

Response to Ofcom consultations on the BBC's commercial activities and assessing the impact of the BBC's public service activities

About Guardian News & Media

Guardian Media Group (GMG), a leading commercial media organisation, is the owner of Guardian News & Media (GNM) which publishes theguardian.com and the Guardian and Observer newspapers. Wholly owned by The Scott Trust Ltd, which exists to secure the financial and editorial independence of the Guardian in perpetuity, GMG is one of the few British-owned newspaper companies and is one of Britain's most successful global digital businesses, with operations in the USA and Australia and a rapidly growing audience around the world.

As well as being a leading national quality newspapers, the Guardian and The Observer have championed a highly distinctive, open approach to publishing on the web and have sought global audience growth as a priority. A key consequence of this approach has been a huge growth in global readership, as theguardian.com has grown to become one of the world's leading quality English language newspaper website in the world, with over 156 million monthly unique browsers. From its roots as a regional news brand, the Guardian now flies the flag for Britain and its media industry on the global stage.

Introduction

GMG is a strong supporter of the BBC, its core values of public service and its contribution to British public life. GMG supports the fundamentals of the BBC in its current form and a universal service funded through a universal levy, at least for the period covered by the next BBC Charter. This funding structure has underpinned the BBC, enabling the BBC to create an unparalleled network of journalists across the world.¹

However, GMG is also committed to ensuring that the Guardian's news services thrive in a digital world, alongside those of the BBC. There is no contradiction in supporting a strong BBC at the heart of British public life whilst also calling for limits to be placed on the scope and role of the BBC in the next Charter period. Through the Charter review process we argued that if its place at the heart of British life is to continue, it will need to increase levels of transparency, openness and partnership.

¹ See, for example, the GMG submission to "Public Service Content in a Connected Society, Ofcom's third review of Public Service Broadcasting", 2015.

Digital news brands operate in an increasingly complex and dynamic digital economy. This dynamism is challenging the fundamentals of the business models of established media organisations at an unprecedented rate. The BBC's near £4 billion of annual public funding represents a very substantial amount of guaranteed income with which the BBC can navigate these choppy digital waters. To put that guaranteed public income in context, following the sale of GMG's 50.1% stake in Trader Media Group, GMG had a cash investment fund of £843 million to help ensure the Guardian's future in perpetuity. £843 million represents just over 2.5 months of the BBC's guaranteed annual income.

Since the Government's decision in 2014 to end public funding for the BBC World Service through the Foreign & Commonwealth Office, the BBC has also sought to commercialise its news content published outside of the UK through advertising and sponsorship². Following this change in policy, in the UK the Guardian now competes for audiences with a licence fee funded, ad free BBC, while in the rest of the world the Guardian competes with an ad and sponsorship funded commercial BBC news.

The BBC's recent response to BBC Charter Review set out plans to "aggressively commercialise" the BBC's global news operations, meaning that the Guardian will come into even closer competition with an increasingly commercial BBC in the years ahead.³ However, as was acknowledged through the Charter Review process, the oversight and transparency arrangements were built for a different age, including those governing how the BBC creates new content and shares existing news media content between the UK licence fee funded and commercially focused news operations.

It is welcome that the BBC is now subject to regulation by Ofcom, which can provide a much more thorough and independent oversight and transparency regime. It is hoped that the new regime will not only ensure that the BBC is acting appropriately within the confines of state aid law, but also that such regulation might incentivise a new culture of partnership at the BBC, through which the UK's archive of content - and the raw materials that create that content - are shared with commercial news organisations with whom the BBC's commercial arms compete.

² <http://www.theguardian.com/media/2014/jan/10/mps-bbc-commercialisation-world-service>

³ http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/future_of_the_bbc_2015

In the rest of this short response, GMG comments on aspects of two consultation papers published by Ofcom. First on the paper entitled, the BBC's commercial activities and then very briefly on the paper entitled Assessing the impact of BBC public service activities.

The BBC's commercial activities

At 1.22, the Ofcom document states that *“When deciding whether to open an investigation, we will consider whether there is evidence that the BBC's arrangements are outside the market norms for the relevant line of business and if the BBC's commercial activities are likely to distort competition in the UK. We would not expect to consider distortion to competition in international markets. **We would therefore expect complainants to clearly demonstrate how the BBC's arrangements are outside of market norms and in particular how they are likely to impact UK competition.**”*

From the perspective of a potential complainant, a key concern here is the degree to which information is available in the market to demonstrate to Ofcom that the BBC's arrangements are outside market norms. While it is welcome that Ofcom will force the BBC to publish the methodology by which transfer prices are calculated, the prices themselves will not be published. This will clearly mean that any concern will be subject to a degree of estimation.

At 1.25, the document states that Ofcom plans to *“**undertake further work early in the new Charter period to develop our understanding of the processes and practices around the operation of the BBC's commercial subsidiaries and their relationships with the Public Service.** For example, we expect to look in detail at the BBC's transfer pricing arrangements and the specific nature of the range of different commercial activities that sit within the BBC's commercial subsidiaries, including the BBC's identification of individual lines of business for the purpose of setting a commercial rate of return.”*

This move by Ofcom is welcome. The last BBC Trust report⁴ on transfer pricing - published in October 2016 - was deficient in a number of ways, not least the manner of the publication of the report, whereby the BBC Trust gave the BBC Executive the opportunity to review a report⁵ that had been commissioned from Ernst & Young (EY) and to craft remedies to criticisms of

4

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/transfer_pricing/bbc_transfer_pricing_trust.pdf

⁵ http://www.bbc.co.uk/bbctrust/news/press_releases/2016/transfer_pricing#report

BBC processes within that report, without any public debate about the efficacy of those reforms. Both the substance of the report and manner of the BBC Trust's handling demonstrated why the existing system of governance was in need of reform.

At 3.29, we welcome Ofcom's view that *"where possible, the BBC public service must make goods and services supplied to the commercial subsidiaries available to the wider market. In these cases, they must be made available to third parties on equivalent terms and prices to commercial subsidiaries."*

One of GMG's key requests through the process of Charter Review was to open up the BBC's archive of audio-visual content beyond the realms of the BBC's own commercial subsidiaries. Our rationale for that request was that *"Media companies and news brands across the world are coming to terms with the new patterns of consumption that are being wrought by digital technology. The BBC stands incredibly well placed to support UK news brands by providing a creative wellspring for new video by opening up access to the enormous history of audio visual content in its archive. Such a policy might see commercial rivals pay a fee or revenue share to access content in line with the rate card fees paid by the commercial news arm of the BBC to access that library of BBC content. As well as providing access to material that may otherwise never again see the light of day, this could create a lucrative new revenue stream for the BBC and provide commercial news organisations with valuable content."*

In relation to comments at 3.30 of the consultation document, no clear reason has been given by the BBC as to why they need to preserve exclusivity over this video archive, other than they wish licence fee payers to view that content via BBC channels. It is hoped that the new regulatory framework overseen by Ofcom, combined with the obligation (at point 13 of the news Royal Charter) on the BBC to *"work collaboratively and seek to enter into partnerships with other organisations, particularly in the creative economy, where to do so would be in the public interest"*, will lead to a new culture of cooperation from the BBC.

At 3.42, the Ofcom document discusses the question of commercial rate of return, stating that *"In assessing whether the rate of return of a commercial activity is appropriate, we would consider whether a rational private investor would invest in the activity. We would expect a private investor to carry out an investment project if the expected return on the investment is higher than the opportunity cost of capita"*. The document goes on to state that *"we would expect every activity to be profitable over an appropriate time period. However, in some circumstances an investment in one activity could generate indirect returns elsewhere, and a rational investor may accept low returns on a specific investment if this investment*

produces high returns for the same investor from other assets. Where this is the case we would expect the BBC to be able to demonstrate the business plan for how low returns on one activity supported higher returns elsewhere;"

The BBC's News services play a number of roles outside of the fact of providing news. For example, in "British, Bold, Creative", the BBC set out its view that from an international perspective, *"Britain's media increase its global influence. We came first in a recent ranking of different countries' 'soft power', thanks in large part to the creative industries. One of BBC's public purposes is to 'bring the world to the UK and the UK to the world'. Global users feel that the BBC is a great ambassador for the UK (scoring the BBC at 7.2 out of 10 on this measure)."*⁶ While the BBC remains at the heart of the UK's creative industries in promoting a vision of Britain to the world, it is important not to lose sight of the role than other media organisations play in this regard. Furthermore, it is essential that the expansion of a potentially loss-leading commercial BBC news subsidiary is not allowed to continue purely on the basis of the BBC's contribution to soft power. It is important to note that the BBC is not necessarily a rational commercial actor in relation to ongoing investment in a loss making commercial news arm. Its incentives for continuing such investment may be far more complex than that of a commercial news organisation, which may lead it to accept financial losses to an extent that would be deemed acceptable in a commercial news organisation. Dividing the arguments about the role of BBC News in the world, and its desire to be seen as a trusted media brand, from its increasingly commercial objectives will be a difficult and complex role for Ofcom to carry out.

Monitoring, reporting and transparency

We welcome the decision by Ofcom to force the bbc to *"Publish the methodologies it uses to establish transfer prices for each type of good or service that the Public Service supplies to commercial activities"*, and *"Publish the methodologies it uses for valuing the BBC brands."* Similarly, the consistent monitoring of the BBC's commercial performance against targets is an important step to ensure adherence to applicable rules on state aid.

Assessing the impact of the BBC's public service activities

6

At 3.12 of the document, Ofcom notes that *“The BBC’s presence may also mean that people are less willing to pay for media services and have a reduced tolerance for adverts, further reducing potential revenue.”* From a practical perspective, the BBC’s presence and behaviour in the market may influence substantial strategic decisions taken by commercial news organisations to issues such as to ad blocking, or to the approach taken by news organisations to partnership with large dominant platforms. The BBC produces a large volume of online news content that is increasingly similar in nature to content that is produced by the commercial news sector. Yet the BBC’s incentives in terms of ensuring the reach and monetisation of that content are often at odds with the objectives of the commercial news sector. Under the new Charter, and in the interests of maintaining a high quality, plural news sector in the sector, it must be hoped that the BBC will seek to understand the pressures and concerns of the commercial news sector, and to adjust its behaviour where appropriate.

Guardian Media Group

13th February 2017