



Consultation for the Independent Reviews of the BBC's Digital Television and Radio Services: Submission from the Satellite and Cable Broadcasters' Group

Introduction

The Satellite and Cable Broadcasters Group represents the interests of a wide variety of channels operating in the commercial multi-channel sector. This sector has grown considerably over the last decade, creating investment and employment and providing consumers with a plurality of choices to suit their individual tastes and interests.

The launch of every new BBC digital television service followed in the wake of similar services that already existed as risk taking ventures by commercial operators. The remit set for the BBC services by the Secretary of State for Culture, Media and Sport, and the means by which these remits are enforced and reviewed, have inevitably therefore been issues of considerable concern to SCBG members.

There is evidence that the new BBC services are straying beyond their agreed remits into closer competition with commercial players and, in so doing, are having a material economic impact. We also believe there to be significant public interest issues at stake in terms of ensuring the continuation of a plural media economy and a diversity of choice for viewers.

Terms of reference

The terms of reference for the Review are limited, and the SCBG is concerned that as a result the BBC's digital channels may be considered in isolation from other BBC services in terms of their market impact and future development. It is important to note that the market impact of digital channels is magnified by the effect they have had in liberating BBC1 and BBC2 to compete more fiercely, to reduce the diversity of their output and to restrict their services for minority audiences.

Market impact assessment

Given the limited time period for consultation and review of the BBC Digital Services, the SCBG is not in position to provide in-depth analysis of all the BBC channels or, indeed, a full market impact assessment to counter-balance the Oliver and Ohlbaum report commissioned by the BBC. We note, however, the importance of a transparent research methodology and regret that parts of the Oliver and Ohlbaum report submitted by the BBC rely on research that is not currently in the public domain. No member of the SCBG was asked to supply information for the Oliver and Ohlbaum assessment, though several SCBG members are referenced extensively with data and conclusions that they consider erroneous.

We agree with the Oliver and Ohlbaum finding (*see Section D see page 61*) that “to the extent to which BBC services have helped increase free to air digital TV at the expense of pay TV, they will have reduced the reach and share of all pay TV services”. However we disagree with the assertion that this “will have increased the leverage enjoyed” by our channels with regard to the pay TV operators in order to compensate for lost reach. A business model based purely on advertising revenues (and no subscription) would not be sustainable on our current and projected multichannel audiences. In particular, the children’s advertising market has been static for the past 3 years, is showing short-term signs of decline, and facing the possibility of increased self-regulation over the issue of the appropriateness of advertising to children. The suggestion that all the thematic channels could successfully use the free to air, advertising-based alternative business model as a threat in negotiations with the pay TV operators in the foreseeable future is unrealistic.

Overall, we recommend that your own market impact assessment take particular account of the fact that BBC entry in the multi-channel market is only *now* beginning to demonstrate its commercial impact. This is a result of a natural lag effect and also the fact in the case of channels such as CBBC and BBC4 the schedules and marketing strategy have been significantly altered since launch. If the Review were to look only at the last two years it would not capture the serious level of distortion that the BBC channels are now creating.

Compliance with remits

There are a number of points that we wish to make in relation to the non-compliance of CBBC and BBC3 with the remits agreed with the Secretary of State, and the likely consequences of this for commercial players. Although the specifics are different for individual BBC channels, the overall pattern is the same – BBC scheduling is competitive not complementary to what is provided by commercial thematic channels.

CBBC

The BBC children's channels were launched into a market in which a large number of commercial children's channels already existed. The distinctiveness criterion set by the Secretary of State is therefore of critical importance both to minimise commercial impact but also to ensure plurality for viewers and value for money for licence fee payers.

We would like to draw attention to research commissioned by Nickelodeon from David Graham and Associates that, in the case of CBBC, finds evidence of increasing non-compliance with the conditions of approval laid down by the Secretary of State resulting in content and scheduling that increasingly resembles commercial channels. Key findings include:

- A significant and consistent decline in the proportion of factual programming in the CBBC schedule since launch (to just 12% in December 2003), especially in peak time, and a corresponding growth in drama and entertainment programming, more akin to competitor offerings.
- Live programming reduced during the week and dropped altogether from the weekend CBBC schedule
- A greater proportion of acquired programming if scheduled in peak hours on CBBC than at other times of the day
- Greater divergence from the scheduling policy on CBBC in holiday periods, with a correspondingly high market impact.

It should be noted too that the BBC's analysis distorts the picture by combining hours of schools and factual programming (*see Section 2.3, page 8 CBBC submission*) which conceals the extent to which factual programming has decreased since launch. Additionally, the Oliver and Ohlbaum report (*see Section C page 44*) only looks at a sample schedule of one month, during April/May 2003, which again conceals the steady month on month decline in factual programming from launch until Dec 2003 that the David Graham and Associates research highlights. In particular, the schedule changes we are most concerned about began in June 2003, just after the time period chosen by Oliver and Ohlbaum for their study.

Please also find enclosed a joint letter submitted to the Secretary of State at the end of 2003 outlining key questions that we consider pertinent to the assessment of the BBC's children's services.

BBC 3

The SCBG would draw attention to the following areas in particular where BBC 3, despite its significant budget, has not complied with its requirements:

- BBC 3 has not adequately served the 25-34 year old audience, with both reach and absolute audience numbers for this demographic at lower levels than existing commercial players such as Sky One and ITV2.
- Furthermore, BBC 3's audience share is driven by films, soaps, repeats and football, genres that do not fulfil its remit to provide distinctive or risk-taking programming and result in a schedule close to existing commercial channels such as Five.
- BBC 3 is required to make up 80% of its output from programmes "specially commissioned for BBC 3 and genuinely new to television" in order to stimulate UK production and develop new talent. We do not consider repeats, co-commissions with other BBC channels and spin-offs from existing BBC1 and BBC2 programme strands to contribute towards this objective, although BBC 3 has included these in its own interpretation of the requirement.
- BBC 3's commitment to education, science, religion/ethics, business, music, arts and current affairs makes up only 3% of its total schedule.

Driving digital take-up

With regard to digital impact, the Oliver and Ohlbaum report claims that BBC digital services have been a driver of digital penetration and the children's channels are likely to have had the largest absolute impact. However, the preliminary David Graham and Associates analysis suggests that the launch of these channels had no discernible impact on the growth of digital penetration overall.

The BBC was required to promote the take up of digital television services under the terms of consent to assist the Government's overarching objective of achieving digital switchover. However, commercial channels are also playing a key role in appealing to new audiences, stimulating demand for new services and converting viewers from analogue to digital. The BBC's performance in this area must therefore be assessed within the context of the sector as a whole, and public policy should reflect the need to incentivise all players. If BBC digital channels have only weak terms of consent that allow them to duplicate (or reflect too closely) commercial offerings this will inevitably skew the ability of other market players to attract viewers, to commit to Freeview with their most attractive

content and therefore reduce the effectiveness of the industry as a whole in delivering digital switchover. Uncertainty about the BBC's future programming strategies, as a result of the weak consents, serves not only to affect investment in the Freeview platform but also makes it difficult to even consider launching on a satellite equivalent.

Cross promotion

The level of cross-promotion of BBC digital services has been a subject of much concern for commercial players as it is a key element of market impact not recognised in the terms of consent.

Codes for commercial broadcasters prevent them from cross promoting, trailing or editorialising its channels on any free to air network. In contrast, the BBC is free to cross promote its digital services without restriction on BBC 1 and BBC 2. For example, it does so through continuity links in the CBBC and Cbeebies segments on BBC 1 and BBC 2 at regular intervals, by promotional trails on BBC 1 and BBC 2, by promotional announcements on Radio 1, 2, 4 and 5 and by news bulletins and editorial features on BBC television and radio. In addition the BBC spends significant amounts on above-the-line marketing.

The discrepancies in rules and standards on cross promotion serve to further distort the market, with the longer term effect of restricting growth and investment in new channels and programming for the public's benefit.

Recommendations

- ❖ The terms of consent must include fixed percentage requirements for key public service and distinguishing genres, such as children's factual or current affairs for the youth audience.
- ❖ The terms of consent must be applied across all time periods during a year, to ensure that BBC schedules are kept consistently distinct and not scheduled competitively at intervals.
- ❖ There must be clearer definitions for targets such as distinctiveness, based on measurable criteria. For example programming with an original format, concept or idea, programming that is innovative, risk taking or unproven, programming of high quality that sets the standard in UK broadcasting, programmes for minority viewers, interests or ethnic origin etc.
- ❖ There must be a clearer definition of peak time viewing and the requirements for scheduling mix during peak hours, including levels of acquired programming.

- ❖ Requirements for repeat levels should be measurable and benchmarked against repeat rates on equivalent commercial channels. Repeat levels must be applied to both origination and acquisitions and be consistent across day parts and time periods during the year.
- ❖ The terms of consent for all BBC Digital Services should reflect the priorities set for BBC 3, after much consideration by the Secretary of State, to deliver innovation and to stimulate UK original and regional production.
- ❖ A value for money measure should be introduced under the terms of consent to maximise the benefit for viewers from use of the licence fee.
- ❖ A measurable cap on cross-promotion of BBC digital services should be set and the BBC should be required to quantify and report on the level of cross-promotion of its digital services.
- ❖ Clear regulatory mechanisms should be put in place to ensure consistent and ongoing compliance with the terms of consent and to monitor the impact on commercial broadcasters.
- ❖ Failure to comply with the terms of consent should result in approval for a service being withdrawn.

ANNEX – SCBG Respondents

Artsworld

The Chinese Channel

CNBC Europe

Discovery Networks Europe

Disney

Flextech/Telewest

The History Channel

MTV Networks Europe

Music Choice

National Geographic Channel

Nickelodeon

Paramount Comedy Channel

QVC International

Sci-Fi Channel Europe

The Travel Channel

Turner Broadcasting System Europe