

## Barriers to entry and expansion

1. In this appendix we assess the barriers to entry and expansion that the parties, and others, have identified (technology, promotion and content) (see paragraphs 4.117 to 4.123 in our main report).

### Technology

2. The technology required to provide retail VOD services depends on the delivery platform (see paragraph 4.118). We have been told that the technology requirements are simplest for an open VOD service delivered over the Internet.
3. The parties told us that a basic technical platform could be built using off-the-shelf software and minimal software development. They did not provide estimates of the cost to develop a basic technical platform.
4. [REDACTED] told us that it had set up [REDACTED]. It provided cost estimates which show that set-up costs are not particularly significant relative to [REDACTED].
5. Many third parties, including for example [REDACTED], also said that there were no significant technological barriers to entry.
6. However, the parties also told us that it was likely to be more costly to develop a sophisticated website. ITV told us that [REDACTED]. BBCW told us that [REDACTED]. However, BBCW told us that, [REDACTED].
7. C4C also told us that [REDACTED]. C4C told us that [REDACTED].<sup>1</sup>
8. We have also been told that a requirement to download an application can limit consumer demand for an open VOD service. [REDACTED] We understand that many VOD retailers have developed similar software, so this does not appear to be a significant technology barrier.
9. However, some third parties told us that sophisticated technology was required to make content as attractive as possible to advertisers. For example, [REDACTED].

### Promotion and marketing

10. Some parties told us that promotion was a barrier to entry and expansion (see paragraph 4.119). They raised concerns that the parties would be in a unique position to promote their VOD retail offer to a wide audience via their linear broadcasting operations.
11. The commercial PSBs are subject to Ofcom's cross-promotion code which aims to ensure that cross-promotion does not prejudice fair and effective competition. The BBC Trust has its own, parallel, cross-promotion code. The associated BBC Fair Trading Guidelines confirm that cross-promotion must either be for editorial reasons or to meet the BBC's Public Purposes.

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<sup>1</sup>[REDACTED]

12. In addition to cross-promotion, we understand there to be a variety of other ways of promoting VOD services. In particular, a number of third parties told us of some innovative ways to promote sites. For example, [REDACTED].
13. In addition, the parties told us that there were websites (such as blinkx) that could be used to search all video content on the web. They allowed users to aggregate content from a variety of sites according to their preferences. The parties told us that [REDACTED].

### **Access to attractive UK-originated VOD content**

14. A competitive entrant must be able to access attractive UK-originated VOD content (that is, content that has previously been broadcast on linear TV and preferably content that has been successful) (see paragraphs 4.120 to 4.123).
15. We note, for example, that [REDACTED].
16. We analysed whether a potential entrant would be able to access sufficient suitable VOD content to launch competitive entry in the UK supply of VOD. We first establish the minimum scale and scope of UK-originated content necessary for competitive entry. We then look at the availability of UK-originated content from two alternative sources to the parties (other broadcasters and third-party production companies).

### ***Minimum scale and scope of UK-originated content necessary for competitive entry***

17. While a number of parties have told us that access to a wide range of compelling content is crucial to competitive entry, we were told that it might be sufficient for them to have access to content from two of the three parties (see paragraph 4.96).
18. BT Vision told us that [REDACTED].
19. [REDACTED] said that access to the parties' content was an essential element of a VOD offering.
20. A number of existing VOD retailers and potential entrants told us of the importance of being able to offer both catch-up and archive VOD content (see paragraph 4.98).
21. Hulu told us that: [REDACTED].

### ***Alternative sources of UK-originated content***

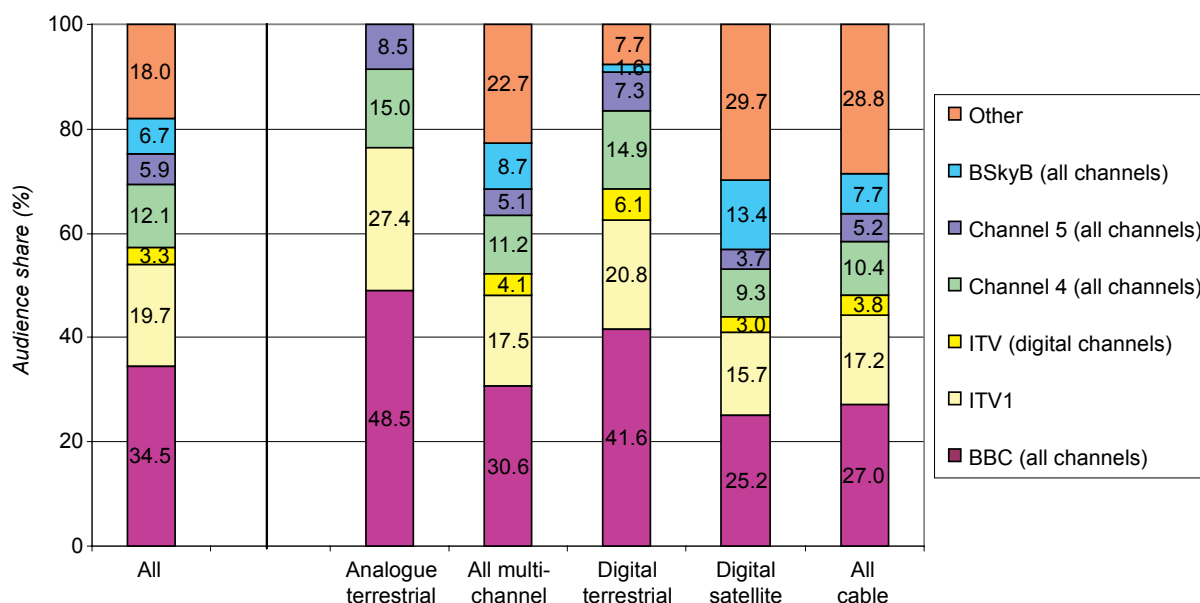
22. We looked at how much content would be available to a competitive entrant from other broadcasters and directly from third-party production companies (see paragraph 4.101).

#### ***Other broadcasters***

23. Broadcasters other than the parties may represent an alternative source of VOD to a potential entrant. In Appendix G we look at whether other broadcasters are currently credible sources of UK TV VOD content.

FIGURE 1

**Audience shares by platform ([redacted])**



Source: Broadcasters' Audience Research Board Ltd (BARB) data, CC analysis.

Notes:

- BBC does not include UKTV channels, which are a joint venture between Virgin Media and BBC Worldwide, the commercial arm of the BBC. BSkyB does not include joint venture channels. Channel 4 includes S4C.
- The 'Other' category includes over 150 reported channels. Within this group, the individual channels with the highest share in all homes are UKTV Gold and Living, with viewing shares of less than 1 per cent each; all other channels have viewing shares of less than 0.5 per cent. The channels owned by Virgin Media have a significant presence within this group, with a viewing share of just under 2 per cent in all homes, which rises to around 4 per cent in cable homes. UKTV channels (co-owned by Virgin Media and BBC Worldwide) have over 3 per cent share in all homes and over 5 per cent in cable and satellite homes.

- The other broadcasters together have about a 30 per cent share of viewing across all platforms. However, individual broadcasters' shares are small: Five (5.9 per cent), BSkyB (6.7 per cent), others (18.0 per cent) (see Figure 1). This suggests that these other broadcasters would have access to a limited amount of attractive VOD content.
- This is consistent with Ofcom's view that digital-only channels have limited reach and impact. In the first phase of its Second Public Service Broadcasting Review, Ofcom commented that the audience share of individual digital TV channels was unlikely to grow to anything near levels comparable with the five main networks and that ITV2, the most viewed digital TV channel outside the main PSBs in 2007, still only commanded an audience share of 2 per cent in multi-channel homes.<sup>2</sup>
- UKVOD provided us with an analysis by BARB of the top programmes among 25- to 44-year-olds that showed that the most popular programmes on digital channels are watched by [redacted] than the most popular programmes on terrestrial channels. [redacted] Each title in the top 80 programmes broadcast on terrestrial channels was watched by [redacted] viewers. By comparison, the most popular programme in this age group in the preceding 12 months on digital channels was watched by [redacted] viewers. [redacted]
- The BARB analysis also showed that the parties' digital channels broadcast the most popular programmes among digital channels. [redacted]

<sup>2</sup>Ofcom's Second Public Service Broadcasting Review, Phase One: The Digital Opportunity.

28. We also looked at the VOD offer of the largest of these other broadcasters (Virgin Media, Sky and Five). Virgin Media provides TV VOD services to its pay-TV subscribers as a differentiating factor. It told us that [REDACTED]. Sky Anytime offers its subscribers push VOD content, the large majority of which [REDACTED]. It does not acquire VOD content from the parties [REDACTED]. Sky Player offers viewers [REDACTED] (including a significant amount of content from its own channels as well as movies), but in June 2008 it had only about [REDACTED] views of TV content. Five Download (an Internet-only VOD offer with paid-for content limited to US dramas) was launched in October 2007. Demand Five, an advertising-funded and paid-for VOD offer, launched in July 2008.
29. We are not aware of any broadcasters other than the parties supplying their VOD content at the wholesale level. [REDACTED]
30. The parties told us that there was no regulatory impediment to investment by non-broadcasters in content production and that, in their view, barriers to entry for digital channels were low for those prepared to pay the market rate and costs for it. They told us that there was nothing to stop new entrants bidding for or creating valuable content which would compete with the parties' content, but that 'at the moment it just appears that they choose not to'.
31. While we recognize that there are no regulatory barriers for content production, we found it unlikely that the lack of success is because other broadcasters have chosen not to bid for or create valuable content. We note that as PSBs the parties are in a privileged position relative to other broadcasters, benefiting from funding and access to a large audience. Finally, even if a broadcaster were to become successful in bidding for or creating valuable content, it would be difficult to replicate the parties' catalogue of UK TV content.

#### *Third-party production companies and distributors*

32. As an alternative to other broadcasters, an entrant could acquire VOD rights directly from the UK third-party production companies or from content distributors who act as wholesalers of content rights in order to compete with UKVOD. We discuss the availability of UK TV VOD content from third-party production companies and distributors in Appendix G.