

## **A RESPONSE TO THE DCMS GREEN PAPER ON THE REVIEW OF THE BBC'S ROYAL CHARTER 'A STRONG BBC, INDEPENDENT OF GOVERNMENT'**

### **Background**

Chrysalis Radio is one of the UK's 'Big Three' commercial radio groups. We own and operate nine analogue local radio stations, under the Heart, Galaxy and LBC brands, as well as The Arrow on digital radio.

Chrysalis Radio is a member of the Commercial Radio Companies Association (CRCA) and fully supports the CRCA's own response to this consultation.

- 1. Do you think it is helpful to define the BBC's purposes in this way?**
- 2. Are these the right purposes?**

We agree that the current Charter Review requires an assessment of the fundamental principles behind the existence, and activities, of the BBC. However, we believe that the purposes for the BBC proposed in the Green Paper do not adequately recognise the shape of the modern media environment in which the BBC now operates.

It is no longer enough to say that the BBC must provide 'public service broadcasting' and to define that term in isolation from the reality of the media landscape. Whilst the Green Paper claims that we expect services from the BBC that the market alone would not provide, that stipulation alone is now a far less useful definition than it was ten years ago.

The availability of digital spectrum has meant that the market now provides much 'public service broadcasting'. The multi-channel television universe, where spectrum constraints have, in all practical senses, been entirely removed, is a good place to demonstrate this. Satellite and cable platforms have created a free market where barriers to entry are low, regulatory constraints minimal and success is determined solely by popularity and the commercial revenue that flows from it. The experience of multi-channel TV is not one of an industry scrabbling in the gutter to cater for the lowest common denominator. Public service broadcasting is alive and well on commercial television. The market, left to its own devices, has provided a range of commercial news and sports channels, an array of documentary and educational services, channels focusing on high quality drama and comedy, and channels catering for specific sectors of the population such as children, ethnic minority communities and religious faiths. While some deride the US television market as an example of how the free market fails in the provision of PSB, it is very often the same people who cite American examples of world-class, high quality, innovative drama and comedy to illustrate the paucity of provision here in the UK. *The Sopranos*, *West Wing*, *ER*, *Frasier*, *Friends* and *The Simpsons* are all products of a commercial market-led approach. Arguably the most important global news story of 2004 – the prison abuses at Abu Ghraib – was broken by CBS, a commercial broadcast news outlet.

The market can, and does, provide public service broadcasting in radio. As the CRCA's recent public service audit demonstrated, terrestrial commercial radio provides a substantial amount of output that listeners would identify as 'public service'. Some of commercial radio's smaller stations are shining examples of where cultural identity is enriched through radio; and projects like our own Galaxy Radio Academy nurture talent. On Chrysalis stations, we have promoted education and learning in a whole host of ways; and we are proud of the array of initiatives which we believe reflect the UK's cultural diversity.

Recognising that the BBC is no longer the monopoly provider of public service broadcasting places additional obligations on the BBC to justify the support it receives and the distortion it continues to inflict on a now developed, competitive and mature market. We believe that the principles laid down for the BBC should incorporate an acknowledgement of the need to justify the cost and economic impact of the Corporation and its activities. We further believe that the key to such justification lies in ensuring that the BBC is distinctive from the wide range of commercial broadcasting choices available.

Distinctiveness would justify the colossal financial cost of the BBC. The BBC has been allowed to grow into a sprawling leviathan that dwarfs every other broadcasting organisation in the UK, with the possible exception of Sky. The Secretary of State's comparison between the BBC and the NHS is apt. Both are vast organisations supported by the entire UK population, whether they use its services or not. Both are in need of wholesale institutional and cultural reform. But there is one critical difference – funding for the NHS has, in the past, gone down. Throughout its history, the BBC's appetite for cash has only ever gone up. The licence fee has never gone down. BBC spending has never decreased. Even the current round of cost savings – which we support and welcome – only reflect a re-allocation of resources to renew the BBC's focus on programming, rather than an actual reduction in total expenditure. If the BBC were a government department, it would be more expensive than four other departments. The budgets of the Foreign Office and the DCMS combined are still lower than the BBC's.

Distinctiveness from commercial broadcasting would also provide some justification for the other substantial cost of the BBC, namely its use of scarce and valuable radio spectrum. The allocation of the bulk of the available analogue broadcasting spectrum to the BBC is the basis of its success and growth, and yet is not mentioned in the Green Paper. The BBC has exclusive rights over nearly 60% of the analogue FM radio spectrum. It has been able to operate four national FM services, when commercial radio has been allowed only one. It has been able to run two national terrestrial TV channels, against the commercial sector's three, one of which has severe technical constraints. It is the only broadcaster to have guaranteed carriage on terrestrial DAB digital radio for its radio services, and the only one to be able to operate its own national DAB multiplex carrying exclusively its own stations. This allocation of spectrum carries a cost. It represents substantial state intervention in the broadcasting market through the granting of access to a valuable natural resource for which all other broadcasters must compete and pay to gain inferior access. It also represents a major opportunity cost. The jealous guarding of 'its' frequencies by the BBC – which does not allow for alternative use of those frequencies even if the BBC is not making use of them – imposes a real limitation on the ability of commercial broadcasters, in radio particularly, to launch new services. This stifles both the development of our industry as well as the creation of new listening choice for the public.

Finally, by including distinctiveness in the BBC fundamental purposes, justification can be provided for the enormous distortion that the BBC imposes on the economic market. This distortion is the consequence of the cost of the BBC, as described above, and the fact that that cost is guaranteed by law, and is at the public's expense. Not only does no commercial broadcaster have access to anything like the scale of funding that the BBC receives, we also have no guarantee of any funding at all. We must secure our own funding, at significant cost, and do so in an environment where a publicly-funded entity is our principal competitor. Moreover, with no shareholder to account to, and no effective mechanism for accountability to its funders, the BBC can, unlike any commercial operator, spend every penny it receives. No other broadcaster can match the BBC's ability to market its services, both externally and through its own channels. Not only can it take risks on a scale that commercial broadcasters cannot, it can also use its buying power to deprive commercial broadcasters of the risks they have invested in, by poaching talent or over-bidding on broadcasting rights for events. All this represents a distortion of the market that, in any other field of enterprise would be regarded as grossly unfair competition and invite severe regulatory penalties and corrective remedies.

The financial cost of the BBC, its unrivalled access to spectrum and the distortion it imposes on the market all require a justifying rationale. It is no longer sufficient to base this rationale on vague public service principles, given the proven success of commercial broadcasters in this field. If the BBC's services duplicate those of commercial operators, then it means that money and radio spectrum are being wasted, and the market is being further distorted by publicly-funded direct competition.

Where BBC services duplicate commercial offerings, we do not believe that quality and scale justify that duplication. Indeed, it is precisely the ability of the BBC, through its access to public money, to out-perform commercial broadcasters in both quality and scale that is the principal cause of the market distortion it brings. The BBC will always be able to provide news on the radio on a grander scale than commercial radio, for example – it gets a gift of £3 billion every year that we do not. Those strengths of quality and scale should be applied to genuinely new, distinctive, innovative output, not used to compete unfairly with commercial services.

We propose the following changes to the purposes set out in the Green Paper. First, an additional purpose:

**Enhancing and broadening listener and viewer choice through content which is demonstrably distinctive**

- Innovating and experimenting to ensure that all its output on all its services are genuinely different in purpose and appeal from those available elsewhere in commercial media
- Ensuring provision of content for sectors of the audience that commercial broadcasters cannot, or do not, serve effectively.

We also propose an additional over-arching principle:

**In fulfilling the above purposes, the BBC will always be mindful of its obligations to make effective use of the public funding it receives, of the radio spectrum it has been granted, and to minimise its adverse impact on the broader media marketplace.**

- Where its output duplicates, in purpose or appeal, that of another broadcaster, the BBC will withdraw from that activity unless it can justify its continued presence in terms of public service benefits over and above those offered by the other broadcaster.
- The BBC will not use the resource advantage it has to compete directly with other broadcasters.

We believe that the BBC's success should be measured against its record in fulfilling the purposes laid down for it. Its success must not be measured by audience ratings. We do not believe it is necessarily true that "the BBC needs to provide programmes that large audiences enjoy, so the public feels that its money is being well spent." The measure of value for money should be whether or not the BBC has fulfilled its purposes. Ratings cannot be an objective of the BBC. This is not the same as saying that the BBC should become "a broadcaster that only shows minority-interest programming", nor that its output should not be entertaining. Distinctive public service broadcasting is clearly capable of appealing to large audiences and of being entertaining – as the BBC has repeatedly demonstrated with programmes like *History of Britain*, *Blue Planet* or *Would Like to Meet* on TV, or *The Today Programme* on radio. However, if appeal and entertainment alone are permitted to justify the licence fee and the existence of the BBC, then what we will end up with is a BBC that chases ratings during peak hours and builds its public service reputation when no one is watching.

We already see this with the BBC's pop music radio stations. Radios 1 and 2 are not, by any credible definition, public service broadcasting during peak daytime listening hours. Whilst the BBC's analysis may have demonstrated that, musically, each network plays a wider range of genres than selected individual commercial stations, CRCA's study (submitted as part of its Green Paper response) highlights that popularity remains the principal factor in the selection of music on Radios 1 and 2, and that very little of the music on those services is unique to them. Music on the BBC is further limited within individual daytime shows, the shows which target the largest audiences. Furthermore, if we had the luxury of sixty minute hours, rather than hours depleted owing to commercial content, we too would play a greater range. The BBC should go further still.

Looking beyond the music, it becomes clear that some of the most popular shows on Radio 1 and 2 fail to satisfy any of the public service purposes of the BBC. We can find nothing in Chris Moyles' Radio 1 breakfast show that sustains citizenship and civil society. Nor does Terry Wogan do anything to promote education and learning. Steve Wright doesn't represent the regions and communities of the UK any more than Jonathan Ross stimulates creativity and cultural excellence. These are some of BBC music radio's most expensive shows accounting for a majority of its overall listening hours. They benefit from national FM exposure and they compete directly with equivalent output on commercial radio. Yet they bring no discernible benefit to the listener, to society at large or to the broader media environment other than popular entertainment. On Election Day this year, the lead story on Radio 1's Newsbeat in the afternoon was about the BAR Honda Formula One team receiving a two-race ban. Part of that station's election activity included an on-line game that involved throwing balls of mud at the political party leaders. We find it difficult to identify any public service benefit to this activity.

Whilst it is possible to list some impressive examples of BBC public service broadcasting, we feel that it is also possible to cite a vast proportion which fails to qualify. Structures need to be in place for this 'negative' examination to be applied.

We do not agree that low audiences to distinctive elements of BBC output should be regarded as justification for questioning licence fee funding for those programmes. The analogy with the NHS is again appropriate. Like the BBC, the NHS is funded by everyone, whether or not it is used by all. This is justified by the public benefit that the NHS brings: quality healthcare, available to all. This does not mean that it is desirable that everyone makes use of the NHS if they do not need to. The fact that an individual taxpayer may not use the NHS in any given year does not reduce their obligation to support the Service through general taxation. Some will use it more than others and it will be used more, or less, at different stages of people's lives. The same principle applies to the BBC. Universal access is not the same as universal use. If the presence of a public service broadcaster is regarded as a general social benefit, then its access to the public's money is justified as long as it provides that benefit, whether or not it is universally used.

Whilst we do not subscribe to the view that the BBC should exist solely to address 'market failure' – i.e. that it should only cater for audience entirely unserved by commercial broadcasting – we believe that market failure should nonetheless remain a priority for the BBC. In its drive to maximise its audience and compete with commercial broadcasting, we believe the BBC has failed to identify and serve obvious areas of market failure. For example, we noted in our response to the DCMS Review of the BBC's digital radio services that the BBC had chosen to launch new DAB stations that duplicated the appeal of existing commercial DAB services, rather than cater for unserved audiences. Thus, BBC 1Xtra was designed to cater for young fans of black music, despite the presence of Choice, Galaxy and/or Kiss in most major urban markets in the UK. Black listeners over 35 have no radio service dedicated to them, and yet the BBC has failed to cater for this market. The over 50s have little currently by way of commercial choice in much of the UK, yet BBC local radio is moving younger in its appeal at a time when Radio 2 has shifted similarly. Five Live Sports Extra uses a valuable national radio channel merely to provide additional coverage of top-flight sporting events, like Premiership football. There remains no channel catering for minority sports, for women's sports, or for disabled sports. The BBC has the ability and the spectrum to do so, but chooses not to. We believe this is a failure in the provision of public service broadcasting which we wish to see corrected in this Charter Review.

### **3. Are these the right characteristics?**

We are not convinced of the relevance of separating the BBC's purposes from the characteristics of its output. The BBC is a broadcasting organisation (taking the widest definition of broadcasting that includes on-line and digital platform content). Its success is gauged by its output. Ensuring that its output displays certain characteristics should surely, therefore, be one of its fundamental purposes. Those characteristics should be as comprehensive as the purposes they are designed to meet. We suggest turning the proposed characteristics into a governing purpose:

**Providing programming that is of high quality, challenging, original, innovative and engaging.**

**4. Do you agree that the BBC should be at the forefront of developments in technology, including digital television?**

It is important that the BBC works as a driving force to promote new technology, along with the rest of the industry, particularly when a major change affecting consumers is involved. The high level of public trust placed within the BBC suits it towards being a positive influence upon society, promoting change. The BBC has the unique benefit of being able to run long-term campaigns across television, radio, and online.

As an example, the BBC has been able to successfully lead the promotion of Freeview by use of its brand power and ability to run cross-platform campaigns. Informational trails for the digital service line junctions on BBC television, posters adorn billboards throughout the country, and the [bbc.co.uk](http://bbc.co.uk) is awash with promotional information with regards to the technology.

It is important, however, that the BBC works in tandem with commercial operators and those who have an interest in the platform or technology. If not, the Corporation risks alienating fellow operators and listeners by pursuing a non-standard technology, or advancing an idea prematurely. One only needs to observe the BBC Radio Player. This new technology has been of great service to many hundreds of thousands of BBC Radio listeners. However, it has been at the expense of many millions of others. As a major Internet peer, the BBC were in a position to deliver media-rich on-line content. At the time, the costs of connectivity and equipment would have made it prohibitive for commercial operators to offer a comparable service.

As the first to bring about a time-shifted radio service, the BBC was in a position to negotiate a unique arrangement with the performing rights bodies. In the interim, changes in how performing rights licences are awarded for on-line use have resulted in it being difficult for commercial operators to secure cost-effective music licensing. This has effectively created a market for the BBC to operate in, without the need to be concerned with commercial viability, remaining free from the pressures of commercial competitors.

**5. Do you support the proposal for a further review of alternative funding methods, before the end of the next Charter period?**

Yes. We agree with the government that the licence fee is currently the 'least worst' funding option for the BBC, given the reality that a subscription-based model is probably not workable at present. However, as the Green Paper acknowledges, technology is moving on apace, and circumstances may develop rapidly that either undermine further the validity of the TV licence, or provide a stronger basis for alternative funding methods. Given the speed of change at the moment, a review of funding methods before the end of the next Charter would be a logical move.

It is worth bearing in mind that the dilemma of how to secure adequate funding for the BBC only arises because it has been allowed to grow into an organisation that needs £3 billion each year just to keep going. A BBC that withdraws from those activities where it adds no meaningful choice – such as pop music radio – is one that can reduce its funding burden.

**6. Do you have a view on any aspect of the operation of the licence fee: concessions, its collection or its enforcement?**

Given the government's acknowledgement of the fact that the licence fee is a regressive tax, it follows from this that draconian enforcement methods, imposed primarily on those unable to pay the licence fee, are not appropriate. We welcome the government's willingness to review licence enforcement.

The cost of licence fee collection and enforcement is too high, and deprives the BBC of funding that could be used on programme production.

**7. Have we defined the roles of the BBC Trust and the Executive Board sufficiently clearly?**  
**8. Is this the right way to define the public interest remit of the BBC Trust?**

Whilst we welcome greater separation of management and regulation, we have some reservations about how meaningful the new arrangements would be. If the plans proposed by Government are to be introduced, more clarity is required. The fundamental issue highlighted in Stilpon Nestor's report for the CRCA, namely the division necessary between the functions of governance, regulation and accountability needs to be fully addressed.

The BBC needs effective governance. We support the creation of an Executive Board which would act like a Board of Directors for a commercial company. The Board would include the Director General and the senior management team, along with a majority of independent non-executive directors and a strong non-executive chairman.

We welcome the Green Paper's suggestions for various methods of BBC accountability to the public, and believe these warrant further consideration.

The BBC needs effective, independent regulation. If there is to be a Trust, its chairman should not be the Chairman of the BBC, but someone who is charged fully with representing the interests of the licence payer.

There would, nevertheless, remain both specific and broader issues which we believe are best handled by Ofcom. Ofcom is certainly better placed than the Trust to identify those things the BBC should not do. A heightened role would certainly help to provide additional useful scrutiny, increase public confidence and allow for the valuable and consistent cross-industry perspective which is ever more important in a converging media world.

We are baffled by the arguments presented in the Green Paper against allowing Ofcom to assume useful regulatory responsibility for aspects of BBC activity. It is suggested that Ofcom "may in fact be more inclined than the Governors to act in a way that it imagines the government would wish" but we see no reason why this should be the case, nor any evidence to support this claim. Indeed, noting how many times the government has deferred to Ofcom's judgement on a range of broadcasting issues in the Green Paper alone, it appears that the government is following Ofcom's lead, not the other way around.

The government further argues that it would be difficult for Ofcom to "resolve any conflict between what was good for the BBC and what was good for the commercial sector." Again, we disagree. One of the purposes of the Charter Review is to define the limits of the BBC's activities, taking into account the legitimate interests of commercial broadcasters. What will emerge from this process is a framework that Ofcom can use to guide its decisions in the event of such a conflict. Moreover, with Ofcom we can at least be assured that the interests of the commercial sector will have some bearing on the handling of regulatory issues, which is not likely to be the case with the BBC Trust.

On resources, Ofcom already possesses the expertise and skills to regulate programme content – including public service obligations and can expand with ease to accommodate any new duties placed upon it.

Finally, the government notes that "Ofcom is not at present responsible for the direct oversight of public spending on the scale represented by the licence fee." This is true but, if the BBC Trust is to be a genuinely new body, and to represent a clear change from the current Board of Governors system, then it too will have no experience of such oversight. Ofcom is responsible for the direct oversight of companies like BT, a company with turnover of £4.6 billion, and there is no evidence that Ofcom finds the scale of this task intimidating or difficult to manage in any way.

In terms of the BBC's expenditure and value for money, there already exists an additional body with the expertise, skills and authority to ensure accountability for the use of the public's money – the National Audit Office. We believe that the BBC should be fully accountable to the NAO for its financial expenditure.

**9. How many of these options for accountability would you like to see adopted in the Trust's statement of promises? Are there any other options you would like to see considered?**

In the main, we would wish to see all options adopted in the Statement of Promises as they demonstrate a positive move towards de-mystifying the Corporation. As stated above, we believe it should be the Executive Board, as the principal body of governance, that is held accountable.

We welcome the quantitative and qualitative research designed to track audience opinions about the BBC's performance. It is hoped that the results of this research will be made available to the public as to do so would build confidence in the licence payer, allowing them to monitor performance in a user-friendly way as well as enhancing their sense of ownership of the BBC.

Regarding consultations via Regional Broadcasting Councils, we are concerned that enlarging or reconstituting these councils could be a costly exercise and their effectiveness is debatable. Where we have seen regional consumer panels or advisory boards used in the past – such as by the old Independent Broadcasting Authority – they have tended to be poorly attended and have attracted virtually no interest from local consumers. We would welcome the move towards e-forums and open meetings/AGMs.

The suggestion for the Trust to meet in public and to webcast its meetings or AGMs along with publishing the minutes of meetings would further give the public a level of access they have not had before – heightening their confidence in the workings of the Corporation and its decision-making.

We congratulate the BBC on their recognition for the need for a user friendly and transparent complaints procedure. As we have argued above, we believe that the only way to build confidence and trust in a complaints procedure is to have it managed by a genuinely independent body, such as Ofcom.

The BBC Trust should operate a new, rigorous system of performance measurement for every BBC service. That system should be clear and transparent and should ensure that the BBC takes account of the thoughts and opinions of those who pay for the BBC.

The Trust, both collectively and members individually, should additionally be subject to some form of external performance management review, perhaps by an external auditor, to gauge the effectiveness of its decision-making and ensure that they are delivering the greatest possible value for money to licence fee payers.

**10. Have you any view about how the BBC Trust should handle complaints?**

As we have argued above, we do not believe that the Trust or any other body within the BBC should handle complaints. An entirely independent external body should handle complaints about the BBC, and we remain of the view that Ofcom is the most appropriate body to take on this task.

**11. How many members do you think the Trust needs?**

Simply, the Trust should be large enough to provide sufficient breadth and depth in expertise and experience, but small enough to be manageable and to function effectively as a cohesive body.

**12. What skills and expertise do you think they will need?**

We believe that non-executive members of the Executive Board, or of the BBC Trust should have a proven track record in broadcasting, regulation, and delivering public sector services. It is important that the Trust can address the issues both facing and surrounding the BBC, understanding and working within the wider regulatory framework, while at all times ensuring the Corporation works to its clearly defined public purpose.

**13. Are there any particular communities or interest groups that you think the Trust members should represent?**

Whilst we recognise the value that individuals representing particular interest groups or sectors of society can bring to bodies like the proposed BBC Trust, we urge an approach that does not go too far down the road of 'tokenism'. There is a danger that public bodies populated entirely by individuals representing specific interests fail to represent society as a whole, with each member feeling it is their role only to promote their own particular interest. This may apply to members appointed to represent individual home nations or regions, ethnic minority or religious groups, or particular political or commercial interests. We hope that experience and ability will be the first priority in selecting members of the BBC Trust or non-executive members of the Executive Board.

Additionally, we have noticed in some public bodies a tendency to appoint some individuals whose primary is sitting on the boards of other public bodies, and who have built up portfolio careers on this basis. We believe that real practical experience of broadcasting or business management would provide the clearest benefit to the BBC. A commercial media background would also help the BBC understand more fully which programming might actually be better addressed by the commercial sector.

As an industry dependent largely on an audience dominated by younger listeners, we note the lack of younger people on the boards of public bodies, including those that deal with broadcasting. The youngest member of the current Board of Governors is 42, and the average age is 56. Under-40s are the heaviest users of broadcast media, and also those whose loyalty cannot be taken for granted. Representation of younger people would be a valuable addition to the BBC's governing body.

**14. Do you think a 'window of creative competition' can be made to work? If not, would you support a raised quota for independent production on BBC television?**

We have no views on this issue.

**15. Do you think a voluntary 10% independent production quota for radio is sufficient? Or should the quota be increased or made mandatory?**

We are neutral as the merits of requiring the BBC to satisfy quotas on independent production in radio. However, if it is accepted that a quota is beneficial, then clearly a voluntary quota is meaningless in that it offers no guarantee of ever being enforced. If there is to be a quota it should be mandatory.

**16. Do you agree that the BBC should be able to propose changes to its range of services over the course of the next ten years?**

**17. Do you agree with our proposals for handling new services?**

The BBC's ability to change the character of its radio services at will, without the need for any form of regulatory approval or oversight, is a clear example of the unfair competition facing commercial radio, which has no such flexibility. In the period since the last Charter Review, both Radio 1 and Radio 2 (as well as some local stations, including BBC London) have undergone several significant changes to the character of their output. In making these changes, the BBC has sought to maximise its audience at the expense of commercial radio.

The BBC should operate under the same regulatory framework with regard to station 'formats' as commercial radio. Any change to the character of a service, either in its output or its appeal, should be subject to the scrutiny and approval of an independent, external regulator. Ofcom is clearly well qualified to assume this role. That regulator would then judge the proposed changes in terms of their impact on the BBC's ability to fulfil its public service purposes, and the likely impact on competing commercial services. If any proposed change would be likely to have a noticeable adverse impact on commercial operators, and if the public service justification for such an impact is insufficient, the regulator would then be empowered to prevent the change from being effected. Additionally, Ofcom should be empowered to determine whether or not the BBC's services are actually meeting their existing format requirements, and impose sanctions if they are not, as is the case with commercial radio.

The same model can be applied to the approval of new services. By handing responsibility for approval to Ofcom, we can be assured that the new services will satisfy public service purposes and have minimal

adverse impact on the existing market. It also removes this responsibility from the Secretary of State, thereby reinforcing the BBC's independence from government.

We do not agree with the government's proposals for handling new services because they involve approval by the BBC Trust which we do not believe will be a genuinely independent authority.

**18. How strictly should the BBC's commercial services be restricted to those businesses that are linked to public purposes and public services?**

We believe the BBC's commercial service should be strictly limited to businesses that are linked to public purposes and public services. Whilst the BBC's commercial services are kept financially separate from its licence-funded activity, they parasitically exploit content and branding developed for licence-funded channels to which they have exclusive access. It would clearly be unacceptable for the BBC's commercial ventures to be able to take these advantages into markets where other commercial operations were already established, thereby creating unfair competition in those markets.

**19. Is the existing fair trading commitment a useful addition to the arrangements for regulating the BBC commercial services? If not, what option would you prefer?**

We are not convinced that the existing fair trading commitment are sufficient to prevent the BBC from engaging in unfair competition, and would favour a more fundamental structural solution.

By the very nature of what it does, the BBC generates millions of pounds worth of intellectual property every year. This may be in the form of actual programming and content, or brands and marketing concepts which can be extended into non-broadcast activity such as magazines and merchandise. It is right that the BBC should derive financial benefit from its creative activity. Moreover, it is right that those who fund this activity should derive financial benefit, through lower licence fees, subsidised by the income generated by the onward exploitation of the intellectual property.

The manner in which the BBC exploits and manages its rights, however, needs to be re-assessed. By acting as the sole distributor for the UK's biggest intellectual property owner, BBC Worldwide is abusing a dominant position, thereby stifling the business of other publishers, broadcasters and distributors, and potentially not deriving the maximum financial benefit for licence-funded services.

For the most part, within the UK, other broadcasters are precluded from bidding for the right to re-broadcast BBC productions, and other publishers are not able to acquire the rights to publish books or magazines relating to BBC productions. The BBC is then able to use the marketing power of its public service broadcast channels to promote its commercial products and publications. Licence fee funding is therefore being used to allow the BBC's commercial activities to gain a competitive advantage over other commercial publishers. This is particularly noticeable in the case of independently or internationally produced programming, where the BBC has acquired the broadcasting rights, but another company has acquired the book publishing rights. Not only does the on-air promotion of the tie-in book, that would be routine and prominent were it a BBC publication, not appear, but the BBC also refuses to inform publishers of the likely dates of broadcast of the series, making it impossible for the publisher to plan its publishing schedule. The distorting impact of this activity is readily apparent; indeed, the BBC's latest annual report includes the boast that "BBC Worldwide is the UK's biggest hardback non-fiction publisher both by value and by volume." It is difficult to see the public service value in the BBC commanding such a dominant position in its commercial enterprises.

An obvious consequence of the privileged relationship between the BBC as a producer and broadcaster, and BBC Worldwide as a publisher, is that the BBC may not be deriving the maximum financial benefit from the intellectual property that it owns. Because BBC Worldwide faces no meaningful competition from other companies in acquiring the publishing rights to BBC productions, the income from its products is dependent solely on the volume of retail sales. If there were competition to acquire those rights, the rights themselves would have an intrinsic value that the BBC could receive regardless of the subsequent retail success of the licensed products. This could still be augmented by the receipt of royalties from sales, which would also continue to incentivise the BBC to provide on-air promotion and maintain the value and

quality of the licensed brands. It would also create a more level playing field between publishers operating in a purely commercial market.

We believe that one possible option to consider for BBC Worldwide is for it to cease to be a publisher in its own right, and simply to act as the commercial intermediary between the BBC and commercial publishers for the sale or licensing of the rights to BBC productions. By making these rights available on the open market, the BBC maximises its income and a healthy, competitive publishing sector is fostered on a fair and equitable basis.