



At the heart of British television

RESPONSE FROM IPC MEDIA TO THE DCMS BBC CHARTER REVIEW CONSULTATION

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1. SUMMARY

- 1.1 The BBC's effectiveness and reputation as a public service broadcaster is being undermined by the conflicting interests of the Corporation. The Corporation's desire to be a major commercial operator in the magazine publishing market has led the BBC to skew its editorial objectives to make available airtime for the promotion of the magazines published by BBC Worldwide, a commercial subsidiary of the BBC. While being able to offer licence-fee payers the ability to extend further their interest in particular programmes is something that is laudable, when the only magazines that are trailed are published by BBC Worldwide, an entity that the BBC's Fair Trading Commitment obliges the BBC to treat as it would any third party, then this is discriminatory. Not only does it deny licence-fee payers the opportunity to further extend their interest in a programme in a broader range of areas (where other publishers have titles that are editorially close to BBC programmes), it serves to distort competition in the magazine market through the granting of what amounts to free advertising on the BBC's public service channels.
- 1.2 This submission addresses three main areas of concern: discriminatory treatment relating to the use of BBC air time on publicly funded channels for the promotion of the magazine of BBC Worldwide, a commercial subsidiary of the BBC that the Charter obliges the BBC to treat as though it were any other third party; the cross subsidy afforded to BBC Worldwide by the BBC from its public resources; and the preferred partner status of BBC Worldwide. IPC believes that, in relation to these three areas, the BBC is acting in a manner that distorts competition in the markets for consumer magazines to the detriment of end consumers.
- 1.3 IPC recommends that, in order to remove or diminish the distortive effect of such conduct:
- 1.3.1 The BBC should be required either to allow non-BBC Worldwide paid-for listings titles non-discriminatory on-air trail exposure to *Radio Times* and other consumer magazines on BBC channels or cease to trail *Radio Times* and other consumer magazines.

- 1.3.2 The preferred partner status of BBC Worldwide, which is contrary to the requirements of the BBC's own Fair Trading Commitment, should be removed, and a new and more flexible approach to securing value for money from commercial exploitation should be explored. Such an approach must respect open market principles, transparency and fairness.
- 1.3.3 The BBC should be required to cease placing the BBC logo on publications that have insufficient connection to publicly-funded programmes, or to permit other publishers to have licences of the BBC logo on fair, reasonable and non-discriminatory terms.

2. INTRODUCTION

2.1 This submission is made in response to the DCMS' BBC Charter Review consultation. It addresses the section of the consultation concerned with the commercial activities of the BBC, and in particular with the following issues:

- Do you think the BBC should continue to run commercial services alongside its licence fee-funded services?
- 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?
- Should there be any limits on what the BBC is allowed to do commercially and, if so, what should those limits be?

2.2 The responses offered below are those of ipc media Ltd ("IPC"), a wholly owned subsidiary of Time Inc., the publishing division of Time Warner. With almost 100 magazine titles and other brands, IPC is the leading consumer publisher in the UK. Within IPC, ipc tx Ltd publishes four TV listings and TV related magazines – *What's on TV*, *TV Times*, *TV and Satellite Week* and *Soaplife*.

2.3 IPC's particular experience is in relation to TV listings magazines and other consumer interest magazines and its comments are reflective of its experience with the BBC in that area alone.

2.4 IPC believes that the questions posed above are more effectively answered together. The following sections of this submission are therefore intended to be responsive to all three questions posed in the consultation.

3. THE IMPACT OF BBC COMMERCIAL ACTIVITIES

3.1 Given the lack of effective regulation, IPC believes that the BBC's provision of consumer magazines has the capacity to adversely affect the consumer magazine market in the UK, distorting competition, and thereby being unfair to competitors and prejudicial to the interests of both licence fee payers and consumers more generally.

3.2 These adverse effects will arise in different ways in the various markets in which commercial services are offered. However, the principal means by which such adverse effects might arise are through:

- the unfair use of advertising on BBC public service channels, which distorts competition in the markets for consumer magazines;
- brand subsidy and other forms of cross-subsidy; and
- distortions caused by the preferred partner status of BBC Worldwide.

These discriminatory practices amount to a breach of both the BBC's Fair Trading Commitment (and therefore the Charter and Agreement) and the State aids provisions of the EC Treaty.

4. THE UNFAIR USE OF ADVERTISING ON BBC PUBLIC SERVICE CHANNELS

The BBC is failing to comply with the terms of its own Fair Trading Commitment in relation to the use of air time for its own commercial purposes.

- 4.1 The BBC's Fair Trading Commitment prohibits the use of licence fee funds to subsidise the BBC's commercial activities:

A fundamental principle is that we will not use licence fee funds or grant-in-aid to subsidise our commercial activities...

There is no ambiguity about this prohibition. In particular, the Commitment does not distinguish between "fair" and "unfair" subsidies. Moreover, the BBC's commercial services are required to pay a fair price for services and inputs they receive from the BBC:

Where the BBC's commercial activities require the use of BBC programmes, facilities, resources or other inputs, fair prices will be negotiated which take proper account of the cost of provision of such inputs. We would not normally expect such prices to be out of line with the prevailing market price for similar inputs, and in no cases will we establish prices which are below the relevant cost of producing the good or service.

This would require BBC Worldwide to pay the BBC for the value of promotional air-time granted to *Radio Times* and other BBC commercial activities. If, as the BBC argues, the promotional activities are editorially justified, then air time should be made equally available to all publishers of programme-related publications on similar terms. BBC Worldwide does not pay for such air time. This demonstrates that the Fair Trading Commitment is not observed in perhaps the BBC's most important participation in commercial markets .

- 4.2 The DCMS will be aware that the BBC's Fair trading Commitment provides that the BBC shall operate so that "no legitimate concerns could arise from its participation in the commercial world", and that the "BBC's core public service...will not be used unfairly to promote [its] commercial activities in the

UK.” The BBC purports that such principle is satisfied through the observance of the BBC’s commitment to the OFT, given in 1992, under which the BBC is required to

“...promote on BBC1 and BBC2 magazines published by the BBC or an associate only in a specified way requiring, inter alia, that the promotion is done in an objective manner at the end or the beginning of a programme to which the magazine relates, giving in most cases only the name, publisher and price of the magazine and its connection with the programme, and stating that other similar magazines are generally available.”

- 4.3 Apart from the fact that the undertaking is not universally observed, it has become inadequate in protecting the interests of fair competition. This effect is principally due to changes in the market for TV listings magazines since the Monopolies and Mergers Commission (“MMC”) made its findings in 1992.¹ The principal premises accepted by the MMC in making its findings in the 1992 report, and the changes that have occurred since then, may be summarised as follows:

BBC SUBMISSION TO THE MMC FOR 1992 REPORT	SITUATION TODAY
<p>Editorial constraints</p> <p>Editorial constraints on <i>Radio Times</i> as a result of the BBC’s public service remit distinguished the title from other titles in the sector and subjected it to financial pressures which were not commercially determined.</p>	<p><i>Radio Times</i> has now changed its editorial policy, content and practice and operates in the same way as any other commercial listings title, more clearly than it did in 1992. In some respects, <i>Radio Times</i> is less supportive of BBC programming than are IPC titles, as the BBC title’s cover policy shows. In addition, <i>Radio Times</i> now produces an edition tailored specifically to the ntl:home cable television offer, which is marketed as a co-branded reduced subscription offer, endorsing the ntl</p>

¹ Television Broadcasting Services: a report on the publicising, in the course of supplying a television broadcasting service, of goods supplied by the broadcaster (MMC - Cm 2035).

BBC SUBMISSION TO THE MMC FOR 1992 REPORT	SITUATION TODAY
<p>Advertising opportunities</p> <p>On-air trails for the title supported BBC programming and drove copy sales, delivering to the requirement for BBCE to supplement the licence fee by commercial activities.</p> <p>It was not easy for the BBC to advertise effectively on commercial television; the ineffective advertising for <i>Radio Times</i> on ITV just after deregulation was evidence of this.</p> <p>Nature of the TV listings market</p> <p>Total publicity and promotional expenditure on listings magazines during 1991 was estimated at £43m including price promotions; <i>Radio Times</i> share of spend (including the value of trails at more than £10m) was £16m or 37% of the total.</p> <p>The market was in a growth/launch period, characterised by heavy promotional spends and very heavy price cutting.</p>	<p>cable platform.</p> <p><i>Radio Times</i> now advertises extensively on commercial television and radio and has sponsored the BAFTAs, shown on ITV.</p> <p>The listings market is mature and is no longer characterised by price promotion or large scale media spends except for new launches to the market.</p>

- 4.4 The MMC's recommendations in the 1992 Report were not to prohibit trails for *Radio Times* completely, even though the MMC recognised that these trails were 'actions which may be expected to operate against the public interest by reason of the distortion of competition in the listings ... sector'. (7.173b, p137).
- 4.5 The premises relied upon by the MMC have now changed in the ways summarised above. Further details are provided in Appendix 1 to this submission.

4.6 Given these changes in *Radio Time*'s editorial policy and advertising practice, and the market promotional landscape, continuing exclusive free on-air trails for *Radio Times* results in a significant further distortion of competition in the listings market than that identified by the MMC in 1992. We note that an expected review of the undertakings by the OFT was due to take place in 2002, but worryingly there is as yet no firm timetable for this.

4.7 The problem of free advertising is not confined to adverse impacts in the market for consumer magazines, as Baroness Buscombe pointed out in the House of Lords debate on the Communications Bill on 22 May 2003:

“Many viewers and listeners complain—only slightly tongue-in-cheek—that the level of advertising on the BBC is now worse than on commercial channels.”

4.8 IPC has approached the ITC to investigate the potential for cross promotion opportunities for *TVTimes* on ITV, linking programme trails and editorial content to support ITV programming, in the same way that the BBC provides cross-promotion for BBC Worldwide titles. The ITC has replied that there is no scope for this kind of cross promotion of third party publications.

4.9 Acknowledging the BBC's claim that promotional airtime is gifted to BBC Worldwide for the purposes of enabling licence fee payers further to pursue their interest in the contents of the preceding programme, IPC also approached the BBC with an editorially suitable proposal. The proposal was for a trail for an IPC title which featured heavily the then forthcoming Six Nations Rugby tournament (including promotional content on the BBC's own coverage), which was to be broadcast on the BBC. IPC believed that such a title was eminently suitable and were happy to for the contents of that magazine to be vetted to ensure compliance with the BBC's *Producers' Guidelines* in the same way as BBC Worldwide publications. This request was summarily rejected (copies of all correspondence are available). IPC then complained to the Fair Trading Compliance Committee of the BBC Board of Governors. The Board's defence of the BBC's position was strikingly odd, citing the practices of ITV. IPC remains extremely puzzled by this response as of course the BBC

and ITV are bound by very different rules in these area- namely European rules governing the use of State aid. In fact, our own discussions with the ITC over the potential for us, as a third party, (i.e. not an ITV licence holder), to access ITV airtime in the same way editorially as BBC Worldwide (which the Fair Trading Commitment requires that the BBC regard as a third party) accesses publicly funded BBC airtime demonstrate that the BBC Governors' justification of the BBC discriminatory practice is simply incorrect.

- 4.10 Given the failure of the BBC Board of Governors to regulate effectively in this area, IPC recommends that the BBC should be required under the Royal Charter either to allow other paid-for listings titles equal on-air trail exposure to *Radio Times* and other consumer magazines on BBC channels or cease to trail *Radio Times* and other consumer magazines.
- 4.11 IPC believes that the current arrangements also breach EU law on State aids. Article 87 of the EC Treaty prohibits State aids that distort or threaten to distort competition and which may have an effect on trade between Member States. The European Commission has published a Communication on the application of State aid rules to public service broadcasting.² IPC believes that the use by the BBC of programme trails for its own commercial products, and the denial of such opportunities to competitors, breach the State aid rules as so interpreted by the European Commission. While we have no current interest in pursuing a complaint against the financing of the BBC at the European level it can only be a matter of time before the State Aids branch of the Competition Directorate of the European Commission extend their interest in the funding and the scope of public service broadcaster to the BBC.³
- 4.12 The Commission's Communication states that "[w]henver a public service broadcaster undercuts prices in non-public service activities below what is necessary to recover stand-alone costs that an efficient commercial operator in

² OJ C 320/5 of 15 November 2001.

³ See the Commission's interest in the scope of activities of the Dutch public service broadcasters as a recent example of a more interventionist approach. OJ C 61/8 of 10 March 2004. "**Aid C 2/04 (ex NN 170/03) — Ad-hoc measures to Dutch public broadcasters and NOB Invitation to submit comments pursuant to Article 88(2) of the EC Treaty (2004/C 61/05)**"

a similar situation would normally have to recover, such practice would indicate the presence of overcompensation of public service obligations and would in any event ‘*affect trading conditions and competition in the Community to an extent which would be contrary to the common interest*’ and this infringe [EU law]” (paragraph 58). IPC believes that the free air time reserved by the BBC for its own commercial titles unfairly subsidises those titles to such an extent as to amount to an unlawful State aid. Walker Media have calculated, on behalf of IPC, that the commercial value of that reserved advertising amounts to at least £11 million, of which *Radio Times* accounts for at least £6 million. IPC acknowledges that the European Commission is the appropriate body to whom a complaint should be made in relation to illegal State aids. However, these concerns are also very germane to the DCMS’ current consultations, since they demonstrate the impact that may be felt on commercial markets through the misdirection of publicly-funded assets (in this case air time).

5. BRAND SUBSIDY AND CROSS-SUBSIDY

- Unfair subsidy of the BBC's commercial activities may arise in two ways: (i) through "brand subsidy" – i.e. the unfair use of the BBC name or logo applied to commercial products that have no sufficient connection with BBC publicly-funded programmes; and (ii) through the use of publicly-funded resources to fund commercial activities.

Brand subsidy

- 5.1 Baroness Buscombe in the House of Lords debate on the Communications Bill (22 May 2003) expressed this issue in clear terms:

“[t]he power of the BBC brand cannot be underestimated. It is critical that its commercial activities are regulated in such a way that no question of cross-subsidy between licence fee-funded activities and commercial interests arises.”

- 5.2 IPC's concern is that the application of the BBC brand to the title or cover of magazines that have no sufficient nexus with BBC programmes provides an unfair advantage in the market, and thereby distorts competition, unless the same rights are made available to other publishers. Such magazines are given a competitive advantage as a result both of the cachet inherent in the BBC brand, and in the apparent endorsement by the BBC of the product in question. The unfair promotional advantage conferred on these magazines enables them to compete unfairly with other titles in the same market. Since the competitive value in the BBC brand was developed through the use of public assets, its use on titles that have insufficient connection with BBC publicly-funded programmes constitutes an unfair subsidy.

- 5.3 The presence of magazines such as *Eve* and *Homes & Antiques* in the BBC's portfolio, and the sheer scale of the BBC's magazine publishing activities,⁴

⁴ BBC Worldwide claims that its BBC Magazines division is the UK's third largest consumer magazine publisher by readership and revenue. Based on recent multiples paid for UK magazine publishers, including Time Warner's acquisition of ipc media in 2001 from Cinven, we estimate BBC Worldwide's magazine division to be worth £350m-£400m.

demonstrates the inadequacy of the BBC's Fair Trading Commitments. These allow commercial activities to be carried on where they are "linked to and consistent with the programme purposes of the BBC". This rather weak formulation ("programme purposes" rather than "programmes") has permitted the BBC to engage in commercial activities not merely as an adjunct to its public service broadcasting role, but as a significant publishing house in its own right.

- 5.4 Recent changes to the remit of BBC Worldwide, which allowed it to engage in a much wider range of commercial services, including contract publishing, were agreed without consultation either on the ability of the BBC's regulatory system to adequately police the new activities or the impact on competition within the market.
- 5.5 The acquisition in February 2004 of Origin Publishing by BBC Worldwide demonstrates both the scale of the BBC's publishing activities and the departure from the original remit of publishing programme-related magazines. Origin Publishing's titles at the date of acquisition were, by definition, not developed in a programme-related manner. Its titles include: *The World of Cross Stitching*; *Cross Stitch Crazy*; *Cross Stitch Quick*; *Cross Stitch Gold*; *DMC Cross Stitch Favourites*; *Cross Stitch Card Shop*; *Koi, Ponds and Gardens*; *Hair Ideas*; *Your Hair*; *Focus*; *220 Triathlon*; and *Living History*. In addition, it publishes a number of contract titles for commercial enterprises. These include: *Waterstone's Book Quarterly* (said by Origin to "...reinforce... the positioning of Waterstone's as a premium retail brand in a very competitive market");⁵ *HMV Choice* ("...readers ... are encouraged to buy more CDs ... HMV Choice... positions HMV as a highly authoritative retailer..."); *Unlimited*, for UGC Cinemas; *Escape*, for Wessex Trains; *PowerOn*, for Roland UK Ltd ("Reaching these key users of their musical equipment allowed Roland to take great steps towards market leadership"); and *PADI Member News*. In addition, *Parentwise* magazine, acquired from Family Titles Ltd in Spring 2003 was later relaunched as *BBC Parenting*

⁵ <http://www.originpublishing.co.uk/contract.htm>

Magazine in September 2003, benefiting from use of the BBC brand and inherent cachet.

- 5.6 In order to address these concerns, the BBC should be required not to use the BBC brand on such titles, or to associate them with the BBC. Alternatively, other publishers should be licensed to use the logo on fair, reasonable and non-discriminatory terms. We understand that the BBC relies on an irregular benchmarking in an attempt to value BBC Worldwide's use of the BBC logo, but IP benchmarking is notoriously unreliable and a general benchmarking cannot be used to quantify the value to BBC Worldwide for every form of commercial exploitation of the logo. Given the potential risks associated with ineffective regulation (ultimately a negative decision from the European Commission) it would be much safer and more sensible for the Government to require the BBC to either not permit the commercial licensing of the logo or to only permit it on a non-discriminatory basis.
- 5.7 We appreciate the BBC's legitimate concerns about the need to both safeguard the integrity of the BBC logo and to ensure that where the logo is exploited the relevant party must conform with relevant BBC guidelines. This concern can readily be addressed through contractual terms that require the licensee to comply with the relevant guidelines. Contractual controls relating to brand licenses are prevalent across industry and integral to many IP based businesses. The franchising sector provides an illustrative example.
- 5.8 The BBC's current approach not only leads to a dangerous distortion of the magazine market, it only denies licence-fee payers the full value of the commercial exploitation of what is a publicly funded brand.

Cross-subsidy

The Fair Trading Commitment provides that

“Where the BBC's commercial activities require the use of BBC programmes, facilities, resources or other inputs, fair prices will be negotiated which take proper account of the cost of provision of such inputs. We would not normally expect such prices to be out of line with the prevailing market price for similar inputs, and in no

cases will we establish prices which are below the relevant cost of producing the good or service.”

- 5.9 The use of publicly-funded resources for the purposes of the BBC’s commercial products clearly creates a cross-subsidy concern for commercial competitors in the markets for those products. In order to allay such concerns, the price charged by the BBC to BBC Worldwide for access to its assets must be, and must be seen to be, fair and appropriate. The method used by the BBC to determine whether such is the case is ineffective. The BBC’s favoured approach, irregular benchmarking, does not ensure that BBC Worldwide pays a fair market price for the rights they acquire. Benchmarking of IP rights is notoriously difficult when it relates to a specific property. To carry out such an exercise in order to try to identify a benchmark price at a more general level or even a genre-specific level (we do not believe that the BBC’s irregular benchmarking is as narrowly focussed as this) is unreliable and does not provide the degree of comfort that – for example - a regulator, in a regulated sector, would typically require. IPC is aware that the BBC itself is aware of the weaknesses of the benchmarking approach, and has tried to market test properties. As the BBC will have discovered, this approach is also unhelpful as each property is different; drawing general conclusions based on testing of a particular property is simply not reliable.
- 5.10 In view of the weakness of the BBC approach, we do not see how the BBC Governors are able to determine whether or not the BBC treats BBC Worldwide as an arm’s length third party.⁶
- 5.11 The impact of such a cross-subsidy creates an inevitable and significant distortion of competition in the consumer magazine sector. The most egregious and obvious form of cross-subsidy is the reservation to the BBC of free air-time on publicly funded channels for the advertising of BBC commercial products, such as *Radio Times* and other consumer magazines. This issue is dealt with above.

⁶ In any event, the status of BBC Worldwide as a preferred partner of the BBC prevents such an objective approach from being properly established. This is discussed below.

- 5.12 The adverse impact of such cross-subsidy is exacerbated by the discriminatory conduct of the BBC discussed below.
- 5.13 The most effective way of ensuring that the transfer pricing is fair and appropriate is to allow market processes to operate freely – through a tender or auction process. Auctions are becoming an increasingly more common method of selling IP-based products and those products where the seller is unsure of the market value. Auctions are not complicated, despite the economic theory and can provide a quick and low cost means for selling in the market. Auctions can also be used to sell small lots or individual properties as efficiently as they can large lots. Such a system would also ensure that the company that values the relevant opportunity most highly (and can therefore be expected to exploit it most effectively) will acquire the relevant rights. In turn, this will secure two benefits: a maximum return to the BBC and an increase in consumer welfare. Because of this dual advantage, this recommendation is also discussed below in the section dealing with the preferred partner status of BBC Worldwide (see paragraph 6.3).

6. DISTORTIONS CAUSED BY THE “PREFERRED PARTNER” STATUS OF BBC WORLDWIDE

- 6.1 BBC Worldwide Limited is the BBC’s preferred partner for the commercial exploitation of programmes and other assets. In effect, BBC Worldwide has the right of first refusal to undertake any commercial activity on behalf of the BBC, whether or not that represents (i) value for money for the UK licence fee payer or maximisation of revenue for the BBC, or (ii) the most effective way of producing high quality commercial products.
- 6.2 The preferred partnership status is not necessary in order to preserve the equity in the BBC brand. The arrangement appears to be based on the premise that BBC production values can be retained only where editorial control is exercised through corporate ownership of the commercial entity. IPC believes this premise to be mistaken. Sufficient protection of BBC values could be exercised equally effectively over an independent licensee through appropriate performance criteria in the licence. Such criteria could be enforced through, inter alia, termination of the licence. Indeed, this is common practice where the BBC commissions content from an independent producer or where commercial activities are sub-licensed to a non-BBC company. IPC is not aware of any instances where the BBC has had reason to complain about this approach and it would appear to be one which safeguards the integrity of the BBC, ensures the minimum distortion of competition and maximises the potential returns to licence fee payers.
- 6.3 The preferred partnership status is not necessary to “realise the value of licence payers’ assets and generate income to be ploughed back into public service programming” as expressed in the Commercial Policy Guidelines. Indeed, the arrangement prevents the BBC from assuring itself that the value of those assets is realised to the full extent, either in terms of income generation or in terms of production values. The only manner in which this may be assured is on a case-by-case basis through the operation of a free market. This may be best achieved through a transparent system such as an auction or tender process, in which BBC Worldwide would be required to

compete, with commercial operators, for the right to a licence to commercialise a BBC product. This will ensure (i) the maximisation of revenues for public service programming, and (ii) that commercial products are produced by the most efficient supplier, through the operation of free and open markets.

- 6.4 The operation of the preferred partnership arrangements distorts competition between the BBC and producers of competing products. IPC has noted a change in practice at the BBC such that previous levels of access to BBC locations (such as televised garden locations), presenters and advance programming information is now being denied. This clearly is discriminatory as it serves the interests of BBC Worldwide publications to have preferred access in order to enable them to provide services to their readers that are denied to the commercial operators. This discriminatory use of BBC resources appears to be a breach of applicable competition law as well as the BBC's own Fair Trading Commitment.
- 6.5 IPC recommends that the preferred partner status of BBC Worldwide be removed, and that a new and more flexible approach to securing value for money from commercial exploitation be explored. Such an approach must respect open market principles, transparency and fairness.

7. RECOMMENDATIONS

- 7.1 The BBC should be required to cease placing the BBC logo on publications that have insufficient connection to publicly-funded programmes, or to permit other publishers to have licences of the BBC logo on fair, reasonable and non-discriminatory terms.
- 7.2 The BBC should be required either to allow other paid-for listings titles non-discriminatory on-air trail exposure to *Radio Times* and other consumer magazines on BBC channels or cease to trail *Radio Times* and other consumer magazines.
- 7.3 The preferred partner status of BBC Worldwide should be removed, and a new and more flexible approach to securing value for money from commercial exploitation should be explored. Such an approach must respect open market principles, transparency and fairness.

Appendix 1 (paragraph 4.6 of Submission)

This appendix outlines the summary of the MMC report of 1992 section *Findings in the consumer magazines market* versus the current market situation for paid-for TV listings magazines.

In the section *Findings in the consumer magazines market*, the MMC report of 1992⁷ notes that:

‘The BBC has public service broadcasting responsibilities for which it is remunerated by its licence fee income, but it is also expected by the Government to supplement the licence fee by commercial activities. The BBC pursues these activities through BBCE. The latter, however, does not have a free hand because of the understandable emphasis the BBC places on its obligation to serve and inform its viewers and listeners. This places particular constraints on the editorial policy of Radio Times. It incurs extra costs by providing extensive radio coverage, and the BBC told us that it also foregoes potential revenue from tobacco advertising.’ (7.151, p 134)

Further detail is supplied earlier under the heading *The BBC’s evidence*:

‘BBCE was also seeking to increase the number of viewers of BBC programmes. The trails encouraged both the sale of BBCE’s products and the growth of audiences for BBC programmes. Programme makers used the magazines as an important and cost-effective means by which information on programmes could be conveyed to viewers. The BBC was obliged to follow its editorial guidelines for Radio Times to include a preponderance of BBC-orientated material, to include cast lists and details of regional broadcasting and radio broadcasts and to abstain from lucrative tobacco advertising. By contrast, other listings magazines may tailor their editorial content in a manner designed to maximise circulation and minimise costs. These

⁷ Television Broadcasting Services: a report on the publicising, in the course of supplying a television broadcasting service, of goods supplied by the broadcaster (MMC - Cm 2035).

obligations on BBCE imposed a substantial financial burden upon Radio Times which, again, had no parallel in other listings magazines.’ (7.67, p122)

The editorial guidelines mentioned in this paragraph have changed, and there is no longer a requirement for the title to include a preponderance of BBC-orientated material. The title has shifted emphasis in terms of supporting BBC programming.

Covers

- *Radio Times* broke with its long-term practice of carrying BBC covers exclusively in 2001.
- In 2003, the title has carried fewer covers (main image) directly relating to BBC content than other paid-for listings magazines such as *What’s on TV*, *TVQuick* or *TVChoice*. The trend over the last two years shows *Radio Times* reducing the number of covers featuring BBC content while other titles in the market show an increase.

Features and Listings

- IPC reviewed 12 copies (drawn one a month) from 1992, the year of the MMC review, against 12 copies drawn on the same basis from 2003, to assess changing practices in the balance of BBC content against other content in *Radio Times*. This analysis looked at editorial space dedicated to the broadcasters, rather than at the number of main features, to remove as far as possible individual value judgement.
- *Total paging*: in 1992, BBC-related content accounted for 64% of total editorial paging in *Radio Times*. By 2003, this had declined to 47%.
- *Listings*: the balance of television listings content has shifted from 41% BBC in 1992 to 22% in 2003. Including radio listings, the balance has shifted from 69% BBC content in 1992 to 40% in 2003.

Further elements of the BBC evidence to the MMC in 1992 are no longer accurate.

Regionalisation

- Regional editions are the norm in listings titles
- *Radio Times*, *TVQuick* and *TVChoice* have 10
- *What's on TV* and *TVTimes* have 7
- *TV&Satellite Week* has 5

Paging

- *Radio Times* does carry radio listings, including regional details, which other magazines in this market also carry: however, the larger radio offer of *Radio Times* is a strong part of a distinct commercial offering, aimed at its ABC1 audience and differentiating the title in the market.
- Other titles face similar brand challenges: *TV&Satellite Week*, for example, as part of its brand positioning, carries listings for 83 television channels (excluding pay per view, and regional ITV/BBC) in 70 pages, more than double the number of television channels carried in *Radio Times* at 36 channels in 49 pages of television listings.

Advertising revenue

- Tobacco advertising is no longer carried by any magazine.
- *Radio Times* has an advertising proposition that is unique in the listings market due to its ABC1 demographic profile driven by the title's association with BBC channels, and is able to leverage this to access advertising markets other listings titles cannot. The lucrative car advertising market, for example, provided 232 pages of advertising to *Radio Times* between January 2003 and December 2003, which the rest of the market does not enjoy. (MMC Medialog).

In summary, *Radio Times* is no less able to tailor its product to maximise circulation and minimise cost than any other listings magazine. The title's editorial policies are in line with those of a 'commercial' listings magazine, with the objective of matching consumer need in a section of the market, and leveraging revenue opportunities which accrue from that brand positioning.

Access to television advertising / sponsorship

In *Findings in the consumer magazine market*, the MMC concludes:

‘Commercial television provides an alternative to publicising the magazines on BBC television. It has been suggested that this would enable the BBC to compete on equal terms with other magazine publishers, but, in practice, we accept that it is not easy for the BBC to advertise effectively on commercial television, when there is a strong link between BBC programmes and the magazine. Such advertisements for Radio Times at the start of the open listings market were not, in the BBC’s view, successful; its audience research indicated that the viewer had been confused.’ (7.153, p134)

In *The BBC’s evidence*, the BBC argument is summarised:

‘The BBC told us that if BBCE’s goods could not be trailed on BBC television there would effectively be no satisfactory alternative medium available for television promotion. It would be impossible or impracticable or ineffective to promote the existence of a magazine accompanying a BBC programme on commercial television (see 5.14).’ (7.70, p122)

In 5.14, the BBC argument is summarised:

‘It would be impossible to advertise (given that the ITC allowed ITV companies to refuse advertisements for competing programmes) and almost certainly ineffective to publicise BBC programmes, as well as goods, on commercial television. Equally, it would be impracticable or ineffective to promote the existence of a magazine accompanying a BBC programme on commercial television.’ (p68)

Concluding section 7.70, the BBC argument is summarised:

‘In the case of Radio Times, circulation would fall and the editorial direction and content would have to change to give way to more general features in the hope of winning and keeping a more general audience.’ (p122)

The BBC now markets *Radio Times* through advertising and sponsorship on commercial channels:

- In April and May of 2001, the BBC spent a total of £1.68m (source: MMS) on commercial television advertising for *Radio Times*
- On satellite the spend was £12.2k, across Discovery Civilisation, Discovery Health, Discovery Sci-Trek, Discovery Wings, and ITN News.
- The rest of the campaign was split across Channel 4, Channel 5 and ITV in regional campaigns.
- the BBC also spent in April, May and June of the same year £375k across commercial radio, including Magic and Classic Gold.

Sponsorship of BAFTA. *Radio Times* has sponsored the BAFTA awards in for the past 5 years, broadcast on ITV. *Radio Times* then carry a cover shot of stars at their BAFTA party on the following issue. The sponsorship costs £180,000 per annum.

It is clear that the BBC no longer consider that it is ‘impossible, ineffective or impracticable’ to reach their target audience through commercial advertising routes.

Radio Times' promotional spend in relation to competitor promotional budgets

The MMC arrived at broad agreement with the BBC 'that the value of the television airtime it allocated to trails for *Radio Times* in 1991 was between £9.1m and £10.6m.' (7.53, p119)

'We estimate that the total publicity and promotional expenditure on listings magazines during 1991, including our estimate of the free airtime, enjoyed by Radio Times and TVTimes was worth about £43 million. Of this the BBC's support for Radio Times (£16 million) accounted for about 37 per cent (24 per cent on trails and 13 per cent on other advertising, including over £1m on commercial television, and non-price promotion). IPC's support for TVTimes and What's on TV (£12 million) accounted for some 28 per cent (8 per cent for television commercials, 5 per cent for trails on ITV and C4 and 15 per cent for price promotions), and Bauer's support for TVQuick (£15 million) accounted for around 35 per cent (23 per cent for television commercials and 12 per cent for price promotions).'' (7.54, p119)

MMS data for the year 2002 shows above-the-line spends of £762k for *TV&Satellite Week* and £742k for *Radio Times*. There was no above the line activity for any other title.

Retail and wholesale spends are, so far as IPC is aware, similar across the market, so we have discounted them for the purposes of this calculation.

Walker Media have estimated the commercial value of the *Radio Times* on-air trails, at 14 slots per week at 10 seconds each - the maximum allowed under the BBC Commercial Guidelines – at £6.2 million per annum. *Radio Times* media spend rises to over £7 million with this figure added in. This would represent 90% of the total media spend for the TV listings category in the year.

It is clear that *Radio Times* dominance of above the line spend in the mature listings market is significantly more distorting than the 37% of total publicity and promotion spend estimated by the MMC in 1992.

Access to promotional space for non-BBC titles on commercial television

When IPC approached the ITC regarding the potential to cross promote *TVTimes* on ITV, linking programme trails and editorial content to support ITV programming, the ITC replied

'I am afraid there is no scope for the kind of cross promotion you have suggested. Section 8 of the ITC Programme Code sets out the rules for our licensees governing commercial references in programme time. These allow for a very limited promotion of licensee-produced materials or services when editorially justified and where there is clear viewer benefit.'

'What you are describing amounts to a proposal for regular undue prominence for the ipc-owned TVTimes, which would be unacceptable under our rules as well as being unfair to other publishers operating in the television listings market. We would regard IPC as no different to any other advertiser, irrespective of the history of your acquisition of the TVTimes brand.'

IPC titles are barred from cross promotion on commercial channels. Equally ipc have been unsuccessful in securing promotional slots on the BBC where the guidelines include 'the product must be commissioned or licensed or developed directly with the programme' (evidence can be provided).

It is IPC's contention that free on-air trails for *Radio Times* amount to 'regular undue prominence' for the title which would be unacceptable for any other listings magazine under ITC rules and which are 'unfair to other publishers operating in the television listings market'.