

The BBC's commercial activities

**Response from the Commercial Broadcasters
Association to Ofcom**

February 2017



A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

Introduction

1. The Commercial Broadcasters Association (COBA) is the industry body for multichannel broadcasters in the digital, cable and satellite television sector, and their on-demand services. COBA members operate a wide variety of channels, including news, factual, children's, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay-TV platforms, as well as on-demand.
2. COBA members are critical to the global success of the UK broadcasting sector and its “mixed ecology” of public and private investors. As arguably the fastest growing part of the UK television industry, they are increasing their investment in jobs, content and infrastructure:
 - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, and has helped establish the UK as a leading global television hub.¹
 - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.²
 - UK production: In addition, the sector has increased investment in UK television content to a record £725m per annum, up nearly 50% on 2009 levels.³

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2014 Census, Oliver & Ohlbaum Associates for COBA

Response to consultation

1. COBA welcomes much of Ofcom's proposed approach to overseeing the BBC's commercial activities. The BBC's commercial operations are a major player in the domestic and international markets, and expected to be more so over the lifetime of this Charter, and an appropriate degree of transparency and separation is essential to avoiding undue market competition.

Reporting

2. COBA has consistently called for more clarity in BBC Worldwide's reporting, noting that its shift to reporting on a regional basis, rather than breaking down individual revenue streams, makes it impossible to tell whether major investments in production, channels or other areas are delivering value for money.
3. We therefore welcome Ofcom's requirement that the BBC report in more detail on each line of business, as set out in Section 3.46.

Materiality

4. We also support the criteria set out to assess materiality, particularly the inclusion of a regard to whether the change appears to affect an individual competitor. We have asked that this be reflected in assessing materiality for public services as well.

Separation

5. We are concerned, however, that greater separation is required in terms of the make up of BBC boards. We do not consider it appropriate for a director to serve on both the BBC board and the board of a commercial subsidiary. The example put forward by Ofcom, of a BBC executive sitting on the board of a commercial subsidiary, may have some (limited) merits in terms of oversight, but it would be wholly inappropriate for a director of a commercial subsidiary to sit on the BBC board. The issue of "cross-directorships" has been controversial in the past, and was one of the key criticisms of the BBC in the 2008 inquiry into the BBC's commercial operations by the Culture Select Committee. This concluded that:

"We accept that the BBC's representation on the Worldwide Board, especially at Finance Director level, permits financial oversight and helps ensure coordination between the two organisations. However, we find it impossible to accept the justification for the presence of the Chief Executive of BBC Worldwide on the BBC Executive Board. We disagree with the BBC's assertion that this does not give Worldwide a significant, unfair advantage over its

competitors. Even if the BBC's claim that Board level discussions are purely strategic and of little benefit to Worldwide has some credence, it still creates an unwelcome perception of special favours. It appears from the comments by the Chairman of the Trust that a revision of this arrangement is already being considered. We accept that the Executive and Worldwide may derive some operational benefits from the presence of the Worldwide Chief Executive on the BBC Executive Board, but believe that the BBC should seek to achieve these via other means which do not contravene its fair trading guidelines. We therefore recommend the removal of Worldwide's representation on the BBC Executive Board. This would represent one practical step towards a more transparent, regularised and arms-length commercial relationship between the BBC and Worldwide.”⁴

6. Indeed, even the example put forward of a BBC executive sitting on the board of a commercial subsidiary is problematic. We note that the BBC Trust, in the wake of the Culture Committee's report, removed not only the CEO of BBC Worldwide from the BBC board, but also the then director of BBC Vision (who also sat on the board of the BBC Executive) from the board of BBC Worldwide. In a statement, the Trust said the move was to reduce potential conflicts of interest:

“[T]here will be changes to the membership of both the BBC's Executive Board and the Worldwide Board in order to reduce the potential for conflicts of interest. Specifically, the Chief Executive Officer of BBC Worldwide will no longer be a member of the BBC's Executive Board and staff from BBC Vision (who produce most of the BBC content subsequently sold by Worldwide) will not be eligible to be members of the Worldwide Board. This will result in Jana Bennett stepping down from the BBC Worldwide Board.”⁵

7. As the Trust acknowledged, such cross directorships create the potential for conflicts of interest, and are a clear dilution of the crucial principle of separation. Where there is a concern over the performance of a commercial subsidiary, it would be far more preferable for the BBC board and/or Ofcom to investigate and review the matter – and they should have sufficient powers to do so without compromising the clear and demonstrable separation of the BBC and its commercial entities.

⁴ BBC Commercial Operations, Culture, Media & Sport Committee, 2009, Section 51

⁵ http://www.bbc.co.uk/bbctrust/news/press_releases/2009/worldwide