



## The Advertising Association

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### RESPONSE BY ADVERTISING ASSOCIATION TO THE DEPARTMENT FOR CULTURE, MEDIA & SPORT'S REVIEW OF THE BBC'S ROYAL CHARTER

#### Overview

The Advertising Association (AA) has a very diverse membership including 25 trade bodies and associations broadly representing the three parts of the commercial communications marketplace: advertisers, advertising agencies, and the media. The AA only comments when there is a consensus of views amongst its members. Historically, the advertisers and the media had different views about the BBC and so the AA has not to date responded on consultations about the future of the Corporation.

The AA does not intend to comment on the future funding and structure of the BBC. However, there is now common cause amongst the AA's members about the need for fundamental change in the way the Corporation is regulated. Although there is much respect for the BBC as a cultural British institution and as a powerful global brand, there is a widespread view in the commercial marketplace that the current system of governance, through a Board of Governors that both manages and regulates the Corporation, is no longer sufficient. The BBC is of such considerable size and is such a major market player in so many areas that it has a major impact on the commercial sector. The way in which it uses the licence fee to do so needs to be kept in check through rigorous regulation via external regulatory scrutiny. The current structure of the Board of Governors is widely perceived to be inadequate. This is because the Board of Governors is too close to the management of the BBC and because they are not perceived to have the broad spread of competition and other skills that exist in a regulator like Ofcom, which has concurrent competition powers. The AA considers that the transparency and accountability of the BBC would be greatly enhanced if it were subject to a greater degree of external regulatory scrutiny.

There are various aspects of BBC regulation which are considered in the answers to the questions in the consultation document, including:

- ◆ the approvals process for new services;
- ◆ oversight of the BBC's Fair Trading Commitment (FTC);
- ◆ regulation of remits/formats for the BBC's public services; and,
- ◆ scrutiny of the BBC's accounts to ensure value for money – the National Audit Office (NAO) now has a role in this area, albeit limited.

There are different ways that external regulation could be achieved.

One option might be to separate the regulatory functions of the Governors from their management role through the creation of a completely separated Board of Governors.

Another option might be to transfer all or part of the regulation of the BBC to Ofcom. This has some advantages as Ofcom:

- is already regulating certain aspects of the BBC as well as commercial broadcasters;

- has a duty to conduct public service reviews including on the impact of the BBC and provide the Secretary of State with market impact assessments in the context of approvals of new services; and,
- has concurrent competition powers.

This is not to underestimate the burden of duties already on Ofcom, whilst the advantages of gaining a single regulatory approach to the whole broadcasting marketplace has to be balanced against the pros and cons of allowing one regulator to have such dominance. If this route is taken, the costs of regulation should be paid for separately by the BBC.

Over the next ten years (the period of the next Charter), there will be considerable market change. Post analogue switch-off, the BBC will be but one operator in a truly multi-channel, multi-media marketplace and the Corporation needs to retain public support for its unique status and position in the market if it is going to continue holding its unique status as a publicly-funded public service broadcaster. In this context, consideration should be given to making the interval between carrying out Charter Reviews considerably shorter.

### **Answers to relevant Questions**

#### **Question 1 - The BBC today: What do you value about 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?**

The BBC as a brand has enormous value, and it is an important cultural institution in British life.

In recent years, however, the strains on the current system have become increasingly apparent. The BBC's objective was to meet the digital challenge through an ambitious programme of expansion, not only for its broadcast services, but also online and in new media. The very generous RPI+ formula implemented in February 2000 has enabled the BBC to fund its expansionist digital strategy at no commercial risk and this has brought the Corporation into conflict with commercially-funded television, radio and online services.

Television and radio competitors argue that the BBC is too focused on ratings, and not sufficiently on delivering quality, range and diversity. The BBC has been adopting an increasingly aggressive commercial outlook in both programme scheduling on its public service channels, and as regards its entry into new markets.

Commercial operators are also concerned that the BBC has used its enormous muscle to expand into new markets at no commercial risk, dominating the market and crowding out or restricting the scope for competition. Though the BBC is subject to competition law and its own Fair Trading Agreement (FTA), responsibility for ensuring it is properly applied rests with the Governors. Their proximity to the BBC's management means that they cannot take an objective view, nor do they have sufficient competition expertise to inspire confidence in their judgements.

Responsibility for ensuring the BBC properly enforces the FTA should therefore be transferred to an external regulator, and Ofcom, with its concurrent competition powers, is ideally placed to perform this role.

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

The BBC has traditionally been regarded as providing the benchmark for quality programmes across a range of genres, against which the commercial sector has provided

strong competition. The BBC has produced many innovative and outstanding public service programmes, particularly in the run-up to Charter Reviews.

However, the contrast between the regulatory hoops ITV had to go through for the timing of its peak-time news to be changed and the rapid decision Greg Dyke was able to make to move BBC 1's Nine O'Clock News to 10 pm is noteworthy. It provides but one example of what has been perceived by the commercial sector as a lack of a level playing field between it and the BBC in terms of the relative rigour of regulatory scrutiny.

Secondly, in recent years, the BBC has been adopting an increasingly aggressive commercial outlook in terms of programme scheduling on its public service channels, marginalizing public service programming and going head-to-head with other channels in pursuit of ratings at the expense of audience reach. The BBC has also been given considerable spectrum for its radio services, but the view in the commercial sector is that they are not always sufficiently distinctive to merit these special privileges.

It is widely felt, therefore, that the BBC has too much latitude in the Charter and Agreement and that consideration should be given to a more specific remit or format applying to each of the Corporation's publicly-funded television and radio services to "keep it honest". Whether this is overseen by a more distanced Board of Governors or by Ofcom, there should also be a greater degree of external regulatory scrutiny of the BBC's remits to give the commercial marketplace confidence that the Corporation is properly applying the rules.

**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?**

The absence of advertising and other commercial influences are deemed to be another unique factor about the BBC. Given the value placed on this by the Government and politicians, the AA is surprised it is never mentioned in public discussions about advertising to children, particularly since, in 2003, the BBC's services accounted for approximately one third of children's total viewing. (See also the AA's response to the above sets of questions.)

**Question 2 - How should the BBC adapt to cope with changes in technology and culture?**

The BBC should be able to take advantage of technological changes, so that it can maintain as broad a reach as possible in the services it provides, thus maximising its value to licence payers. However, a balance needs to be achieved. The BBC should not be able to use the licence fee to expand exponentially into new media, dominate the market and crowd out the commercial competition, in the way it has done in online services. The boundaries of the BBC's online activities appear not to have been adequately established in 1997, when the Corporation was given permission to launch its licence fee-funded internet site. The terms on which approval was given need to be made public and, if necessary, further defined in the light of market developments since 1997. The AA considers that it is now time to set clear boundaries either via the Charter or through a revision of the terms of approval document, so that both the BBC and its commercial competitors can have far greater certainty as to planning and operation issues.

**Question 3 - What do you think of the television, radio and online services the BBC provides?**

Some (though not all) of the BBC's services are outstanding in terms of delivering distinctiveness and quality. However, its new services have been launched at considerably more cost than if they had been delivered in the marketplace.

The new approval procedures, whereby the Secretary of State gives the go-ahead to new BBC services following public consultation, provide a reasonable level of external scrutiny, though there are concerns about this proximity between politics and programming decisions.

However, the Governors still have some latitude in deciding whether the approval of the DCMS is required or not for a new BBC service, and there needs to be specific requirements in the Charter that all new publicly-funded services launched by the Corporation go through this process. In addition Ofcom should be required to conduct market impact assessments.

#### **Question 4 - Should the BBC run commercial services?**

The BBC is permitted to operate commercial services through BBC Worldwide as long as no public funds are used, or put at risk, by commercial activities, and as long as the Corporation trades fairly and does not use licence fee funding to subsidise its commercial activities.

These are important principles. There is, however, insufficient 'clear blue water' between the role of the Board of Governors' in managing and regulating licence-fee funded services and their one of monitoring the relationship with BBC Worldwide through the FTC and Commercial Policy Guidelines. With this in mind, responsibility for the FTC should be transferred to Ofcom. (See also the AA's response to Question 1.)

The AA notes in paragraph 26 of the consultation document that the BBC is expected to squeeze more value out of the Corporation's successes like the Teletubbies, to re-invest in programme-making. Paragraph 26 states that:

The result is that more money can be spent on publicly-funded services without necessarily having to increase the licence fee. [DCMS, December 2003: 17 (Paragraph 26)]

The same principle applies in commercial broadcasting, where advertising revenue is used to fund programming, including children's programmes, at no additional cost to the viewer or listener. It is disappointing that the parallels are rarely recognised in public debates on the question of advertising to children, except by the DCMS.

#### **Question 7 - How should the BBC be governed and regulated?**

The AA does not consider that the existing system, whereby the Board of Governors acts like a Board of Directors of the BBC and also as its regulator, is sustainable going forward. Despite recent modifications, the integrated structure means there is not enough 'clear blue water' between the BBC and the body that regulates it, and this makes the Corporation vulnerable to criticism from both competitors and politicians.

There is, therefore, a strong case in the longer-term for more independent regulation of the BBC. The Board of Governors could then become more akin to a Board of Directors. Ofcom is the prime contender for some, or all, of this role, although there may be alternatives, which could also be explored. (See the comments made by the AA in its 'Overview' section above.)

The AA has already commented in response to Questions 1 & 4 above on the benefits of transferring responsibility for ensuring the correct application of the Fair Trading Agreement, and in its response to Question 3 about the approvals process for new services.

The BBC's licence-funded services should also be subject to clearer remits and formats. The BBC has argued that it should be regulated separately from commercial broadcasters

so that its distinctive public service values can be properly upheld. This is spurious as Ofcom and its predecessors is and were well used to regulating public service broadcasting, albeit on channels funded by advertising, and Ofcom now has a duty to conduct quinquennial reviews of public service broadcasting. Whether it is Ofcom that regulates the BBC's remits or a separated Board of Governors, there would be greater confidence in the relative rigour of the regulatory approach if there was far more independent and external scrutiny. (See also the AA's response to Question 1.)

**Question 8 - How do we ensure that the BBC is properly accountable to the public and Parliament?**

The AA welcomed the move made during the work on the Communications Bill in 2003 to give the NAO limited access to the BBC. There are various examples of new services where the BBC has been accused of being profligate with licence fee money (e.g. BBC Online, BBC News 24), and so scrutiny by the NAO will help ensure value for money in the delivery of the Corporation's services. The deal struck back in 2003 gave the NAO only limited access to the BBC and on the Corporation's terms. The AA appreciates that there is a need to tread carefully in order to protect the Corporation from any hint of political encroachment in its programme-making or schedules, though any anxiety on this front should be alleviated by the way in which the NAO has scrutinised the BBC World Service. Any further opening up of the BBC to NAO scrutiny would be welcome in the interests of greater transparency and value for money. The AA also considers that the BBC should be subject to regular, perhaps annual, review by the NAO.

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