



Response of British Sky Broadcasting Limited ('Sky') to the BBC Trust review of BBC Red Button and Online services

1. Introduction

- 1.1 BBC Trust service licence reviews are an important part of the overall regulatory framework for BBC services established by the BBC Framework Agreement, and are one of the ways in which the BBC Trust exercises independent oversight of the BBC's activities.
- 1.2 The Framework Agreement requires that the Trust conduct reviews at least every five years and that there be public consultation. In this way, service reviews sit alongside Public Value Tests, conducted when new services are proposed or changes put forward to existing services, as the key opportunities for robust and detailed scrutiny of the BBC's public services.
- 1.3 It is therefore incumbent on the Trust to consider, as part of its service reviews, the market impact of the relevant services and, particularly, the Trust's duty to require the BBC "*endeavour to minimise its negative competitive impacts on the wider market*" under the competitive impact principle.¹ If the Trust did not consider such impacts as part of the service review, then it is conceivable that such matters would only be considered on launch of the service, and never again, irrespective of changes in the service or the market context in which it operated. This cannot have been intended by Government in settling the Framework Agreement and requiring reviews every five years.
- 1.4 Sky's interest in the BBC's red button and online services arises principally from its role as the provider of a direct to home satellite television platform by which certain of the BBC's services are made available to over 10 million homes.
- 1.5 Sky's concerns relate to the future availability of the relevant BBC red button and online services across a variety of platforms, the risks associated with the BBC's strategy of moving distribution of its content online, and its interests in a number of content distribution platforms, namely Freeview, YouView and Freesat as well as online through bbc.co.uk ('the BBC Platforms'). Convergence of technologies, in particular broadcast and communications services, brought together in so-called 'connected' devices, present the BBC Trust with additional considerations that must be addressed by the Trust's service reviews and public value tests or risk distorting relevant markets.
- 1.6 This is an issue that the BBC Trust has already had to face to some degree in relation to the distribution of its on-demand programme content, resulting in the Trust's Syndication Policy and Guidelines. As the BBC moves towards greater delivery of public service content via the internet, it must adopt appropriate solutions for other forms of content distribution or breach its Royal Charter and the Framework Agreement.
- 1.7 The Trust must address these issues during service reviews in order to provide appropriate strategic direction to the BBC Executive before it implements changes that would be costly to undo at a later date. Accordingly, the following principles should be enshrined in the relevant service licences:
 - a) the BBC must provide access to its content on a non-discriminatory basis, and must not favour its own platforms in either functionality or content;
 - b) the BBC must develop solutions that enable all platform operators access to the relevant BBC public service content; and

¹ See, for example, the BBC Trust "[Statement of policy on competitive impact](#)", June 2007. Such consideration should include whether a service continues to be compatible with European rules on State aid, for example, as set out in the "[Communication from the Commission on the application of State aid rules to public service broadcasting](#)".

- c) to minimise the negative market impacts of new functionality or content services, as part of the service licence review the BBC ought to be required to publish a roadmap showing proposed technological and other functional developments, approved by the Trust.
- 1.8 The Trust must also consider clarifying the scope of the Red Button and BBC Online service licences in the light of technological developments to avoid duplication and confusion.

2. The BBC must provide access to its content on a non-discriminatory basis

- 2.1 BBC public service content and services should be provided on a non-discriminatory basis to all relevant platforms in the UK. This position reflects the obligations set out in the BBC Charter and Framework Agreement to act in the interests of licence fee payers, to respect the competitive impact principle and to *"do all that is reasonably practicable to ensure that viewers, listeners and other users (as the case may be) are able to access the UK Public Services that are intended for them, or elements of their content, in a range of convenient and cost effective ways which are available or might become available in the future. These could include (for example) broadcasting, streaming or making content available on-demand, whether by terrestrial, satellite, cable or broadband networks (fixed or wireless) or via the internet."*²
- 2.2 BBC's interests in the BBC Platforms, including online, mean that there is a material risk that the BBC will develop its public services in such a way as to favour the BBC Platforms at the expense of other digital platforms. This is particularly the case in relation to BBC Online which is widely available, having been developed by the BBC for a large number of mobile and other 'connected' devices.
- 2.3 The BBC's intention to increase distribution of its public service content over the internet³ may favour some platforms, and disadvantage others. The Trust will be aware that Sky's digital satellite platform, in particular, is not designed to provide access to the open internet, and would therefore be unable to provide access to the BBC's content if it is only made available via the internet.⁴
- 2.4 If the Trust's review is to be meaningful, and fulfil its role of holding the BBC Executive to account, then it ought to consider the impact of the proposed strategy on the wider market as part of the present process. Failure to do so would compound any negative market impacts as the Executive will consider the completed review as a mandate to proceed with implementing its strategy, to the detriment of those licence fee payers who chose to receive BBC public services via traditional television platforms.
- 2.5 Where a platform is unable to receive the BBC's red button and online services, this should not impede developments elsewhere. There ought to be, however, an obligation on the BBC to ensure that such platforms are not unduly prejudiced, and to work with platform operators to find appropriate solutions, whether bespoke (as was the case in relation to the BBC's on-demand content on Sky's platform) or of wider application, for example, using a 'factory gate' methodology whereby the BBC makes its content available in a standard format and develops rules by which platform operators can adapt content in that format for their own technologies for supply to their users. Such mechanisms could work for both red button content on platforms which distribute the BBC's linear services and for BBC Online content. Indeed, they would also work for any hybrid of the two, such as the 'Connected Red Button' service (paragraph 3.1 below).

3. The existing service licences should be amended

- 3.1 As currently drafted, the Red Button and BBC Online service licences describe different delivery mechanisms for similar content, one to television platforms, the other accessible via the open internet. Such a distinction is becoming increasingly irrelevant, as is demonstrated by the launch of the 'Connected Red Button' service which appears to combine elements of both services by providing access to BBC Online via the red button. It is unclear under which service licence this new service would come, and it raises the question of whether the 'Connected Red Button' is a new service requiring a public value test. In any event, the Trust's review must consider the impact of

² Clause 12 of the Framework Agreement.

³ See for example the Trust's [statement following the previous service review for red button, dated 11 November 2010](#), or more recently [the announcement of the launch of 'Connected Red Button'](#), dated 4 December 2012.

⁴ See Sky's responses to the Trust's various consultations regarding the syndication of BBC on-demand content.

such a service on the wider market and whether amendments to either service licence are required to reflect the changes.⁵

- 3.2 For the reasons provided above, both service licences should be amended to provide more specific direction to the BBC Executive as to the obligations regarding non-discrimination. Currently, the service licences are inconsistent in their approach to this issue.

- 3.3 The Red Button service licence currently states that:

"BBC Red Button should be ... delivered for general reception on all digital television platforms. Levels of access and functionality may vary between types of digital television platform. It should seek to provide consistency of its offer across different digital television platforms, as far as this is possible."

- 3.4 The BBC Online service licence states, however, that:

"The BBC's online content may be syndicated to other providers in line with the BBC's syndication policy. Content on BBC Online may be reversioned for specific Internet Protocol platforms and devices, such as mobile"

suggesting that the BBC has greater discretion as to whether to provide its online services to other platforms and devices.

- 3.5 Each service licence should be amended to include a clear statement of the Trust's expectation that the BBC will make content available via Red Button and BBC Online on a non-discriminatory basis to all relevant platforms. The Trust might properly consider whether to expand on the principle outlined in the BBC Online service licence, that content be 'reversioned' for different platforms, and/or extend the principles underlying the Trust's Syndication Policy for on-demand content that, where appropriate, the BBC ought to consider bespoke development where a platform cannot adopt the BBC's 'standard' version. Lack of compatibility with the BBC's chosen distribution technology should not deprive licence fee payers of access to the content they have paid for via their platform of choice.

- 3.6 One of the difficulties for competing platform operators is the lack of transparency over developments in the BBC's services. To minimise the negative market impacts of the BBC's activities, the Trust should consider publishing a roadmap of future technical and functional developments for each service, which has been subject to a process of prior approval by the Trust. This would enable platform operators to engage with the BBC in respect of bespoke developments sufficiently early to avoid discrimination in favour of other platforms.

Sky

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A footnote in the BBC Online service licence notes that the *"BBC Red Button Service Licence covers output on digital television platforms"* suggesting that anything normally covered by the BBC Online licence provided to a digital television platform is dealt with under the Red Button licence. However, individual linear service licences, such as that for BBC One, also list the provision of additional content provided as interactive services as comprising part of their service, suggesting an alternative approach. This confusion exists before account is taken of the various iterations of the BBC iPlayer, comprising on-demand and live radio and television content which is expressly covered by the BBC Online service licence.