



# Public Service Content in a Connected Society

## Ofcom's third review of public service broadcasting

### BT's Response

March 2015

## **SECTION 1: DEFINING AND FRAMING THE ISSUES - BT's Perspective**

BT welcomes Ofcom's third review of public service broadcasting (**PSB**). Since the previous review in 2008 there has been significant change in the communications media industries: notably the completion of switchover from analogue to digital terrestrial television (DTT) broadcast, increased penetration of broadband and superfast broadband, the introduction of 4G networks, an ever widening variety of mobile devices to enable and enhance the distribution and consumption of audio-visual media as well as the growing consumption of over the top (OTT) media from PSBs along with new OTT entrants such as Netflix and Amazon. We therefore feel this review is very timely in terms of taking stock of the impact of these developments and setting a course for long-term delivery of the PSB's objectives.

BT responds to this review both as a provider of TV services - as a YouView partner and provider of sports channels alongside our wider TV offer - and as a major UK network provider.

### **Summary: BT is supportive of strong and successful Public Service Broadcasting (PSB) sector**

PSBs play an important role in creating world class British content enjoyed on a free-to view basis domestically, but also desired and exported around the world. Collectively, they represent a unique eco-system, delivering public service content to viewers and playing a wider pivotal role in enabling the success of the UK creative industries.

Given this important mandate we are pleased that overall, the data shows the PSB model has proven resilient in the face of change with high audience satisfaction rates (increased to 77% in 2013 from 69% in 2008), and only modest declines in audience share and original content spend (which were largely made up for by the commercial PSBs portfolio channels) over the period despite the emergence of many new alternatives for UK audiences. The model for PSB broadcasting, while not without opportunity for enhancement, remains generally robust thus far. We also agree with Ofcom's observation that many other non-PSB sources of content (e.g., broader multi-channel sector, OTT players) are also delivering against the broadly defined PSB purposes and objectives as set out in the Communications Act.

However given the ongoing pace of change, we believe a key objective of this PSB review should be to consider how to sustain public service broadcasting for the future against the backdrop of a rapidly changing environment. In doing so, it should also consider the interests and impact on broader stakeholders, in order to enhance the overall benefit to UK audiences. In BT's view there are several key themes that merit particular attention when considering the long-term delivery of the public broadcasting system (several of which are already occupying much public debate). They are as follows:

1. Ensuring a competitive environment which provides PSBs with a level playing field
2. Maintaining fair, efficient and effective content funding models
3. Realising the full potential offered by IP distribution
4. Modernising the EPG to meet audience needs better today and in future
5. Refreshing PSB obligations, rights and future reviews for a digital age

The remainder of this section sets out our high-level views on each of these areas which address many of the questions raised by Ofcom.

## 1. Ensuring a competitive environment which provides PSBs with a level playing field

Despite the model for PSB broadcasting being generally robust, the impact of the enduring dominance of Sky's vertically integrated pay TV platform poses a number of challenges to the long-term health of many actors in the UK media sector including PSBs who are at risk owing to the fact they compete with Sky for audience share, advertising revenues and the acquisition of rights, while at the same time they are heavily dependent on the Sky platform for access much of their audience<sup>1</sup>.

Pay TV continues to grow overall penetration, now reaching over 60%<sup>2</sup> of UK households and Sky's share of the overall pay TV market has remained in excess of 65% over the past decade, significantly larger than any other player in media and telecoms. Reviews by competition authorities (Ofcom and the Competition Commission) since 2007 have consistently highlighted the existence of market failure in pay TV. Sky's high and persistent market share at the retail level in pay TV and its persistent domination of premium sports and movie channels at the wholesale level, and strength as a pay TV retailer creates a self-reinforcing vicious circle. Its scale reinforces its potential for adverse influence on PSBs in three key ways:

1. Ability to outbid all competitors (including PSBs) consistently for exclusive control of attractive content. Where PSBs were once able to compete effectively for all kinds of acquired rights, including sports, movies and general entertainment, they now are generally limited to sports that are legally required to be broadcast free-to-air, sports where the rights-holder has a preference for free-to-air to ensure as wide a distribution as possible, movies outside their primary windows and commissioning general entertainment content. Sky's recent acquisition of the British Open exemplifies this along with the continuing 100% ownership of all the first pay TV subscription window rights from all the six major Hollywood studios and the development of Sky Atlantic, built on acquiring primary general entertainment rights.
2. Ability to secure favourable outcomes in its platform dealings with PSBs (e.g., access, prominence, functionality) as a result of the scale and importance of its TV platform<sup>3</sup> such that all channels effectively have no choice but to be on available on the Sky platform.
3. Ability to out-compete PSBs for creative talent (which is often discovered, developed and invested in by PSBs).

The risk is that with market power concentrated on Sky and its platform, all other platforms and the PSBs are weakened. These issues in the media value chain are similar to the issues that have been effectively and successfully addressed by Regulators in the UK telecoms markets. Thus, properly converged ex ante regulation of the wider media and telecoms

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<sup>1</sup>Laying out the full extent and impact of Sky's dominance in pay TV is beyond the scope of this review but is extensively evidenced in our submission "BT's Response to Ofcom's Review of the Pay TV Wholesale Must-Offer Obligation" Feb 27, 2015

<sup>2</sup> In this context we mean platform pay TV where an operator provides a platform over which pay-TV content is sold (video on demand or linear). This includes YouView (BT and TalkTalk), Sky satellite (i.e., excluding NowTV only customers), and Virgin Media customers

<sup>3</sup> Whilst there is regulation in place for the Sky platform (for the provision of EPG, Conditional Access and Access Control services on a fair, reasonable and non-discriminatory basis), this nonetheless provides Sky with considerable latitude in relation to the terms, conditions and charges that it applies for such services. Full and effective regulation of such services is therefore an important safeguard against Sky exercising its market power.

landscape to ensure a level playing field would help address these issues and serve to better protect the interests of the PSBs.

Achieving this would simply require conferring upon Ofcom similar powers that it has for telecommunications and applying them to media: powers to define markets, identify market failures (including, but not limited to, market power) and the design of remedies to promote effective competition and provide a consistent level of protection for consumers. Regulation should also distinguish between interventions designed to promote the effective operating of market mechanisms from those applied for other social purposes (such as the PSB framework). This would have the benefit of clarifying the purposes and main objectives of media regulation. As consumers have increasing choice between means of delivery, in particular between broadcast or IP delivery, and between PSB and non-PSB content, the case for balancing the regulatory environment between telecoms and media and between content categories becomes ever more pressing, not least to ensure the future success of PSBs. This should be a leading issue in this PSB review.

## **2. Maintaining fair and efficient content funding models**

There has been much debate over whether existing primary funding models (the BBC licence fee and television advertising) will effectively support the creation of a sufficient quantity and quality of PSB output today and in future. BT's view is that while significant declines to longer-term PSB income could have an adverse impact on the PSB system, we do not recognize this scenario at present or see it as likely in the foreseeable future. We would encourage policy makers to resist the recent calls for regulatory change, in particular the proposal by commercial PSBs for the introduction of retransmission fees. These are unnecessary, unworkable and if implemented would likely represent a zero-sum impact; shifting funds between market participants with little material impact to UK content investment, while resulting in a discriminatory cost targeted at the customers of pay TV platforms.

It is sometimes argued that the TV platform operators benefit from the availability of PSB channels on their networks and so should bear some of the costs. This is not the case presently as all the PSBs are available on all TV platforms there is no relative benefit from having the PSBs on the platform. Pay customers switching between pay TV platforms will not do so on the basis that the PSBs are available on one not the other, because the PSBs are available on all. In aggregate, pay TV customers presently derive no additional value from access to the main PSB channels via their pay TV platform vs. that which they would otherwise freely receive when they access via other non-pay platforms (such as DTT Freeview or FreeSat).

In any case, retransmission fees, even at the most bullish estimate would not represent more than a small percentage contribution to the funding of UK content that addresses the PSB objectives. If we use recent estimates by Enders<sup>4</sup> which suggested retransmission revenues for commercial PSBs could be as much as £200m per annum, and apply Mediatique's assumption on re-investment rates asserted in a recent report for DCMS<sup>5</sup> that ~50% of any increase in revenues would be reinvested in content, the impact is therefore at best only £100m. To put this in perspective, this represents an uplift of only circa 5% on top of the annual content spend on UK first run originations by BBC and the four commercial PSB channels, or rather,

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<sup>4</sup> Enders Analysis note on Retransmission Fees, Toby Syfret, 15 October 2014

<sup>5</sup> Mediatique, [Carriage of TV Channels in the UK: policy options and implications](#), July 2012

only a 2% uplift vs. all channel spend on UK first run originations (including non-PSB content). Even this scenario seems optimistic based on the recent evidence between 2008 and 2013 where ITV revenues increased by £213m while content investment over the period was reduced by £142m. Clearly commercial PSBs, as rational economic actors, with access to various sources of finance, will invest in content up to a level where the marginal benefit exceeds the marginal costs - irrespective of the absolute level of overall revenue they are transferred by regulatory fiat via retransmission fees.

While some of the PSBs may have incurred modest declines in funding levels over the past several years, they have at the same time been able to introduce focus and efficiency into the production of content, resulting in greater overall audience satisfaction. We believe there is scope for this to continue in the same way that BT continually seeks (and indeed is required by regulators) to drive cost efficiencies while improving customer outcomes (speed, access, etc). Indeed, declines in communications revenues are at least as significant but are dealt with by applying technology to reduce costs. PSBs should continue to do the same.

It should also be noted that while advertising revenue streams of commercial PSBs fell over the period since the last review in 2008, a large part of this decline is cyclical owing to the deep recession during the period - which should continue to be reversed as the economy strengthens. At the same time PSBs are finding increasing revenues from sources which have yet to be fully exploited such as international and online distribution. We would note the recent comments of ITV's CEO, Adam Crozier following the announcement of a special £250m dividend on March 4<sup>th</sup> of this year; *'ITV is now a high growth business with increasing emphasis on international content creation and distribution, and is demonstrably much stronger, both creatively and financially.'*<sup>6</sup>

We welcome these comments and concur with ITV's optimism regarding the potential for new growth opportunities that leverage PSB content, against the backdrop of a rebounding advertising market and further cost-innovation. Collectively these factors should enable ITV and other commercial PSBs to invest appropriately in content for which there is a ready and monetisable market without the introduction of retransmission fees.

It is nonetheless instructive to examine hypothetical scenarios where transmission fees were introduced to consider the challenges that would arise:

- If retransmission fees were introduced and set by commercial negotiation, it is not clear that PSBs would be able to secure any better terms given the significant negotiating dominance of the Sky platform which was outlined in the previous section (with all parties knowing that channels effectively have to be made available on DSat given its scale). Indeed, it could likely end up disadvantaging them and open up a whole range of other issues, such as EPG prominence for PSBs.
- If retransmission fees were introduced but were governed by some regulatory solution, Sky's market power would allow them to simply pass the fees on to their customers (as evidenced by their recent statement that they will pass on increase much of the cost increase associated with the latest Premier League rights to customers). In this scenario

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<sup>6</sup> <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/11448512/ITV-plans-to-return-250m-to-investors-via-a-special-dividend.html>

Sky's UK customers, who are already paying the license fee and also the highest prices in Europe for pay TV, would bear the additional funding cost. We think it would be unfair that viewers who use pay-tv platforms should end-up effectively cross-subsidizing other viewers of PSB content, simply owing to the nature of the technology they are using to access content which is otherwise freely accessible.

- If retransmission fees for PSB signals were introduced and became reasonably expensive, then rational pay TV players that don't currently utilise a DTT tuner in their set top box would likely respond by attaching a DTT tuner to the set top box removing any potential justification for a retransmission fee. Such a response was seen in Sky Italia's dispute with broadcaster Rai when Sky sent out USB plug-in DTT decoders to their customers to enable them to continue to receive the Rai channels.

### **PSB funding is dependent on the health of the existing Intellectual Property (IP) framework in UK and Europe**

Finally, maintaining the robustness of the current IP regime is vital for the future health of PSB funding models. Should the EU to move towards a single market in creative content as part of their Digital Single Market initiative we would be concerned for the longer-term health of the PSBs as it would have far reaching implications for their funding models that allow them to effectively monetise their PSB content in other markets.

The Commission President Juncker has made modernising copyright rules, with an emphasis on cross-border access to content one of his ten policy priorities<sup>7</sup>. The issue separates into portability (whether UK viewers could access online services such as BT Sport via the app, or iPlayer while travelling elsewhere in the EU) and cross border access or sales (whether an EU citizen in one State should be able to buy content, or access to content, from a provider in another EU State), with a further distinction over whether the content is already available in the original territory, or not.

The proposals being discussed currently would mean that all actors, including PSBs, would in practice be obliged to make their content available across the EU. Clearly the implications of this would be extraordinary for all parts of the current content creation and rights value chain. For PSBs it would put in jeopardy the current, successful, UK based 'compact' of benefits and obligations, with the BBC licence fee funding model particularly challenged.

BT, along with many other players, is making the case to the EU of the risks of their proposals, while also highlighting that there is no legislative barrier to selling rights across the EU.

### **3. Realising the full potential offered by IP (Internet Protocol) distribution**

Although still relatively nascent distribution platforms, online (OTT) and IPTV has already proven highly successful for PSBs; enabling them to reach, engage and monetise their audiences better than via the DTT platform alone. Going forward, we believe the trend towards consuming PSB content online and via IPTV will only accelerate owing to the continued deployment and take-up of NGA, changing demography, new online competitors

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<sup>7</sup> [http://ec.europa.eu/priorities/docs/pg\\_en.pdf](http://ec.europa.eu/priorities/docs/pg_en.pdf)

and content offerings along with continued device innovation. Continuing to invest and innovate in their online distribution platforms to exploit this opportunity will be vital to the long-term success of PSBs, while also supporting the public policy ambitions towards increasing digital inclusion in the UK for several reasons:

- Both IPTV and OTT distribution offer the potential for a richer user experience with ubiquitous access, deeper engagement, and interactivity, than those available on DTT enabling PSBs to better meet evolving audience expectations and compete with global OTT players.
- While today, online catch-up services already benefit PSB advertising models owing to the insertion of ‘unavoidable’ advertising embedded into time-shifted content, in the longer-run advertising economics for commercial PSBs will be transformed as IPTV offers the potential for enhanced customer targeting, measurement and real-time impact / response<sup>8</sup>.
- IPTV as a distribution platform is less constrained vs. DTT with greater potential for PSBs to offer 4K and 8K programming of main channels and also for their portfolio channels.
- PSBs are becoming increasingly fragmented in their distribution strategies across DTT, cable, and satellite and online. In the longer-run there are potential efficiency benefits to focusing on fewer distribution platforms with DTT the obvious candidate to exit given the relative merits of IP and the alternative use of the spectrum that could be released.

There is no disputing that OTT has benefited the PSBs. We highlight that while the PSBs pay CDNs (Content Delivery Network providers) to cache their content in the network, ISPs pay for the costs of delivery from the CDNs to viewers, not the PSBs. So PSBs are already getting considerable benefits from broadband and wireless networks and enjoying the increasing performance that has been delivered by investments in them.

IPTV by contrast allows for linear distribution of channels with managed quality of service, in a manner competitive with broadcast platforms. In this case ISPs are allowed to charge for the additional costs of providing quality assured delivery. In the ordinary course of business, one would expect a content business to pay for the costs of distribution: that is how the industry has worked ever since it began. In a free-to-air DTT model, the PSBs pay Arqiva and others for transmission services. So seeking to defray the costs of IPTV distribution on to the network services providers is not an obvious economic model; it would need to be justified.

In BT’s view IPTV is not only a feasible substitute for DTT, but a more desirable distribution platform that would underpin the long-term success of the PSBs. Additionally, we are more bullish on timeframes for realising a potential switchover than Ofcom<sup>9</sup>, who views post 2030 as a more likely scenario. BT believes that an IP switchover should be possible from 2025 and that policy makers should pave the way for this future opportunity in that timescale so as to

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<sup>8</sup>Adam Crozier said ‘Online is very profitable for us, online pay and interactive together. Our CPMs are roughly five times what we charge for linear TV because it’s a more exclusive produce where we carry less advertising.’

<http://www.theguardian.com/media/2015/mar/04/itv-chief-2014-schedules-adam-crozier-arthur-george>

<sup>9</sup> “The Future of Free to View TV”, Ofcom, 28 May 2014

bring forward the realisation of benefits for PSBs, advertisers, audiences / consumers and mobile operators.

#### **4. Modernising the EPG to better meet audience and needs**

While the notion of EPG prominence has long been a valuable benefit provided to the PSBs, it is in the interest of audiences and fair competition for content providers that both the regulation of prominence and guidelines around discoverability / EPG should evolve to achieve a more appropriate balance between PSB prominence, and the evolving expectations for customer experience (including consumer protection) and enabling fair competition between both channels and platforms.

Increasingly, consumers want to be able to find the content that is most relevant to them quickly and easily. Moreover, they expect to be able to customise their platform and service interfaces to reflect their interests: this capability is part of the success of online platforms. In comparison, the static television EPG controlled by Digital UK is being exposed as increasingly inadequate in contrast to OTT players such as Netflix and Amazon Prime given the ease and control they provide the consumer to search, discover and access content.

There are also significant implications for competition in the wider media market. Channels that are consigned to the lower echelons of a rigid programme guide find it harder to build an audience. There is a clear need to enable platform providers within the Freeview system to develop their customer experience in response to changing expectations.

Enabling partnerships between PSBs and the commercial sector is likely to be vital to their ongoing strength and success. To this end, there needs to be more flexibility in the EPG guidelines to enable commercial channels to position their content favourably alongside PSB channels and to ensure there are a number of modern, compelling competing platforms available for PSB distribution.

Media standards and child protection are also an issue with the current approach to EPG. In its most recent policy announcement in July 2014 Digital UK has said it will continue to position adult content and some text services (for example 1-2-1 Dating, Rabbit and Gay Rabbit) above all IPTV channels. This means that these channels will continue to be easily discoverable by children and young people as they must be scrolled past to reach the children's, general entertainment and sports channels below them which are provided over IPTV. Digital UK have said that they *'do recognise the consumer protection issues presented by the presence of adult content on the platform and take measures to protect against inadvertent viewing of inappropriate content, particularly by children, through the positioning of the genre, the Adult prefix to all channels names and the bookends.'*<sup>[1]</sup> This is a wholly inadequate response to a serious issue, especially in comparison to the steps ISPs are taking to ensure better consumer protection from offensive content online.

We have concerns that the day-to-day management of the public platform (DTT) EPG is controlled by the PSBs who have a strong self-interest in promoting their own portfolio channels up the EPG, at the expense of developing a broader framework in the interest of



consumers and rival channels. Given these inherent conflicts, BT has serious issues with the current approach of Digital UK (formerly DMOL) to the Freeview EPG and we propose a new decision making framework is needed which we set out in more detail in our answer to Question 12, below. Ideally, it should be run to ensure that the arrangement complies with the full spirit as well as the letter of Ofcom's EPG requirements while enabling modern, efficient approaches to content discovery and engagement that will ultimately benefit audiences as well as the PSBs.

We welcome Ofcom's commitment to review EPG Code under its annual plan in 2015/2016 and hope that it addresses the issues we raise.

## **5. Refreshing PSB obligations, rights and future reviews for a digital age**

BT agrees that where Ofcom does not do so already, it would make sense to look at the contribution and output of PSBs as institutions, rather than simply their main channels.

Additionally, in BT's view, PSBs have a key role to play in drawing the digitally excluded online, enabling the realisation of many wider public policy benefits of a wider UK population being online. To realise this we suggest that some responsibilities in this area be added to the public service remit set out in Section 264 of the Communications Act 2003. Going forward, PSB responsibilities here may be an important motivator for the continuation of PSB privileges.

As we move towards more content being offered and consumed online problems arise when technical upgrades and newer versions of online players are issued, in particular when older versions cease to be supported. While there are cost implications to supporting numerous versions, at the same time, from a viewer perspective, each upgrade and withdrawal of a player is a smaller scale equivalent of analogue to digital switchover. While it is important to drive new innovation, and the shift to a world of multiple rolling upgrades is likely inevitable, all audience/consumer members do not adapt as quickly as others but nonetheless their well-being should be considered by PSBs.

Recently BT was facing this challenge on behalf of our customers when a PSB proposed to remove support for a version of its online player. While a compromise was reached in this instance, it resulted in considerable and unexpected costs for BT to enable these customers to continue to receive the service. Clearly, PSBs cannot simply leave viewers unserved, nor export the costs of continuing to serve them entirely and unpredictably to other parts of the value chain, whether commercial platform providers, technology companies (for example, if a smart TV is sold as enabled for TV catch up services but is not compatible with newer versions) or to viewers directly (if likewise their phone or tablet is not compatible with newer versions).

This is an emerging area, so we propose that Ofcom develop a draft framework of obligations for PSBs around the timeframe over which they will continue to support and supply content to older versions of their online offers. This will enable other parts of the value chain to be informed in advance and respond appropriately.

## **SECTION 2: THE CONTEXT FOR OFCOM'S REVIEW – Responses to Ofcom's Questions.**

***Question 1: Do you agree with our assessment of the context in which the PSB system operates, and how the trends identified might affect the PSB system? In particular, do you agree with our analysis of the independent production sector?***

Broadly BT agrees with Ofcom's assessment of the context, apart from the key omission, already discussed in Section 1, above, of the importance of the Sky platform in a converging world which requires further assessment.

Otherwise the model of several PSBs with different funding models and institutional structures works well, generating competition in content, which drives up quality, originality and variety as the institutions and channels seek to differentiate their offers.

***Question 2: Have we identified the key differences in Northern Ireland, Scotland and Wales?***

BT has no comments in response to Question 2.

## **SECTION 3: PSB PERFORMANCE**

***Question 3: Do you agree with our assessment that the PSB system remains strong overall?***

In BT's view the UK's PSB system is an excellent mechanism for creating quality content available to all, free at the point of consumption.

We agree that the system remains strong overall even as recent trends show notable changes in the revenue flows in the sector. We highlight that as shown in Figure 15 in Ofcom's Consultation Document (page 36), the majority of revenue growth in the TV sector as a whole for the Review period has been in pay TV subscriptions, in comparison with decline in main channel PSB advertising revenue, only partially offset by growth in PSB portfolio channel advertising revenue.

These trends require ongoing monitoring and the implications are not clear cut. For example, we note that the period reviewed, from 2008 – 2013 covered a sharp global economic downturn following the 2008 banking crisis, so it is likely that much of this decline in advertising revenues is cyclical rather than structural; as Ofcom said '*the commercial PSBs in particular, have begun to recover from the recession*' with net advertising revenues growing in 2013.

All organisations in the media and communications industries face downward pressure on revenues and prices and the decline in licence fee revenues is reasonable in the wider fiscal and economic context. It is unclear to us why PSBs should be insulated from these realities; rather they should respond appropriately to them. Communications Companies deal with these challenges by applying technology to reduce costs: PSBs should do the same.

**Question 4: Given the resources available, to what extent is the system meeting the needs of as wide a range of audiences as practicable?**

We are pleased to see that audiences continue to support the system and broadly believe that the PSB system continues to deliver the purposes and characteristics of PSB programming. And audience viewing figures are remarkably robust. While PSB main channel viewing showed a 10 per cent decline in main channel audience share (from 60.8 per cent in 2008 to 51.1 per cent in 2013<sup>10</sup>) there is barely any decline in audience share when the PSB portfolio channels are included (from 74.7 per cent in 2008 to 74.3 per cent in 2013<sup>11</sup>). Given that digital switchover (and thus near universal multichannel television take up) took place during the review period this suggests that PSBs are adept at both meeting the needs of their audiences and adapting to new contexts and challenges.

**Question 5: Given the resource available, does the PSB system deliver the right balance of spend and output on programming specifically for audiences in Wales, Scotland and Northern Ireland and programmes reflecting those nations to a UK-wide audience?**

BT has no comments in response to Question 5.

**Question 6: Is declining investment affecting the quality of PSB and is it a cause for concern?**

Increasing investment spend is not necessarily directly related to quality of programming. Indeed, in a world of technological change, it may well be possible to continue to produce more and better quality content for less overall spend. On the other hand the introduction of new production and broadcast standards - the push to HD and ultra HD - will drive investment costs. Likewise, viewer expectations and the high production standards, especially of flagship programming, that the PSBs are known for may also keep costs high.

Nevertheless, technology will continue to make content production cheaper and easier than ever before, and it is reasonable to expect PSBs to continue to take advantage of this, and to be able to do more with less. The overall decline in investment spend may be at least partly a reflection of technology and efficiency gains. There is evidence that is already happening at the BBC where 'cost per hour trends demonstrate cost reduction over time. For example Continuing Drama Series (including Eastenders, Casualty and Holby City) reduced cost per hour by 17 – 20 per cent between 08/09 and 12/13'<sup>12</sup>.

The detailed figures set out in Ofcom's Review document suggest that, in reality, the situation is complex, with a lesser decline in first-run originated programme hours than spend (suggesting efficiencies gains are being made to some extent). While at the same time there are overall increases in some areas, such as increased volume of first-run original programmes, there are big falls in both spend and volume in other areas.

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<sup>10</sup> Figure 18: Main five PSB channels' audience share, all homes: 2008 – 2013 p.g. 41

<sup>11</sup> Figure 44: Channel share for the main five PSBs channels and their portfolio channels, all individuals: 2008- 2013 p.g. 81

<sup>12</sup> Driving efficiency at the BBC, section 6.2 Television, p.g. 26

[http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc\\_efficiency\\_report\\_2014.pdf](http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_efficiency_report_2014.pdf) November 2014

This follows the pattern of polarisation around hits, with a long tail of declining interest, which characterises the consumption of content in a converging world. It is hardly surprising that PSB content spend matches this pattern in so far as possible within the parameters they set.

It is too early to tell whether this polarisation is a cause for concern, or rather one way in which PSBs are naturally evolving to meet the fast changing environment. If outcomes in terms of audience viewer numbers and satisfaction remain high<sup>13</sup> it is likely to be the latter.

***Question 7: Do you agree with Ofcom's provisional findings in the Review of C4C's delivery of its media content duties?***

BT broadly agrees with Ofcom's provisional findings in the Review of C4C's delivery of its media content duties. In particular we note the success of C4C in meeting the Digital Economy Act's (DEA) extension of its duty *to contribute to towards the fulfilment of the public service objectives* to all of its services including its portfolio channels and online offer.

**SECTION 4: THE DELIVERY OF THE PUBLIC SERVICE OBJECTIVES BY THE WIDER MARKET**

***Question 8: To what extent do you agree with our assessment of the degree to which the non-PSB service play a role in helping to deliver the public service objectives? In doing so please set out your views on the delivery by the PSB portfolio channels, other non-PSB channels, on-demand and internet services and also radio services separately.***

**PSB Portfolio channels**

In BT's view, the role of PSB portfolio channels in delivering public service objectives is already important, and as markets continue to converge, this is likely to grow. Some of this is obvious, for example +1 channels are delivering main channel PSB content only slightly time shifted and it is therefore logical to consider their contribution as part of PSB main channel delivery.

PSB portfolio channels provide an excellent way to enable PSBs to respond to increasingly fragmenting audiences, and to meet the expectations of younger and more digitally connected viewers, at the same time as serving the expectations of viewers with more traditional viewing patterns.

**Non-PSB channels**

In terms of non-PSB channels, we note Ofcom's view that content which is only available to pay TV subscribers, rather than being free of charge to everyone in the UK, limits their contribution to the delivery of public service content.

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<sup>13</sup> And at the moment, 'just under four in five (77%) of those who ever watch any PSB channel claim to be quite, or very, satisfied with PSB channels combined. There were no significant differences in overall satisfaction between 2008 and 2013. Most ratings for the importance for all four PSB purposes increased between 2008 and 2013,' Ofcom, Public Service Content in a Connected Society paragraph 3.50 p.g. 44.

BT's entry into sports aims to change this market, to make it more accessible and offer a better deal to a larger group of viewers. At present, our offer is made available differently, being free to BT broadband subscribers (including those who receive their TV services via DSat).

#### On Demand and Internet Services

In BT's view, On demand and internet services are in the vanguard of future content delivery. Ofcom should consider the extent to which the growth in free-to-access online content, produced both by the PSBs and other content producers does, or will, offset main channel PSB declines in content investment and earnings.

### **SECTION 5: POTENTIAL FUTURE MARKET DEVELOPMENTS**

#### ***Question 9: How likely are we to see steady evolution and have we identified all of the potential alternative scenarios and risks in the system***

BT is broadly supportive of Ofcom's prediction of steady evolution of the market. We think the expectation to access content, whenever, wherever and on any device will only grow. The combination of technology and convergence means that a sudden tipping point when viewer behaviour changes much more dramatically, is always possible.

As we discussed in Section 1, Ofcom should be aware of the risks posed to the UK PSB model (and wider UK content industry) by the EU Commission's intention to change European copyright arrangements to enable or require cross border content access. In February 2015 speech Vice President Ansip commented that the BBC iPlayer 'spells out the problem clearly' because the website explains, when trying to access it from elsewhere in the EU 'because of rights agreements, you can only download or stream BBC iPlayer TV programmes while you're inside the UK.'<sup>14</sup>

#### ***Question 10: How might incentives to invest change over time?***

As discussed in response to Question 6 above, there are already signs that PSB investment in content is starting to polarize around key content. This is potentially a wise adaptation to a changing environment, and one where pressures may grow as market convergence accelerates, and PSB competition for viewers increases.

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<sup>14</sup> [http://ec.europa.eu/commission/content/building-digital-space-europe-challenges-ahead-speech-vice-president-ansip-digital4eu\\_en](http://ec.europa.eu/commission/content/building-digital-space-europe-challenges-ahead-speech-vice-president-ansip-digital4eu_en)

## **SECTION 6: MAINTAINING AND STRENGTHENING THE SYSTEM**

### ***Question 11: Have we identified all the relevant ways in which the PSB system might be maintained and strengthened?***

In BT's view the PSB system remains resilient, with high audience share and satisfaction rates and we do not see fundamental weaknesses in PSB funding models.

However BT in BT's view Ofcom has omitted to consider a number of ways in which the PSB system might be maintained and strengthened, in particular:

- The challenges for the PSBs in dealing with a dominant vertically integrated pay TV platform.
- The importance of current territorial IP licencing arrangements continuing to be permitted in the EU.
- The opportunity to streamline distribution models.
- The potential for new models and revenue streams from expanding IPTV.
- The need to ensure that all viewers of the iPlayer pay the Licence Fee.

### ***Question 12: Does universal availability and the easy discoverability of PSB remain important and how might it be secured in future?***

BT is supportive of the universal availability of PSBs. Indeed this is key to viewer consent for the system and thus a foundation for its continued success.

As part of this, easy discoverability of PSBs is essential to make the most of the considerable public resources provided to them. However, in BT's view, the form this discoverability should take should evolve and become more flexible. It cannot simply be an increase in prominent EPG slots reserved for PSB channels or output.

Rather, it might be using the prominence PSBs enjoy currently in a more innovative way, which enables viewer choice and engagement. For example, viewers could be empowered to select which of a PSB's portfolio of channels they wish to bring up in that PSB's priority slots on the programme guide.

As we discussed in Section 1, in BT's view the overall Freeview EPG system needs to be more flexible for providers to meet viewer expectations of enhanced personalisation, given technology innovations. BT customers express their frustration with the rigid system and their lack of control.<sup>15</sup> It is vital to enable viewers to shape their own EPG experiences and to change the look and feel via filters or adaptation (where the filters learn what you want to watch). Continuing to be overly-prescriptive of EPG layout, or expanding PSB prominence, risks driving some viewers away from PSBs, especially younger and tech savvy groups.

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<sup>15</sup> Verbatim from BT's 2014 'Customer Closeness' research programme: "I have to wade through so much content and menus that are irrelevant to me."

Enabling partnerships between PSBs and the commercial sector is likely to be vital to their ongoing strength and success. To this end, there needs to be more flexibility in the EPG guidelines to enable commercial partners to position their content favourably alongside PSB channels and to ensure there are a number of modern, compelling, competing platforms available for PSB distribution.

Finally all EPG controllers must take seriously and address appropriately consumer protection issues, especially to ensure that children and young people are not unnecessarily exposed to adult and adult like content. As we set out in Section 1, the Freeview EPG controller Digital UK is failing in all these areas at the moment.

BT has concerns that the day-to-day management of the public platform (DTT) EPG is controlled by the PSBs who have a strong self-interest in promoting their own channels up the EPG, at the expense of developing a broader framework in the interests of consumers. We urge Ofcom to thoroughly consider and address these issues in their forthcoming review of the EPG<sup>16</sup>.

***Question 13: Should we explore the possibility of giving greater flexibility to PSB institutions in how they deliver public service content, including examining the scope (in some or all cases) for regulating by institution, not by channel?***

In BT's view, the exploration of such flexibility is welcome. BT considers that regulation should evolve to enable PSBs to respond appropriately to changing viewer behaviour. As Ofcom has set out, this cannot be simply extending all PSB main channel obligations and privileges across all PSB portfolio channels. Rather a balanced approach is needed.

Some extensions, such as including the contribution of +1 main channels in the main channel assessments, are obvious, others (e.g. how to approach portfolio channels with distinct identities and content) require more thought. On the one hand, moving public sector content off main channels and onto portfolio channels is not necessarily a gain for the PSB system. On the other hand, increasing the obligations on portfolio channels, which are an increasingly importance source of income for PSB institutions, would be counterproductive. We would leave pay TV PSB offers such as ITV Encore out of any extension in agreement with Ofcom's view that content which is only available to pay TV subscribers limits their contribution.

In its Review of C4C's delivery of its media content duties, Ofcom has noted that '*C4C has, to date, successfully adapted its approach by using its full range of services (particularly the portfolio channels) to attract revenue, deliver content and serve audiences*'. We suggest that any changes in PSB regulation ought to be considered through the prism of whether it will better enable PSBs to meet these three goals: to attract revenue (for commercial PSBs), deliver content and serve audiences.

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<sup>16</sup> Ofcom's Draft Annual Plan 15/16 p.g. 50 - 51

***Question 14: Do the current interventions in relation to the independent production sector need to change in light of industry developments***

BT has no comments in response to Question 14.

***Question 15: Have we identified the right options when considering potential new sources of funding, are there sources of funding which should be considered, and which are most preferable?***

As convergence evolves, and the means and costs of production and delivery of content change, Ofcom and the Government should continue to monitor what arrangements will maintain the best of the PSB system.

Ofcom has not considered the potential of sources of funding which will be market generated and self-sustaining and are therefore preferable. First, as convergence and the move to online viewing continues, there are opportunities for the commercial PSBs to offer more lucrative, targeted advertising, advertising in catch up services and to charge for advertising free services<sup>17</sup>. Second, as others have called for, all UK viewers of the BBC iPlayer should be required to pay the Licence Fee.

BT agrees with Ofcom's assessment of the many challenges around all the current options for potential new sources of funding, and the particular challenges of introducing retransmission fees. Indeed, as we discussed in Section 1, BT is concerned that introducing retransmission fees in the way some PSBs have suggested, in the current market structure, is likely to hurt both consumers and PSBs.

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<sup>17</sup> Adam Crozier said 'Online is very profitable for us, online pay and interactive together. Our CPMs are roughly five times what we charge for linear TV because it's a more exclusive produce where we carry less advertising.'  
<http://www.theguardian.com/media/2015/mar/04/itv-chief-2014-schedules-adam-crozier-arthur-george>