

ITN RESPONSE TO THE REVIEW OF THE BBC'S ROYAL CHARTER

1 INTRODUCTION

- 1.1 ITN is grateful for the opportunity to respond to the Department for Culture, Media and Sport's consultation on the Review of the BBC's Royal Charter. ITN supports the future of the BBC as a strong and vibrant broadcaster for many years to come. ITN and the BBC have competed robustly for nearly 50 years, each helping to ensure that the UK remains way ahead in the provision of high quality news services. We want to keep on competing with the BBC into the digital era and this submission focuses on our views about how that objective will best be achieved.
- 1.2 The review of the BBC's Charter comes at an important moment in broadcasting history, following the coming into force of the Communications Act, the creation of Ofcom, the merger of ITV and as digital take-up in UK homes passes the 50% mark, with plans well underway to achieve digital switch-over in 2010.
- 1.3 All of these events will have a significant bearing on the future of broadcasting in the UK in the coming years. In particular, developments in the broadcasting sector will have a significant impact on the way in which ITN continues to compete with the BBC as its main competitor in news provision in the UK.
- 1.4 ITN currently provides news services to the UK's three commercial terrestrial networks – ITV, Channel 4 and Five. The contract with Five expires at the end of this year and from 1 January 2005 the service will be produced by Sky News, giving it its first proper foothold in the terrestrial news market. ITN also produces the 24-hour ITV News Channel, providing breaking news and analysis around the clock in addition to the main contract to produce the news service for ITV1. Earlier this year we also began producing ITV's London regional news service with a new, dedicated team based at our headquarters in Gray's Inn Road, marking ITN's first move into producing a fully-fledged regional news programme.
- 1.5 ITN also produces news bulletins for Independent Radio News (IRN), providing over 260 commercial radio stations around the UK with national and international news bulletins.

1.6 In an increasingly competitive media marketplace, particularly in broadcast news, ITN had undertaken a major programme of diversification in recent years. We have moved out of high risk, advertising dependent businesses to concentrate on low risk businesses that maximise the potential of the vast amount of news material that comes through ITN each day and the expertise of our staff. We sold our shares in the ITN News Channel to ITV and the channel became the ITV News Channel, produced under contract by us. We also sold our shares in the pan-European news channel, Euronews and our stake in London News Radio, operators of LBC and News Direct.

1.7 Alongside our main broadcast news production contracts ITN now operates three 'enterprise' business units:

ITN Archive: in the last few years we have built the ITN Archive into the world's biggest commercial news archive. Through various business partnerships we hope to turn the ITN Archive into the world's biggest commercial video archive. In addition to our own material from the last 49 years, ITN now sells footage on behalf Reuters, British Pathe, Granada and Channel 4, both of which have seen us broaden the range of the business into non-news material. We also sell material on behalf of a further 12 archive collections and historic newsreels. In total we are responsible for the management of over 500,000 hours of material. The ITN Archive is the fastest-growing area of ITN's businesses and this year we hope to grow it into a £12m a year business, which will underline its position as a vital part of ITN's ongoing commercial sustainability. It competes head on with the BBC's commercial archive business, BBC Library Sales.

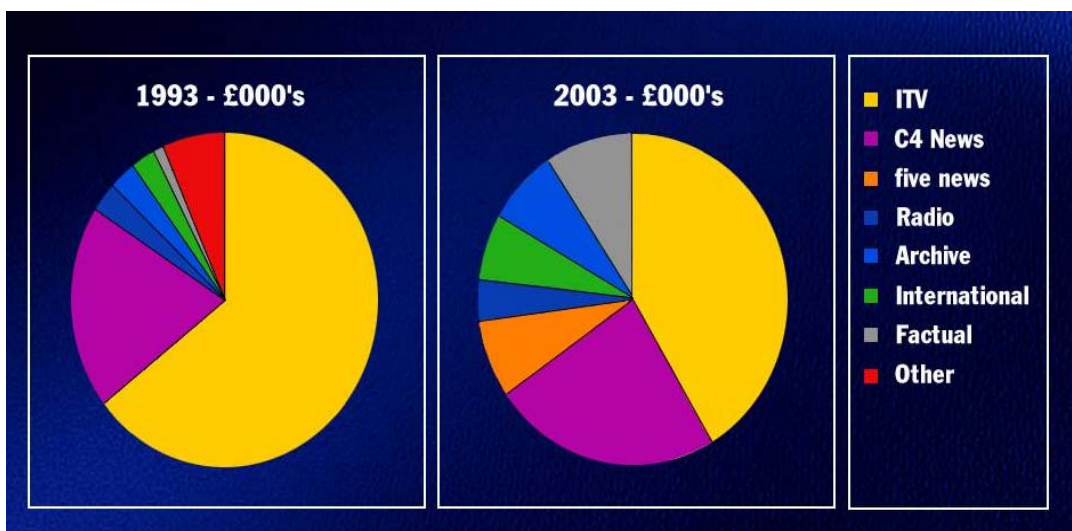
ITN International: ITN International encompasses ITN's new media, syndication and consultancy businesses.

- **Mobiles:** ITN is leading the way in providing video news to mobile phone users. We provide a comprehensive video news bulletin service to Hutchison's 3G '3' service and to Vodafone and O2. We plan to roll out our groundbreaking mobile news services to further customers in future.
- **Other third party supply agreements:** ITN has also branched into other third party news supply deals. Most recently we announced a deal to supply news bulletins to TNX Ltd to broadcast news on trains in the Central region. There are further opportunities for growth with third party distributors, both in transport and other areas, which we hope to exploit in future. We also supply news content to a variety of broadband operators.

- Syndication: ITN also provides news content to other broadcasters around the world under a number of syndication deals. Through these relationships we sell news content to customers such as CNN, NBC and Channel 9 in Australia.
- Consultancy: ITN also runs a news consultancy business. Recent projects have included helping *TV Today* to launch a news channel in India; showing a New Zealand TV station how to best use digital server technology and providing editorial and production advice to a Romanian TV station. In consultancy we are able to 'sell' ITN's expertise in broadcast news production, design and technology.

ITN Factual: ITN Factual specialises in factual documentary making for a range of channels in the UK, including the BBC, ITV, Channel 4, Five and Discovery. Recent programme commissions have covered a wide range of subjects including Leonardo's Dream Machines about Leonardo da Vinci's inventions, Dying to be Apart, the story of the Iranian conjoined twins and a range of documentaries about the royal family.

- 1.8 All three 'enterprise businesses' are important ways for ITN to remain financially healthy and able to develop new services. This in turn contributes to ITN's ongoing ability to compete with the BBC in the provision of news across television, radio and new media news production.
- 1.9 A comparison of the revenue split between ITN's various activities in 2003 and 1993 shows how much the business has diversified and how much more dependent ITN has become on its non-core news contracts for its future growth.



- 1.10 In an increasingly competitive media market, these businesses have become more important to ITN to help underpin the future of the company and its ability to remain competitive with the BBC. They are also areas where we have most concerns about the way in which the BBC behaves and the way in which the corporation will operate its own activities in future in competition with the commercial sector.
- 1.11 ITN fulfils two public service functions. First, to facilitate universal access to impartial, high quality and distinctive news services and second, to compete with the BBC, and other news providers, delivering 'plurality of news voice' to the consumer. Indeed, under the Communications Act, ITV News – which is still ITN's biggest area of business and the most competitive with the BBC – is explicitly required to 'compete effectively' with other news services in the UK, and in particular with the BBC. This is premised on the fact that even today, in an increasingly fragmented market, ITN's news services on ITV and BBC1 News remain far and away the most watched news services in the UK.
- 1.12 For many years ITN and BBC News competed in a duopoly, first solely through ITN's news on ITV and from 1982 through Channel 4 News. This continued until the launch of Sky News fifteen years ago. Then in 1990 ITN became an independent company in its own right, following the Broadcasting Act of 1990 which established ITN as an independent organisation. In 1997 ITN began producing Five News when the channel launched. In 2000, ITN launched the ITN News Channel to compete directly with the two other UK-produced 24 hour news services, Sky News (launched 1989) and BBC News 24 (launched 1997). The channel became the ITV News Channel in 2002, with ITN continuing to produce the service.
- 1.13 ITN - as producer of a digital 24 hour news service and its presence on a variety of new media platforms, together with its linear TV and radio production contracts - fulfils an important function. ITN believes its role is to maintain choice and diversity between high quality, domestically produced news providers in across a full range of digital platforms, available universally to citizens and consumers.
- 1.14 This paper will focus predominantly on how ITN's achievement of those objectives relates to BBC provided services and how the BBC impacts on ITN's activities. Below we respond to the questions in the consultation that relate to ITN's main concerns with the BBC.

What do you think of the BBC's contribution to the life of the United Kingdom and to the wider world? Should this change over the next decade and, if so, how?

What value does the BBC add to the wider provision of public service broadcasting?

How well has the BBC met its purposes over the Charter period? What evidence do we have that the way in which the BBC does this is successful compared to other broadcasters?

- 2.1 The BBC makes a major contribution to the life of the United Kingdom through its output – in television, radio and online. Its services are – and must be – high quality. As the principal provider of public service broadcasting, ITN believes the BBC continues to have a role in delivering a range of quality services and in helping to sustain the wider broadcasting ecology. The BBC should be required to continue the traditions of high quality, impartial news provision that have been enjoyed by the British public in the analogue world. But moving forward it should do so with a greater level of objective – and we believe - external scrutiny.
- 2.2 The BBC must be required to operate all its services fairly in competition with the commercial sector. It must not be forgotten that the commercial broadcasting sector also makes a huge contribution to the life of the UK – indeed, it is by having strong, high quality services available from both the BBC and the commercial sector that makes the British broadcasting sector the best in the world. In news, the BBC and ITN have each helped the other over the last 50 years to drive up editorial and production standards.
- 2.3 Therefore, the BBC cannot be seen in isolation from the rest of the market. This is a point that goes well beyond the commercial interests of ITN. The scale of BBC Online is one such example.
- 2.4 The impact of the BBC's enormous investment in its web activities has been to leave little oxygen for commercial competitors who might otherwise develop major news-based information sites. This has an obvious impact on the plurality of news sources, but beyond that it stunts innovation, research and development in an area in which the UK could be a world leader. ITN's own development of website-based news delivery has, for example, stopped altogether beyond providing online news content for its broadcast customers. Our focus now is on mobile and broadband platforms, where we are ahead of much of Europe and the US in our product development and technical delivery. Further investment depends on potential commercial returns and the introduction of cost-free BBC content would serve to undermine this market.
- 2.5 The BBC should pay demonstrably greater regard to the way in which it impacts on its competitors. The BBC has adopted a more aggressively

commercial strategy in its programming and scheduling recently. This has shown that the way in which the BBC makes decisions and is required to justify major changes is much more lax than the processes that the commercial sector must go through. One such example concerned the scheduling of the BBC's 9 o'clock news to 10pm. Without wanting to get into the merits or otherwise of the scheduling decision, the BBC decided to move its bulletin to 10pm and managed to do so very quickly, without any serious form of discussion about the impact of the move. By contrast when ITV applied to the ITC to seek regulatory approval for the move of the ITN-produced late evening bulletin it took months of assessment before a decision was reached. This example served to show the huge difference in regulatory scrutiny between the BBC and the commercial broadcasters. A greater degree of independent scrutiny would help achieve a more level playing field.

- 2.6 The BBC has the huge advantage of a guaranteed revenue stream and no commercial risk. In recent years the BBC has been able to undertake massive digital expansion with the launch of several new channels, alongside growth into myriad niche markets, through third party supply deals with a range of third party customers, such as train and airline and new media companies.
- 2.7 The BBC has also launched many new services against a backdrop of ill-defined remits. BBC Online is the most obvious example of a new service being launched without a clear and precise remit, which has made it very difficult for the BBC competitors to know what it is they can expect to compete with. ITN has made detailed submissions to the Graf review team on this subject which we hope will lead to a proper, clearly defined remit for BBC Online for the first time.
- 2.8 The BBC's spending on its services must be transparent; the corporation's unique status as a licence fee funded body, paid for by the British public must not be put at risk; the BBC must be properly accountable to the public and to Parliament and the BBC should be more open and transparent in its dealings so that they and the rest of the industry can be assured that the BBC is behaving properly.

Recommendations:

- ***ITN believes that the BBC should be held, through the Charter, to detailed and clear remits for each of its services and that these should be subject to external approval.***
- ***ITN believes that the BBC Charter should work to ensure that the corporation fulfils these objectives with more explicit requirements within the Charter to ensure the BBC is accountable and transparent.***

- ***The Charter should ensure that at all times the BBC has regard to its impact on the rest of the market.***

What is it about the BBC that makes it unique? How do we make sure that it is distinct from other broadcasters? Are there better ways to deliver some of the contribution that we have traditionally relied on the BBC to provide?

- 2.9 The BBC's main uniqueness is its funding. The licence fee provides the BBC with a fixed, guaranteed form of revenue that enables it to exist without any of the risks of the unpredictable commercial sector. The last few years' downturn in the advertising market, amidst increased competition has thrown into sharp focus the advantage that the BBC's funding gives it. In the commercial sector there has been enormous pressure on budgets, with reduction in spending forced on many areas, including on news. The BBC, on the other hand, has been able to expand with new channels and services paid for through a generous licence fee settlement in 2000. This means that the BBC must ensure that it spends that revenue carefully and proportionately.

3 CHANGING LANDSCAPE

How should the BBC respond to the development of new technologies and to changing viewing and listening habits?

- 3.1 The BBC has been in a privileged position in recent years to expand its range of services. With three digital platforms and digital penetration already at over 50% it is appropriate that as the UK's main public service broadcaster, the BBC has looked to develop its services to confront the digital age and remain competitive. However, the way in which it has done so has given ITN some cause for concern. Our primary concerns relate to the BBC's new media expansion and its colonisation of new and emerging new media platforms.

As the consultation paper rightly points out:

"Ten years from now it is quite possible that people will, for example, make widespread use of mobile devices to receive broadcast content on the move..." (paragraph 18).

- 3.2 It is right to expect that the public will continue to change their media consumption habits as new technologies develop and are rolled out. In news there has already been a significant shift in the way in which consumers access news – through 24 hour news channels, online news, text and video news on phones and other new media devices.
- 3.3 However, despite fragmentation of viewing as a result of multi-channel television, the vast majority of television news viewing is still to news bulletins on the main terrestrial channels. Viewing levels outstrip viewing to digital news channels, beyond their reach potential. ITN

research shows that BBC television news programmes reach around 66% of the population in a week and ITN related television news programmes reach around 63%. That compares to around 10% for Sky News¹.

- 3.4 Share figures for 2003 also show how much higher viewing of the terrestrial bulletins is:

Average share:

BBC 10 o'clock News:	25%	(5.2m)
BBC2 Newsnight:	7%	(1m)
ITV News at Ten:	17.4%	(3.5m)
Channel 4 News 7pm:	5%	(1.1m)
BBC News 24:	0.5%	
Sky News:	0.7%	
ITV News Channel	0.15%	

- 3.5 The public continues to have a right to access a range of high quality, universally accessible news bulletins on the main public service networks. Likewise as consumption habits change, it is important that those core principles of choice and diversity are transposed into the digital world.
- 3.6 The BBC's strategy to launch new services to react to new technology and changing viewing and listening habits must not be seen in isolation from these important principles and must not be developed so that they eradicate competition from other operators.
- 3.7 ITN has had experience in the past that indicates that the BBC's strategy would pose a threat to our ability to compete.
- 3.8 In December 1999, ITN became the UK's first provider of a text news service (using SMS messaging) to mobile telephones in a commercial deal with Orange.
- 3.9 In January 2000 the BBC launched a similar deal to provide news content to BT Cellnet (now O2). But the BBC was providing the material to BT Cellnet completely free of charge.
- 3.10 Therefore, having taken the initiative to enter this market ITN found its business model unsustainable once its main competitor started

¹ Figures are approximate. Based on viewing for all individuals for national news viewing (ie not regional).

providing parallel content for free. ITN was eventually forced to withdraw from the market.

- 3.11 We have described how important it is for ITN to be able to thrive in a range of markets and on a commercial basis to continue to sustain ITN as a viable business. Therefore, while we are gradually building a successful business through our video news to mobiles businesses, we will only be able to do so as long as we are able to do so commercially. If the BBC enters the market by providing content for free this would almost certainly squeeze us out of the market and limit our ongoing ability to meet the desired policy objective of providing competition to the BBC.
- 3.12 Part of the problem that we have encountered is that it is often unclear what the BBC's exact remit and future strategy is. This makes it difficult for ITN and other commercial competitors of the BBC to develop new services with certainty of business planning.
- 3.13 There have been some improvements made under the DCMS approvals process in recent years, with the process becoming more transparent, and importantly, more focused on the need to conduct market impact tests for new BBC services. This was seen most clearly in the approval of BBC Three, where the ITC conducted an assessment of the channel's likely impact on the market. As a result of the new approvals process the more recently approved services have faced more scrutiny, and have more detailed and defined remits.
- 3.14 This compares to the remit for services such as BBC Online, which (as we have argued to the Graf review team as part of their review) was approved with little industry consultation and without any sort of clearly defined remit. ITN believes that an Ofcom-conducted market impact test should be included within the BBC Charter.
- 3.15 The BBC regularly cites its own viewer consultations as part of its justification for new services. However, these consultations tend to be very flimsy. ITN believes that Ofcom should be entrusted with carrying out the viewers' consultation as part of the approvals process for new BBC services.
- 3.16 Despite the improvement to the approvals process and the guidelines overseen by DCMS there is still a major problem with the BBC about when and why services are put through the approvals process. It is a decision for the BBC executive and Board of Governors to judge whether a new service needs to be approved separately. This means that the BBC is still able to launch new services without any proper scrutiny or market impact assessment. This was part of the difficulty we faced with the

launch of the BBC's text to mobiles service or its WAP services. In the case of text to mobiles the BBC initially launched the service as a trial.

The BBC suggested in response to our queries then Chairman Christopher Bland responded that permanent service 'would be subject to the Secretary of State's consent and would be required to conform to the BBC's Fair Trading Commitment'. It never did.

- 3.17 The BBC has announced recently that it will launch an Internet Media Player (IMP) service². This service will be a brand new initiative, allowing the public to download BBC programming via broadband for up to seven days after initial TV broadcast. It is a development that could have profound implications on the BBC's competitors. However, despite a public announcement, there has been no talk of the service being put through a proper approvals process. Similarly, the BBC recently announced its intention to launch the BBC Creative Archive, a project of digitisation of the BBC's archives to provide material free for public use. The service may operate in direct competition with commercial archives, such as the ITN Archive, and will involve enormous investment through licence fee funds. It may also provide a knock-on benefit to the BBC's commercial library sales business, by digitising content and improving its quality and ability to be delivered quickly to commercial customers. Again, this has been announced with no external assessment or approval.
- 3.18 Why not? And on what criteria does the BBC believe these services, however worthy in their own right, should escape scrutiny to ensure that they are a) an appropriate use of licence fee funds; b) to test their impact on the market and c) that they would not be better operated as commercial services?
- 3.19 In the case of the IMP we understand that this is currently in a trial phase and will be followed with a pilot stage. However, it is unclear whether the BBC would envisage putting this through a full approvals process as we believe it should. ITN believes that the approvals structure is, in the main, effective. However, the problem lies within the BBC and the transparency about how and why certain proposed new services are put forward for approval.
- 3.20 ITN does not believe that the BBC should be precluded from expanding its range of services and adapting to the digital age, but we believe strongly that it should not be allowed to do so unfettered. There must be careful scrutiny of new *and planned* services. The BBC's level of spending on such new services must be proportionate and its entry into new markets must not act in such a way to stifle the ability of commercial providers to continue to compete.
- 3.21 The BBC has on occasion operated services under the guise of quasi 'marketing activity'. One such example is the BBC's provision of news to Maiden Outdoor advertising for giant billboards showing news in

² Ashley Highfield speech at the FT New Media Conference, March 2004
(http://www.bbc.co.uk/pressoffice/speeches/stories/highfield_ft.shtml)

railway stations. The BBC pays Maiden for the billboard 'space', and produces rolling news services for the boards. ITN previously provided a similar service with Maiden where ITN was paid a commercial rate to provide the content. We understand the service was negotiated and is paid for through BBC Marketing. This service was never scrutinised for its effect on the market and nor has it ever been justified by BBC management. This example shows the enormous financial weight of the BBC marketing machine and how it can use the excuse of 'marketing' to launch new services that might otherwise have required approval. Elsewhere the BBC has a massive marketing capability. In its last Annual Report and Account it states its marketing, press, publicity and events spend in 2002-3 was £63.5m. To put that into context, that is the equivalent of nearly two thirds ITN's TOTAL annual turnover. ITN believes there should be further examination of the level of BBC marketing spend.

Recommendations:

- ***The BBC Royal Charter should mandate a rigorous approvals process for all new BBC services***
- ***The Charter should include an explicit requirement that any new approval should be subject to a full market impact test, conducted by Ofcom***
- ***Ofcom should be required to conduct the public consultation for new BBC services***
- ***The BBC management should be more transparent about discussions surrounding planned new BBC services***
- ***The BBC – Executive and Governors - should be required to publish all details of proposed new services to DCMS and Ofcom. DCMS and Ofcom would then be able to assess whether new services are under discussion that would require approval through the approvals process.***

4 PUBLICLY FUNDED SERVICES AND FUNCTIONS

What do you think of the publicly-funded services provided by the BBC, on television, radio and online? What changes, if any, would you like to see?

How well do the BBC's publicly-funded services deliver its core purposes?

In what way should the BBC's services differ from those of commercial public service broadcasters and other purely commercial broadcasters in order to add value? To what extent should the BBC provide 'something for everyone'?

- 4.1 Taken across all its television, radio and online activities the BBC is enormous in scale. While ITN does not wish to comment on the level of funding of BBC services in detail, we do have some questions about the level of funding certain BBC services receive when compared to

their commercial counterparts. In the interests of the licence payer it is important that the BBC spends the licence fee as efficiently as possible to ensure best value for money. And in terms of the way the BBC competes, it is vital that the licence fee is proportionate to the level of funding available to its competitors, particularly the commercial public service broadcasters.

- 4.2 Because of its scale the BBC has economies of scale available to it beyond any of its competitors. For example, BBC News is the biggest news operation in the world, with many hundreds of staff around the world and across the UK. ITN believes it is appropriate that the BBC operates a 24 hour news channel in BBC News 24. However, we have never been able to understand how the BBC justifies spending £24m on the service when the ITV News Channel can be produced for a fraction of the cost (well below £10m). Can it be in the best interest of the licence payer that BBC services cost so much more than many services provided by the commercial sector?
- 4.3 Furthermore the budget for BBC Online, listed in the Annual Report and Accounts as costing £74m a year is very well funded compared to any of its competitors. The danger here is that if the BBC can benefit from much higher levels of funding for certain services it will limit the ability of commercial competitors to enter markets. This has been graphically demonstrated in the BBC's ability to invest heavily in trial services and cover start up costs, particularly in the online world, that we are simply not able to do without risk. If the BBC is allowed to continue to enter new markets without proper scrutiny of the levels of spending and appropriateness of the service it will become increasingly difficult for us to be able to maintain competition across a variety of platforms in future.
- 4.4 This issue is closely related to the need for clearly defined remits and a rigorous approvals process for new services, which we discuss in more detail in section 2.7.

5 COMMERCIAL SERVICES

Do you think the BBC should continue to run commercial services alongside its licence fee funded services?

- 5.1 ITN believes that in principle the BBC should be able to continue to operate commercial services through its commercial divisions. As the Davies funding review panel identified, the BBC licence fee is not a limitless source of funding and commercial activity can play an important role in providing additional revenues to channel back into the licence fee arm of the BBC.
- 5.2 The BBC has the potential to become a much bigger media business in the global marketplace and this should be encouraged. It can also be argued that stimulus from expanding overseas markets would fuel investment in new BBC production and could help energise its creative abilities.
- 5.3 However, it is extremely important that the BBC's commercial services operate fairly with the rest of the commercial sector, that the BBC's commercial services do not benefit from cross subsidy from the licence fee arm, and that licence fee funds are not put at risk.

If the BBC should continue to run commercial services, how should we ensure that the relationship between the public and commercial services is fair to the BBC's commercial competitors?

- 5.4 The BBC's commercial services are supposed to abide by the terms of the BBC's Commercial Policy Guidelines and the Fair Trading Commitment, which sets out the specific rules relating to the BBC's commercial activity in terms of how it should compete with the rest of the market. As described in the consultation paper, these rules are currently enforced by the BBC Board of Governors. The Commitment does more than simply reflect competition law – they also impose rules designed specifically to deal with the BBC's unique nature as a publicly funded body and to ensure that the licence is not put at risk.

Essentially the rules exist to ensure:

- that the BBC complies with competition law
- to ensure there is no cross subsidy from public funds to the BBC's commercial activities
- to ensure that the BBC's commercial activities reflect market practice
- that the BBC does not compete unfairly in the market
- that the BBC's commercial activities deliver a return to the licence fee arm of the BBC

- 5.5 The rules imposed through the BBC Fair Trading Commitment are entirely appropriate. Their effectiveness as a regulatory tool was 'rubber stamped' in 2001 by Professor Robert Whish. However, the effectiveness of the Board of Governors' enforcement of the Fair Trading Commitment rules has been found to be lacking on several occasions.

- 5.6 BBC Worldwide provides British Airways with an in-flight news service. In its oral evidence to the Culture, Media and Sport Select Committee in January 2002, BBC Chairman Gavyn Davies claimed this service is purely commercial and 'paid for totally by British Airways'.
- 5.7 ITN learnt that the BBC did not set up the service by making a charge to British Airways but that it received 'payment in kind'.
- 5.8 When ITN pitched to supply a similar in-flight news service to one of BA's competitors, we were told that we could not expect to receive a fee for our content because the BBC is providing content in the market for free. The BBC's behaviour has demonstrably distorted market expectations and it has successfully "crowded out" one of its commercial competitors from a niche market.
- 5.9 Similarly, we also learnt that the BBC supplies the in-train news service to the Heathrow Express (with the rules specially waived by the Governors to allow BBC World to be shown in the UK) charging a price significantly below the market rate. Our understanding is that the BBC's bid was some 60% lower than ITN's bid.
- 5.10 One of the problems we have encountered in the regulation of the BBC's commercial activities is that it is very difficult to ensure that anyone takes responsibility for the enforcement of the Fair Trading rules. We are pleased to see in the consultation document that Government believes the enforcement of the Fair Trading Commitment to be the responsibility of the Governors.
- 5.11 ITN looked into lodging a formal complaint against the BBC in relation to its news to mobiles service. We approached the OFT who told us that they could not investigate as the case involved a breach of the Fair Trading Commitment, rather than of competition law. When we questioned Gavyn Davies about this whilst he was Chairman, he claimed that the Governors were not responsible for enforcing the Fair Trading Commitment, despite the OFT's confirmation that it was their responsibility. Correspondence between ITN, the BBC and the OFT showed that it is also possible for the BBC to breach the Fair Trading Commitment, without breaching the Competition Act. That the Chairman of the very Governors with responsibility for enforcing the rules not to understand their role in regulating the BBC's commercial activities, simply serves to underline how inadequate the Governors have been in the regulation of commercial activities.

Recommendation:

- ***Responsibility for enforcement of the BBC Fair Trading Commitment should be transferred to Ofcom, to sit alongside its other duties as competition regulator.***

Should there be any limits on what the BBC is allowed to do commercially and, if so, what should those limits be?

- 5.12 As we have said, ITN believes that the BBC should be permitted to continue to operate a commercial division. Indeed, we would go as far as saying that in many cases, outside its core broadcasting activities, we would prefer to the BBC to operate commercially so that we are able to compete on a level playing rather than facing the presence of a BBC juggernaut providing services for free in every market. This is particularly true where the BBC is entering a new market through content agreements with third party operators, such as tailor-made news for mobile phone operators or providing content for trains and airlines.
- 5.13 The main limit on BBC commercial activity should be the effective enforcement of the Fair Trading Commitment and the effective operation of competition law, both enforced by the same regulatory body, Ofcom. We also believe that it is appropriate to maintain an approvals process for certain commercial services.

6 PAYING FOR THE BBC

Does the licence fee remain the best way to pay for the BBC's public services?

- 6.1 ITN believes that the licence fee remains the best way to fund the BBC's core public services. The fact that the BBC has its own distinct funding structure means that it is not in direct competition with commercial channels for advertising or subscription revenue on its main channels. We believe that any move to introduce advertising on the BBC's main channels would have a detrimental effect on the commercial sector's revenue by splitting the amount of available advertising-spend too thinly.
- 6.2 It can be argued, however, that the BBC is currently over-funded. That manifests itself in the large-scale investments in new channels, web activities and even in basic newsgathering, where the corporations's spending levels are considerably higher than anything found in the private sector. The level of the licence fee should therefore be reviewed and the need for above-inflation increases should, in particular, come under much closer scrutiny.
- 6.3 We also believe that there is a case to further examine whether the BBC's digital services should continue to be funded solely through the licence fee. The BBC's ability to spend licence fee funds on new services has vastly outstripped the ability of the commercial sector to

launch new services in difficult economic conditions. This brings with it a risk that the BBC could become too dominant in the digital world. We therefore hope that the Charter Review process will allow for a detailed discussion about whether some of the BBC's non-core digital services might be better operated as subscription services. This might include channels like BBC Three and BBC Four.

Does the BBC deliver value for money?

- 6.4 We have some concerns about the level of funding that some BBC services receive – in particular BBC News 24 and BBC Online. The BBC spends nearly £24m a year on BBC News 24, despite the economies of scale available to BBC News. ITN produced the ITV News Channel at a fraction of the cost. Likewise, BBC Online cost at £72m (this is the figure quoted in the consultation, but we are aware that there are other figures that put the total level of spending much higher. That this is unclear goes to show the lack of transparency around BBC spending).

7 ORGANISATION AND INFRASTRUCTURE

How should the BBC be organised to deliver its functions and services? Should it continue to operate as a single organisation?

- 7.1 Above all the BBC must be structured to ensure that the licence fee is not put at risk and that the public, Parliament and the industry have certainty that the BBC is being run and regulated properly. We will discuss the regulatory structure in more detail elsewhere in this paper.
- 7.2 Internally we believe that the BBC should be required to ensure:
- ***that its commercial divisions operate independently of the licence fee arm of the BBC***
 - ***that there is clear financial and accounting separation between the commercial and licence fee divisions and that the Annual Report and Accounts provide the level of detail required to show that this is the case***
 - ***that the BBC makes it more clear that it complies with its internal codes of conduct – the Producers Guidelines and the Commercial Policy Guidelines.***
- 7.3 The BBC has a number of divisions within it whose remit is unclear. For example, when BBC was looking into potential issues surrounding its commercial activities, ITN became aware of a division called BBC News Ltd. We believe that this unit sits under the aegis of BBC News,

with a specific remit to explore new markets, and that it was through BBC News Ltd. that various distribution deals with third parties were negotiated. However, it has never been possible to discover exactly how the unit is structured, staffed or financed. As a business development unit, it is unclear whether this unit is seeking to exploit material commercially or what – if any - relationship it has with BBC Worldwide. We believe that the BBC should make it more clear how internal structures such as this work.

8 GOVERNANCE, REGULATION AND CONSTITUTION

Do you think that, in the regulation of the BBC, there is the right balance between the Governors and Ofcom?

- 8.1 ITN believes that the Governance of the BBC has been shown to be deeply flawed on many occasions in the last few years. We do not believe that it is sustainable to retain the Board of Governors as both the corporation's 'board of directors' and as its regulator. It is our firm belief that the BBC should be subject to more external regulation and scrutiny of its management by a more distinct and objective body than the current Board of Governors structure.
- 8.2 As we have outlined in this submission the bulk of our concerns lie with the approvals, remit-defining and commercial activities of the BBC. On the occasions when we have written to the Board of Governors or its secretariat we do not believe that our concerns have been heard or responded to with sufficient detail or objective thought. Indeed, we have always felt that responses from the Governors have spoken on behalf of BBC management, rather than making an independent assessment about serious issues.
- 8.3 For example, when ITN wrote to the Board of Governors about the BBC's distribution of BBC World in America, with written evidence that the distribution arrangements did not appear to meet the terms of the Fair Trading Commitment and was damaging our business in the US, we received a two paragraph letter from Baroness Young, the Governor responsible for Fair Trading at the time, saying little more than that there was no problem and that she could not provide more detail as it was commercially sensitive. There was no attempt to investigate or explain the position in any detail. It was not the sort of response that would be expected of OFCOM or its predecessor regulators about a similar matter.
- 8.4 The BBC should be subject to external regulation, with major overhaul of the structure of the Board of Governors. We appreciate that there are difficulties associated with wholesale regulation of the BBC by Ofcom, not least Ofcom's apparent resistance to the idea and issues

concerning the funding and staffing of Ofcom to meet the additional burden.

Recommendations:

If abolition of the Board of Governors as the BBC's regulatory body is not feasible, ITN proposes the following steps to be taken to ensure that the BBC is more independently regulated, with additional external scrutiny:

- ***The BBC Board of Governors to be established as a properly independent body, separate from BBC management and based in a different location to the BBC executive and staff.***
- ***Membership of the Board of Governors to be revised to draw in members with relevant professional, legal or regulatory expertise***
- ***The BBC Board of Governors to continue to fulfil regulatory duties other than commercial regulation and enforcement of the BBC Fair Trading Commitment.***
- ***All regulation of activities in the commercial sector to come under Ofcom.***
- ***The Board of Governors to be answerable to Ofcom through regular publication of minutes to Ofcom and, should Ofcom require it, further detail to be provided about decisions taken. This would help deliver more regulatory consistency across Ofcom and the Board of Governors.***

9 HOW DO WE ENSURE THAT THE BBC IS PROPERLY ACCOUNTABLE TO THE PUBLIC AND PARLIAMENT?

Is the BBC sufficiently responsive to its viewers and listeners and to Parliament? What improvements, if any, could the BBC make?

- 9.1 As licence payers – and therefore 'shareholders' in the BBC – the public has every right to know how and why the BBC is spending its money.
- 9.2 ITN welcomed the new limited access that the National Audit Office (NAO) will have to the BBC under the Communications Act. The level of funding by the BBC on its services is high – in many cases, much higher than spending in the commercial sector (see section 6.4 above).

- 9.3 ITN would welcome any further moves to open up the BBC to greater scrutiny by the NAO. For example, we believe that an annual assessment of the BBC's spending would be welcome to ensure that the licence payer can be assured that licence fee funds are being spent appropriately.

Does a Royal Charter continue to be the most appropriate basis for the establishment of the BBC?

- 9.4 As long as the BBC continues to be a publicly funded public service broadcaster ITN believes that the Royal Charter and Agreement continue to be the most appropriate basis for the establishment of the BBC.

- 9.5 However, we believe that the next Charter should enforce more rigorous requirements on the BBC in the following areas:

- ***the Charter should stipulate that the BBC should be more transparent and accountable***
- ***it should explicitly require a clear and precise remit for all BBC services***
- ***The BBC should be subject to more external scrutiny, particularly over its commercial activities***
- ***it should require the approvals process for all new BBC services to be subject to more external market testing***

- 9.6 Coming into force in 2006, the next Charter will come at a very significant time in British broadcasting history. If digital switch-over can be achieved by 2012, the Charter will only be half way through its 10 year period. Post switch-over, the broadcasting landscape is set to change dramatically. This will alter the way in which the public accesses broadcasting services and channels compete. At the same time, the market is likely to have also experienced widespread take-up of broadband and other new media services. We do not believe it is possible to devise a Charter that can take into account the market before and after switch-over.

- 9.7 With this in mind, ITN believes that a ten-year Charter period is too long.

Recommendations:

- ***We recommend that the next Charter is signed on a five year basis, to be reviewed in 2011 to take into account the state of the market at that point.***

10 CONCLUSION

- 10.1 ITN supports the continuation of the BBC as a strong, vibrant organisation. We would oppose any attempt to marginalise the BBC's core public services as we believe this would have a detrimental effect on the market as a whole, and particularly on the future of key public services such as news. The BBC and the commercial sector have helped provide the UK public with the best broadcasting services in the world, and we see no evidence to suggest that the central core of strong competition and plurality should be altered fundamentally. Indeed, in a fragmented digital environment with more and more choice between providers, we believe the case for the main public service broadcasters to continue providing a diversity of competing, high quality news services across a range of platforms is as strong as it has ever been.
- 10.2 However, as we hope to have demonstrated here, there are some serious problems with the way the BBC is structured and regulated that need to be addressed.
- 10.3 There need to be some significant changes to the way the BBC is monitored and way it operates in competition with (rather than against) the commercial sector. Both play a valuable role and the BBC's unique position and funding means it should be subject to greater, not lesser, external scrutiny to ensure that it helps sustain a vibrant broadcasting sector for the UK and does not stifle innovation.
- 10.4 These concerns have serious implications for our ongoing ability to compete with the BBC into the digital age. We are particularly concerned that the BBC is still able to move into new and emerging markets without sufficient external scrutiny. We are also concerned that the BBC's commercial activities are not regulated robustly enough. We have therefore argued for the BBC to be subject to more external scrutiny, and for the BBC to be held more fully and more openly to account.
- 10.5 We hope that these recommendations will be viewed as helping to provide for a healthy BBC over the next Charter review period, but one that will also allow the commercial sector to flourish.
- 10.6 We would be happy to discuss any of the issues raised here with the Charter review team as they examine responses to the consultation.

Ends
31/03/04