

techUK response to the Ofcom consultations on the Regulating the BBC's impact on Competition

February 2017

Introduction

techUK represents the companies and technologies that are defining today the world that we will live in tomorrow. More than 900 companies are members of techUK. Collectively our members employ more than 700,000 people, which represents nearly half of all ICT sector jobs in the UK. These companies range from leading FTSE 100 companies to new innovative start-ups. The majority of techUK's members are small and medium sized businesses.

This response is primarily made on behalf of techUK's television device manufacturing members. We do not seek to fully represent the views of other members but where those views have been expressed they have been included.

Summary

This document outlines our key competition concerns and provides our recommendations and comments. These are not new areas of concern to device manufacturers but represent issues that supply chain stakeholders believe are yet to be satisfactorily addressed. We welcome the opportunity to continue to contribute to joint discussions as part of the overall review and future impact of the BBC on the receiver device commercial market.

techUK and its members recognise and support the strong leadership and value creation that the BBC delivers in the UK and global content creation, broadcast and distribution market places. The BBC touches us all as viewers and listeners and we recognise the high value that the BBC delivers for UK licence fee payers as a provider of content and a developer of content distribution technologies. It is against this backdrop that techUK seeks to ensure the BBC is positioned to offer the best possible value to licence fee payers and the content, distribution and device industries with which it collaborates as a partner and stakeholder whilst being mindful of BBC impact on markets and competition.

The technologies behind content enablement and delivery are changing at a fast pace and will continue to do so. Whilst viewers and listeners continue to consume BBC content across a broad range of devices the large screen Television is still the dominant device of choice from which to watch programming at home. Hybrid DTT/ IP devices are the fastest growing sector of the Television market, increasingly in larger than 40" screen sizes, providing Ultra High Definition picture quality capability.

As one of the largest and most innovative public service broadcasters in the world, the BBC has a significant impact on the UK consumer technology market. Decisions taken by the

BBC with regards to technology roadmaps, distribution methods, compliance and prominence not only increase the cost of devices and services enjoyed by UK consumers, but also impact the very competitiveness and sustainability of the UK and wider global technology sector itself.

Distribution Guidelines

The recent BBC distribution framework agreement is an example of where the BBC is unilaterally setting a high threshold for device manufacturers and platform providers for access to BBC content which we argue is not in the interest of an open and platform neutral position.

Device manufacturers can show examples where the BBC is setting unreasonable thresholds and controls on digital devices that are designed and enabled to receive BBC content and services. The BBC should balance the level of prescription of technical and performance requirements with allowing consumer choice of receiver devices, user interfaces (UIs) and prominence priorities. Another example relates to the controls over the provision of iPlayer services via connected televisions. The BBC should not be over prescribing the requirements for application and trade mark licence (TML) approval on these devices for the delivery of BBC content as this is contrary to the global and open standards on which the majority of television platforms are developed.

techUK also draw Ofcom's attention to the fact that the compliance requirement requirements for televisions receiving DTT and IP BBC services are set at a far more onerous level than devices that receive the same BBC content and services through applications (Smart Phones and Tablets for example). We ask Ofcom to consider whether these additional compliance requirements are reasonable or allow fair competition between device solutions.

techUK also draw Ofcom's attention to a situation where a BBC funded body, Freeview Play, charges device manufacturers a per device levy to enable PSB catch-up services on televisions. No such levy exists for non-television devices that access these services and we believe this distorts market competition between competing devices. Ofcom should review whether this is an acceptable approach by the BBC and other PSB providers.

techUK believes there must be a reasonable balance between this increasingly prescriptive BBC approach to device compliance and the impact on competition should the BBC prevent device manufacturers reasonable freedom of specification of their devices and UIs and flexibility of prominence, allowing viewers to decide how they manage their content search and discovery.

The device manufacturing industry is a global industry. Globalisation of platform engineering and production scale keeps costs low. The consumer buying price of

televisions has consistently declined on a like for like inflation adjusted basis for more than 20 years. This is partly driven by the economies of scale of global engineering and production. It must be recognised that the BBC and the UK cannot operate as a separate and unique entity when setting technology standards and platform specifications that device manufacturers are then compelled to follow as this has a twofold effect of driving up cost and slowing the rate of technology adoption and new model development and production.

Device manufacturers believe that there is unnecessary complexity and plurality for delivering BBC PSB (public service broadcasting) content to UK viewers and listeners. This increases the cost of content delivery and therefore may contribute to a negative impact on content investment. We believe that the BBC can work more closely and openly with the supply chain industry to reduce complexity in the technologies and platforms for content delivery, freeing up more budget for investment in content. This can be achieved through an increased engagement and dialogue between Ofcom, BBC R&D, techUK and techUK members. We believe that a stronger working relationship between all parties can raise awareness of the challenges and role that the content, distribution and the device community plays in the delivery of content and services to viewers and listeners and the considerations that need to be given to the global nature of the device.

Distribution Technology and role of BBC R&D

Platform neutrality should be a key BBC constitutional requirement. techUK has concerns that the BBC's activity within platforms in which it operates can distort the marketplace and, arguably, lead to a situation where BBC's actions commercially impact other players. An example is where the BBC is a shareholder of an organisation that operates in a horizontal market (e.g. Freeview and Freesat) and, as a lead shareholder and technology developer of the platform, exerts strong influence and control of both the platform technology specifications and the TML conformance requirements that device manufacturers must meet to be TML compliant.

Core (traditional) platforms should not be starved of resources to service the needs of newer less established and riskier platforms. Decades of investment from all sides of industry has gone into ensuring that the current consumer experience is one of almost 100% reliability, instant availability with no pre-requisites for consumers' technical ability. Such value should not be discarded indiscriminately. DTT remains the predominant free-to-air delivery route of choice for viewers and listeners and, based on current patterns of content consumption, this is not likely to change significantly during this Charter period. Whilst we fully support the enablement of IP delivery routes, the growth of IP delivery must not be at the expense of DTT, Cable and Satellite delivery routes given the demographics of who mainly consume content via DTT. The BBC has a duty to ensure that all of the core delivery routes offer a full suite of content and services and that the value of all key platforms are maintained. The BBC should support and prioritise the expansion of linear High Definition (HD) services to as many regions as possible to ensure that all viewers can benefit from these HD services.

BBC R&D and industry partners have played a very positive role in supporting the development and launch of new technologies to enable the creation and delivery of new content, increasing the content choice and higher quality viewing and listening experiences. For example, although the BBC is a beneficial contributor to UK PLC for new technology introduction, some BBC technology prototypes are sometimes made available as commercial IPR at the disadvantage of smaller companies.

Ofcom should look carefully at the potential impacts on markets and competition that the over commercialisation of new technology departments, such as BBC R&D and New Media divisions. They can have a direct impact on competition. It is important there is an explicit framework around the role of new technology departments and their respective programmes that ensures that outputs are not distorting markets or competition.

Key areas of BBC activity that can impact competition within the device industry

techUK draws Ofcom's attention to the following areas where BBC actions and requirements can have a direct impact on competition. The impact on competition can manifest itself in different ways. Some examples of impact on competition can be:

1. Prevention/ Slowing of device innovation due to overly prescriptive compliance requirements for service access, particularly via IP.
2. Restriction of devices available to UK consumers due to specific UK solution requirements that some/all device manufacturers are unable to comply with due to the global nature of device design and specification. Consideration needs to be given to the lifecycles of new product range development and silicon development. These lifecycles are generally 2 and 3 years for new specifications and platforms so consideration needs to be given to allow device manufacturers enough time to implement the requested changes in the content delivery landscape.
3. Additional costs in devices which are passed onto consumers as the result of unreasonable compliance requirements for service reception or TML use for branded PSB services (e.g. Freeview Play, Freesat, Youview).
4. Differing and unreasonable differences in compliance requirements for different device requirements for the reception of IP services (like iPlayer). Smart Phone and PC/ Tablet devices have light touch compliance requirements and televisions have heavy compliance requirements for access to the same services. techUK challenges whether these differences are fair or reasonable.
5. Indirect impact on competition through shareholding of PSB content service delivery. The BBC is a major shareholder of Freeview/ Digital UK, Freesat and Youview. The BBC exerts strong influence over the technology platforms, TML compliance requirements and other PSB shareholders. One example is the device levy for Television, PVR and STB manufacturers so their devices can access catch-up

services via Freeview Play and be TML compliant. No such levy exists for the access to these catch up services on the non-Freeview Play landscape and non-Television type devices.

Distribution Guidelines recommendations

The BBC are in the process of reviewing their distribution guidelines, with a particular interest in the enforcement of additional compliance requirements for Television and related devices. When devising the new framework, we believe Ofcom should make the following clear in the proposed guidelines.

1. The premise of these guidelines should be one of 'Best Practice Guidance' rather than 'Requirements' as they are described in the draft document, otherwise we see these requirements as having an impact on competition within the device market place. techUK and its members believe that a heavy touch compliance framework for horizontal market devices impacts competition and does not act in the best interests of consumers from a device choice and best value perspective.
2. Guidelines should not set editorial & layout aspects for BBC content, which is provided within applications such as iPlayer, against the presentation of iPlayer and BBC content in the UIs of Consumer Electronics (CE) devices. Devices cover a broad range of products from TVs to PVRs, Mobile Devices and Tablets.
3. We recommend that BBC editorial control and content curation is solely in the domain of the BBC and that the BBC involvement should end at that point as opposed to being prescriptive of how user interfaces in the rapidly evolving CE device market present applications such as iPlayer.
4. The BBC's role and focus as a PSB should be to make available its content on as wide a range of devices as possible and the BBC should not attempt to apply any conditions on how devices present the applications. We do not see that it is the BBC's role to specify device requirements, otherwise the BBC has major impact and influence on the device manufacturing market, impacting on competition.
5. Overall device compliance requirements should be light touch. We do not see it as the role of broadcasters and service providers to specify or mandate device performance or specification for the delivery of Free-To-Air services over and above the specification parameters as laid down for common standards (e.g. D-Book) or agreeable TML requirements.
6. techUK fully understand that the BBC requires prominence for its most watched services and viewers of BBC programming should be able to easily access the content they want to watch or listen to. We believe that, within the Television device world, this is currently fully provided for within the linear EPG environment which mandates prominence for BBC services.

techUK have identified the following areas of content distribution that could have an impact on completion.

1. Prominence
2. Editorial Control and Curation
3. Attribution
4. Technical Enhancements
5. Collection and Sharing of user and usage data

techUK produced a detailer paper on distribution guidelines in December 2016 and this has been shared with Ofcom and the BBC.

Dispute resolution. Process of escalation where a dispute cannot be resolved between the BBC and industry Stakeholders.

techUK request clarity on the Ofcom arbitration process, where necessary, and what techUK and device manufacturers would need to do to trigger the process in event of a dispute. It is agreed that every effort should be made between the BBC and its industry partners to reach mutually acceptable agreements. However, should the process of dialogue and negotiation be exhausted without satisfactory resolution we believe that it is incumbent upon Ofcom, as the regulator of the BBC, to support the process of resolution, and, if necessary, arbitration.

techUK believes that holding the BBC to account in this way was a weakness of previous Governance within the BBC/ BBC Trust and we expect to see a clear process and rules of engagement set out by Ofcom should such escalations be required. Industry needs confidence that Ofcom will hold the BBC to account where it is proved necessary.

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