viewers in the nations, and believes it is important that those viewers are able to access news about the wider UK as well as their specific Nation. Channel 4 therefore understands Ofcom’s ambition to find a solution that best supports provision of public service content in the Nations.
15. However, Channel 4 does not believe there is evidence to suggest that amending the definition of peak-time in this way would meet this above aim – while it would have unintended negative consequences for other broadcasters. Channel 4’s strong preference is therefore for Ofcom to maintain the existing definition and find other ways to address the specific concerns of STV and UTV.

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