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27 February 2001

Dear Paul,

Please find enclosed the response from Nickelodeon UK to the Proposed New Services from the BBC.

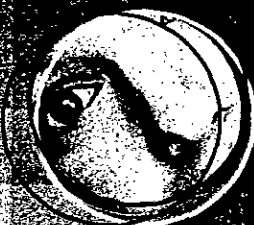
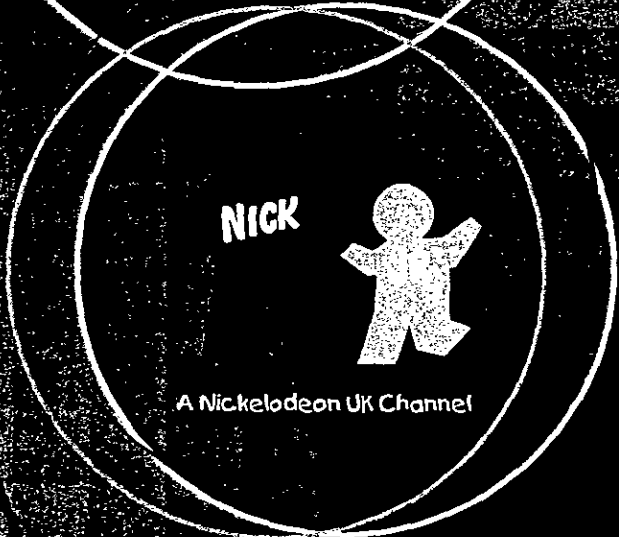
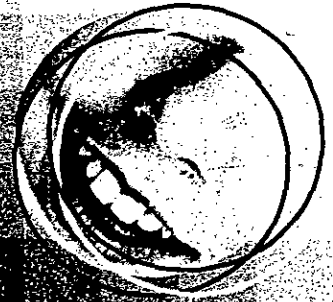
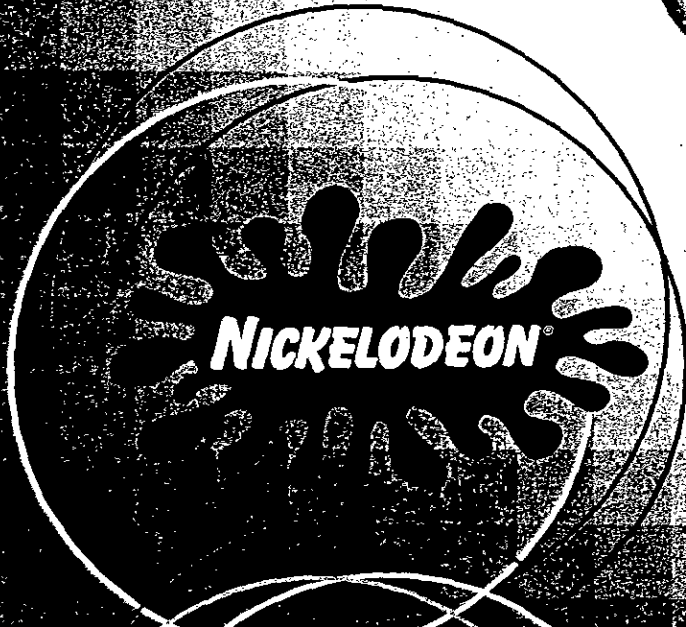
If you have any queries or require further copies please do not hesitate to contact me.

Yours sincerely

Paul Lindley
General Manager



PROPOSED NEW SERVICES FROM THE BBC: RESPONSE FROM NICKELODEON UK



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EXECUTIVE SUMMARY

The BBC's proposed children's services duplicate what is already provided in the marketplace and are not truly distinctive. There are already 14 digital channels for children, and a further 9 channels with significant blocks of children's programming, covering all age groups and a multitude of genres. Children also have a wide range of complementary commercially-funded information and entertainment sources on-line.

There is no evidence that new BBC children's services will drive digital take-up. The BBC claims its new digital services would drive digital take-up and in due course provide a universal service, both key objectives for Government. However, homes with children have already led the way in adopting multi-channel television (nearly all multi-channel homes are now converted to digital) and do not represent the "resistors" that the Government and the BBC want to target. Nickelodeon and Nick Jr., along with other commercial children's channels, have established demand for multi-channel television and are key players in expanding the market. The existing children's channels will continue to be important allies in driving digital.

Existing children's services are steadily increasing levels of original UK production. Nickelodeon UK's original production slate has increased year on year and the company has ambitious plans to continue this trend, with a commitment to supporting £30m of new UK production over the next 3 years. However, these investment plans are based on the assumptions of a level playing field and access to archive material from the BBC at market rates. The uncertainty over free-to-air BBC entry into the market, and the refusal by the BBC to sell its library to secondary channels, makes this commitment uncertain.

New BBC children's channels would have a severe impact on existing and future commercial services. A rigorous, independent economic impact study commissioned from Arthur Andersen quantifies the damage to the commercial children's sector by BBC entry at up to £400 million lost in foregone programming investment. Existing commercial channels such as Nick Jr., with 70-80% UK content, are likely to become economically unviable.

BBC children's programming is not free from commercial influence. The BBC's claim that it has a public mandate to provide a non-commercial environment for children is disingenuous. Sponsorship and product placement is regulated less tightly on the BBC than on commercial channels, it draws huge revenues from global merchandising of its children's properties and is open to editorial influence by its commercial arm BBC Worldwide or co-production partners.

Nickelodeon UK therefore urges the Secretary of State to consider in detail *the costs* involved in the BBC new services as proposed in terms of economic investment, creative risk-taking and innovation, and choice and plurality, and not merely the perceived benefits of two new BBC children's channels.

1. INTRODUCTION

- 1.1 Nickelodeon UK's response to the Davies report, "Putting Kids First", made the following recommendations to the Department of Culture, Media and Sport in consideration of any move by the BBC to launch new licence fee funded children's services:

Clearly define the BBC's public service role within the digital environment, setting limits for its expansion into new areas, and ensuring these do not duplicate existing services.

Maintain a consistent policy framework that promotes fair competition between digital television services and encourages innovation and investment by the commercial sector.

Publish BBC proposals for new public services in full, along with the criteria for evaluating whether or not they fulfil its public service role, and consult with the industry on their potential impact.

Consider alternative ways to the licence fee, and other providers than the BBC, for funding and establishing public service television for children in the digital age.

- 1.2 Nickelodeon UK therefore welcomes the Secretary of State's commitment to consult with the industry before reaching a decision on whether to approve new BBC public services.
- 1.3 Nickelodeon UK's main concerns about the BBC's proposals for children's services reflect the potential trade off described by the Secretary of State, "that the value to the public of the service is proportionate to the likely impact on the market"¹. There is no doubt that the BBC is a provider of quality children's programming. However, there is already a plethora of children's channels in the multi-channel market, covering all age groups and all genres. The BBC proposals do not offer sufficient value to the public to offset what would be a considerable impact on the existing players with consequences in terms of investment, innovation, training and quality in children's programming.
- 1.4 Section 2. (The Secretary of State's Concerns) responds to the BBC's submission on the specific points set out by the Secretary of State for consideration in BBC Public Services: Approvals section 3.1.2
- 1.5 Section 3. (Response to BBC Submission) responds to some of the BBC's general claims for its new services.
- 1.6 Section 4. (The Digital Economy) highlights some broader concerns about the BBC New Services' impact on the market.
- 1.7 This response focuses on the content of the BBC's proposals rather than the approval process, which has been responded to separately.

¹ BBC PUBLIC SERVICES: APPROVALS 3.1.2

2. THE SECRETARY OF STATE'S CONCERNS

Whether the BBC has fulfilled its obligation to consult licence fee payers on proposals to make any material change to the nature of the Home Services

- 2.1 The Secretary of State has required that "an appropriate process of public consultation" be undertaken by the BBC and stated that he will consider this consultation in assessing whether the value of the proposals are proportionate to the likely impact on the market. Nickelodeon UK does not consider the public consultation appropriate as licence fee payers were not asked to assess the BBC's proposals against any putative impact on current and future services provided by other broadcasters. Therefore the consultation's findings cannot be used to demonstrate how valuable the proposed services would be to the public against other interests and priorities, or how likely to drive digital take-up compared with other services.

Whether the BBC has published detailed results from its consultation

- 2.2 The BBC has published results from its self-selecting questionnaire but not from the additional survey it commissioned.

The nature and coverage of commercial services of a similar nature

- 2.3 The children's television marketplace

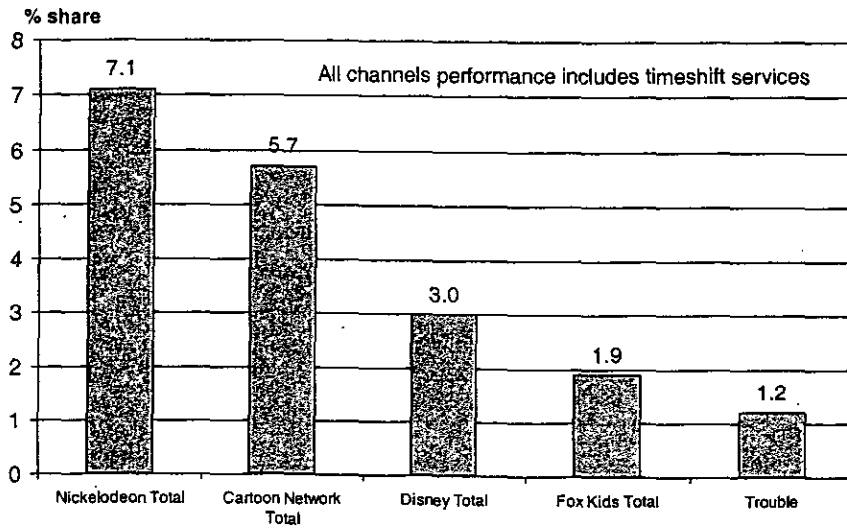
The children's television market is already the most competitive demographic market in television. In terrestrial homes, children's programming is available on BBC1, BBC2, ITV, C4 and C5. In addition to blocks on the terrestrial channels, children's programming has been available all day on dedicated cable and satellite channels since the launch of The Children's Channel in 1989. There are now 14 digital channels fully dedicated to children's programming², and a further 9 with significant blocks of children's programming³. ITV are also planning to launch a dedicated children's channel with a substantial spend on new original production.

Market shares of the major players in dedicated children's television, for older children and pre-school children, are shown in figures 1 and 2.

² Nickelodeon, Nick Replay, Nick Jr., Cartoon Network, Cartoon Network+, Fox Kids, Fox Kids +1, Disney Channel, Disney +1, Toon Disney, Playhouse Disney, Trouble, Boomerang and Discovery Kids

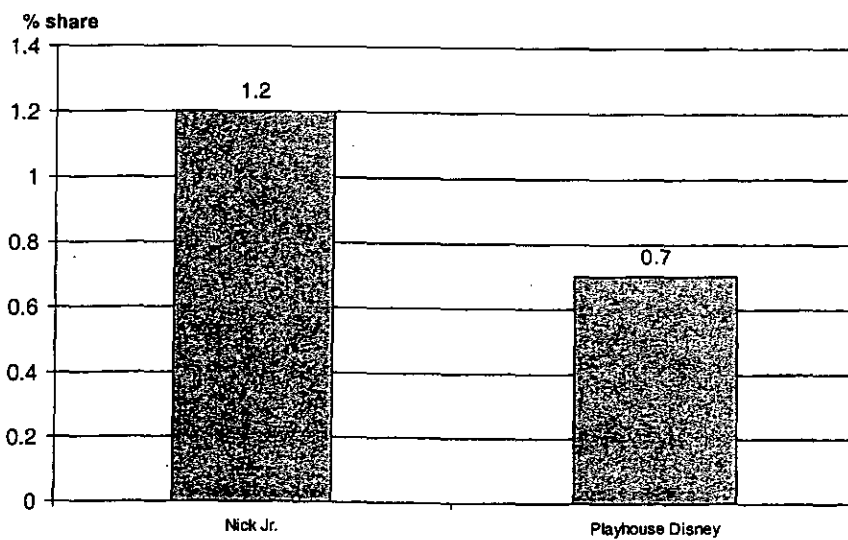
³ BBC1, BBC2, ITV, C4, C5, BBC Choice, Sky One, Hallmark and Living

1 - UK Children's Channels Share of the Market



Source: BARB, Multi-channel homes, K4-15, M-Su, 0600-2200, Jan '00 - Dec '00

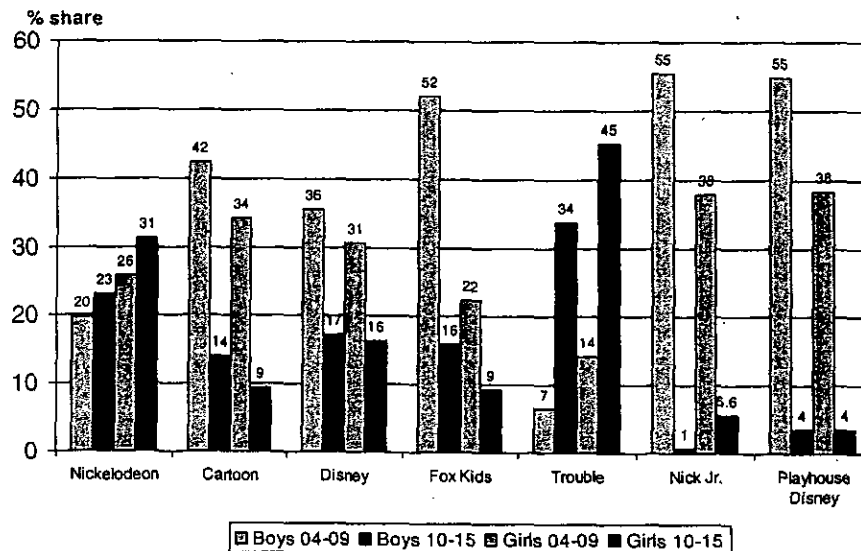
2 - UK Dedicated Pre-school Channels Share of the Market



Source: BARB, Multi-channel homes, HWK, M-Su, 0600-1900, Oct '00 - Dec '00

The dedicated children's channels vary by targeted age group (see figure 3), type of content and ethos. As a whole, they serve children from 2-15 with programming across a multitude of genres including animation, entertainment, comedy, drama, factual, news and current affairs, lifestyle and pre-school.

3 - Children's Channel Age Profiles



Source: BARB, Multi-channel homes, K4-15, M-Su, 0600-2200, Dec 2000

Nickelodeon, Disney, Fox Kids, Cartoon Network, Flextech and CITV all operate substantial websites which provide a broad mix of content across a range of subjects. Children can find games, editorial and on-line communities all tailored to their particular ages and interests.

Commercial broadcasters have also been very active in developing interactive and enhanced services for children. CITV has recently provided enhanced programming on the DTT platform while Nickelodeon and Cartoon Network have a substantial presence on digital cable services. In common with other commercial broadcasters in the children's arena, Nickelodeon UK has several prototype interactive and enhanced services which it intends to roll out as soon as technology and market conditions allow.

2.4 Nickelodeon UK

Nickelodeon UK is a company registered and staffed in England, a 50:50 joint venture between MTV Networks (a division of Viacom International Inc) and BSkyB, and provides three dedicated children's channels in the UK: Nickelodeon, Nick Replay and Nick Jr.

Nickelodeon UK employs 120 people in London and is constantly training and developing new talent both internally and with the

independent production sector. Presenters, producers and technical staff trained at Nickelodeon UK have gone on to work at the BBC, ITV, Channel 4 and Channel 5.

Nickelodeon UK was the first cable and satellite broadcaster to sell an original production to a terrestrial network (drama series *Renford Rejects* to Channel 4) and has recently struck a deal to sell Nick Jr.'s first original production (interactive pre-school show *Blue's Clues* to Channel 4).



2.5 The Nickelodeon channel

Nickelodeon has aired from 6am to 7pm on analogue cable and satellite since 1993. It launched on Sky Digital on 1 September 1999, with extended hours until 10pm, and is now also available on digital cable and OnDigital.

Nick Replay, a digital time-shifted version of Nickelodeon, also launched on Sky Digital on 1 September 1999.

Nickelodeon is available in 7.6 million UK homes, representing over 4 million children.

Nickelodeon has been the top performing dedicated children's channel for 4 consecutive years watched by 2.5 million children every month⁴.



2.6 The Nick Jr. channel

Nick Jr., the UK's first channel for young children, launched on Sky Digital on 1 September 1999, representing a multi-million pound investment by Nickelodeon UK's shareholders. Nick Jr. is now available on digital cable and Nickelodeon UK is in discussions to extend its distribution across all digital platforms in due course.

Nick Jr. is available in 5 million UK homes.

Nick Jr. was the most watched dedicated pre-school channel in 2000⁵. Over 1.4 million kids aged 4-15 and 3.25 million adults have tuned into Nick Jr. since launch⁶.

⁴ Source: BARB, Multi-channel homes, M-Su, 0600-2200, Nov2000

⁵ Source: BARB, Multi-channel homes, M-Su, 0600-2200, 01/10/00-03/12/00

⁶ Source: BARB, Multi-channel homes, K4-15 and adults 16+, M-Su, 0600-1900, 01/09/99 - 03/12/00

The likely impact of the proposed service on commercial services already in the market and on potential future services

2.7 Arthur Andersen economic impact assessment

Nickelodeon UK commissioned an independent economic impact analysis from Arthur Andersen to understand the likely impact of the proposed BBC children's services on commercial services already in the market and on potential future services.

Arthur Andersen has constructed a five-year model of the operating profits of all of the major children's channels using industry and company data. This model calculates each channel's advertising and subscription revenue streams and allows for direct estimation of advertising and subscription impacts arising from BBC entry. The model contains details of each channel's demography, genre mix, quality, schedule and platform carriage, to allow for modelling of the greater impacts on channels "more similar" to the BBC's proposals and smaller impacts on "less similar" channels. Arthur Andersen's model also estimates the impact of certain channels being displaced from the packages in which they are currently marketed. Arthur Andersen's report is attached in full in Appendix A on a confidential basis.

The model uses historical precedents of free-to-air entry, such as the launch of BBC News 24 and The Disney Channel's unencrypted weekends, to inform an assessment of the economic impact of BBC children's services.

When the details of the proposed BBC services are factored into the model, it demonstrates the following potential effects of entry into the marketplace:

- Annual children's commercial sector revenue losses of over £65 million
- Net present value of children's commercial sector reduced to zero
- Quality channels are the most affected
- Existing children's channels such as Nick Jr., which shows high quality UK programmes for young children, are likely to become unprofitable.

The high degree of similarity between the proposed BBC channel for pre-school children and Nick Jr. explains why Nick Jr. would suffer significant commercial impact, as shown in the Arthur Andersen results. Nickelodeon's recent investment in Nick Jr. may not return any profit to reward the innovation, despite the initial success of the channel, if the BBC pre-school channel goes ahead in its proposed form.

2.8 Reduced choice

The quantitative analysis provided by the Arthur Andersen model suggests that:

- The net present value of a number of children's channels will be significantly reduced if the BBC launched its proposed new services
- Some channels will become loss-making, potentially leading to their exit from the market
- New entry may be deterred
- Development of new technology uses may be deterred.

Exit and lack of entry of commercial services will cause the market to be more concentrated, which will result in a narrowing of choice for viewers.

2.9 Reduced quality

Arthur Andersen's quantitative analysis also suggests that channels will have reduced budgets to make investments in domestic programming in the event of new BBC services entering the market. There is a well acknowledged lifecycle, such that as channels mature they can invest more in original, high quality, domestic programming - for example, Nickelodeon has increased its domestic production year on year - and BBC entry would "turn back the clock" leading to more imported children's programming across the sector.

2.10 Reduced innovation

Nickelodeon UK has a dedicated in-house new media team with the sole aim of breaking down the barriers between broadcast and interactivity. Nickelodeon UK's Nick Text is the largest children's teletext service in the world and the company's strong track record in providing relevant and appealing services puts it in a strong position to launch engaging enhanced and interactive content. Development for new platforms and technologies is costly and Nickelodeon UK is concerned that its substantial investment may be undermined by the BBC's entry into this area if it duplicates what is currently in progress.

2.11 Cost-benefit analysis

It is important in assessing the value of new BBC public services to consider the costs as well as any perceived benefits. Reduced choice, quality and innovation in the commercial sector is not a price worth paying for any perceived benefits of new BBC children's channels.

2.12 Response to BBC's Spectrum report

The BBC commissioned Spectrum to provide an Impact Assessment of Two New Children's Channels for the BBC. The paper's stated

objective is to demonstrate that two new licence fee funded public service channels will provide "sensible competition" to incumbent children's channels by "emulating industry best practice" and not destroy their viability. This implies the BBC's intention is to compete directly with existing players by emulating rather than complementing them. There is no mention of the deterrent effect of new BBC services on planned or future commercial entry.

The BBC's Spectrum report has included "indicative" or estimated commercial and programming information for Nickelodeon and Nick Jr. that is inaccurate.

The report makes two key claims, that the BBC's two new children's channels would be "clearly distinctive" and that they are unlikely to have a major impact on existing channels. However, these assertions are not supported by any attempt at robust analysis:

The report refers to the "enormously profitable" state of existing channels, whereas in fact some children's channels are unprofitable and successful new services such as Nick Jr. have yet to generate a return on their initial investment. The children's television sector is highly competitive and profits are aggressively competed for among established channels and by recent new entrants. Furthermore, the report implies any profit is available to be invested in programming, overlooking the fact that new entrants have incurred debt in starting up and are making investments in a range of activities.

The report asserts a belief that subscription and advertising revenues will double in the next two years. However, the *children's* television advertising market is declining and likely to continue this trend and subscription revenues are being squeezed. Furthermore, Spectrum's forecast growth of advertising and subscription revenues makes no reference to commercial threats such as TiVo technology.

The report also claims that BBC and existing channels' programming propositions would be "different" and that existing channels' negotiations with platform operators would not be affected. But the proposed channels are not sufficiently "different" to have no impact on platform negotiations. The impact of News 24 on Sky News is a clear demonstration that past new BBC services have resulted in both TVR loss to the commercial sector and displacement from digital platforms.

Finally, the report restricts its assertion of minimal impact by BBC entry to a scenario where changes in audience share figures were "small". However, the paper contains no methodology to determine whether the impact would be "small" or "large", or to quantify the impact on either basis.

The distinctiveness (in programming or content) of the proposed BBC service from those provided by other broadcasters

2.13 Comparison with commercial children's sector

The proposed BBC services are not sufficiently distinct and different from those already available, or soon to be available, to children in multi-channel homes to provide value proportionate to the likely impact on the market. There are already 14 children's channels, ranging from mixed schedule channels to genre-based channels for pre-school, 8-12 year olds or "teens". Further entry is currently planned and investment is being made in new interactive and enhanced services too.

On a range of factors, not covered by the BBC in its submission, the proposed BBC services are not distinct and different in programming or content from existing or planned children's channels in the commercial sector:

Demographics - Both the pre-school and kids 6-13 sectors are well served by the market

Programming - Existing channels provide children's programming across all genres, and combine both UK origination and imported material as the BBC proposes to do. Original UK content provided by the commercial players is increasing all the time. There is likely to be a significant overlap in programmes provided by the commercial sector and those on the BBC's proposed new children's services.

Ethos - Like CBBC, commercial channels serve UK children and are designed to serve their tastes and interests.

Interactivity - Children already have a wide range of commercially funded information and entertainment sources on-line. Commercial broadcasters have also been very active in developing interactive and enhanced services for children.

2.14 Comparison with Nickelodeon UK

Nickelodeon UK already provides dedicated services for the pre-school and older children's audiences, and considers the majority of the BBC's proposals for new children's services to duplicate its existing and planned future provision.

Nickelodeon UK has already invested considerable resource both in terms of manpower and expenditure in the development of new on-line and interactive services, for both older children and pre-school children and their parents. Detailed editorial and commercial discussions are ongoing with all major platforms about the roll out of such services. See appendix B for examples.

Nickelodeon and Nick Jr. provide a safe and trusted environment and are committed to serving the public interest in terms of issues and quality programming. All websites have strict on-line safety, privacy and data protection policies in place.

2.15 BBC channel for children aged 6-13

In its submission for an older children's channel, the BBC emphasises its mixed genre schedule which combines UK and acquired material, interactive and participative elements as well as live presentation. None of these attributes are distinctive from what is offered on Nickelodeon, as described below. The budget for new UK production is considerably larger than Nickelodeon's current budget. However, given that Nickelodeon UK does not have a terrestrial window like CBBC, its investment has still been significant.

Nickelodeon provides a variety of entertaining, high quality programming with a mixed schedule of animation, live action, drama, music, news and current affairs as well as live interviews with celebrities, pop groups, competitions and 5000 children coming into the studio every year.

40% of Nickelodeon's programming budget is spent on new, long-form UK-produced series. In addition Nickelodeon produces studio-based programming and short-form interstitials. The investment has increased during each of Nickelodeon UK's seven years of operation, and continues to grow.

Nickelodeon's philosophy is to connect directly with children and keep their perspective and experiences at the forefront of everything it does. Its programming reflects the common themes in children's lives, cultural diversity and local issues. Qualitative and quantitative research keeps the channel in touch with children's lives, interests and concerns.

All Nickelodeon programmes are non-violent, with no super-heroes, as well as being race and gender neutral.

Connecting with children by letter, phone, email and web-based communities are all well-established and *offered free* (viewers have to pay to phone CBBC) on Nickelodeon, with new services planned as technology develops. Children contribute ideas, projects and artwork, enter competitions and chat on-line. 2 million children contributed to the channels' output last year.

Nickelodeon proactively helps children get involved in what's important to them. "The Big Help", a nationwide volunteering initiative led by Nickelodeon, encourages children to contribute to their local communities and supports the work of UK charities. Nickelodeon is working with the British Film Institute's Film Education to promote literacy for 9-13 year olds and with an animation training programme in

schools, AnimAction, to promote public health messages like anti-smoking. Nickelodeon's own documentary series, Kid Nation, gives children the chance to express their views and experiences through film-making.

The website for the Nickelodeon channel, <http://www.nicktv.co.uk>, is one of the largest and most popular children's websites targeting the UK exclusively with approaching 4 million page impressions and 250,000 user sessions each month. The website is woven into the fabric of the television service and acts as a direct link to the live on-air presentation of the channel, demonstrating Nickelodeon's original uses of new media. Nickelodeon has premiered original production on the Internet ahead of television transmission.

Nick Text is the world's largest and longest-running children's teletext service.

Nickelodeon has already launched a live service on Telewest Active Digital and developed prototype WAP and Digital Text (Open TV) services.

In 1999, Nickelodeon was the first cable and satellite channel to receive a prestigious BAFTA for an original programme - *Nick News* - a current affairs magazine show using children to report news from a child's perspective. The programme was also a finalist for an international Emmy and won a Royal Television Society award for best children's factual programme and Broadcasting Press Guild award for best cable and satellite original production.

Nickelodeon's commitment to news coverage using new media through <http://www.nicknews.co.uk> won it a 1999 Yell Award alongside the BBC's "Bitesize" education initiative.

2.16 BBC channel for children under the age of 6

The BBC's submission proposes a pre-school channel which is not distinctive in ethos or content from Nick Jr., a multi-million pound risk investment made by Nickelodeon UK with an ongoing commitment to substantial levels of UK content.

Nick Jr. provides a dedicated service for young children of 6 years and under, an innovative new channel for an audience that was previously under-served. Its launch as a full time channel followed the success of Nick Jr. as the fastest growing daytime block on Nickelodeon. Research prior to the launch revealed that 72% of mothers in multi-channel homes expressed an interest in a channel for young children when told it would be a Nickelodeon UK channel⁷.

⁷ Source: Nickelodeon UK/Continental Research, Feb 1999

Nick Jr. invites children to "Play, Laugh and Learn". Its mission is to offer age appropriate entertainment which will inspire young children's imaginations and extend their knowledge and understanding of the world around them. Available all day, Nick Jr. provides a consistently safe environment for the youngest audience.

Nick Jr.'s content is 70-80% UK-originated, comprising the best of classic and contemporary quality content for young children including award-winning educational programmes like UK produced Blue's Clues.

Nick Jr.'s website, <http://www.nickjr.co.uk>⁸ is a one-stop resource for parents and their young children. It provides a comprehensive community and reference site allowing adults to share their experience in parenting and develop their common interests together, as well as featuring richly interactive games and activities designed to allow parents to spend an entertaining and educative experience with their children while on-line. Activities in this area are tightly structured and timed in order to give parents the flexibility to determine in advance how long to spend at the computer with their child.

Nick Jr. will be enhanced by the availability over time of interactive television wraparound services, which already form a natural extension to original productions such as Blue's Clues. See appendix B.

The BBC is planning to broadcast programmes such as Teletubbies, Noddy and Postman Pat on its new pre-school channel. These programmes are not distinctive or different to what Nick Jr. has provided or would be providing without BBC entry. Nick Jr. has broadcast Noddy, Postman Pat, Teletubbies, Fireman Sam and Pingu, and expressed its interest in acquiring Tweenies and other library programmes, which are all due to be scheduled on the proposed BBC pre-school channel.

2.17 Duplication of programming

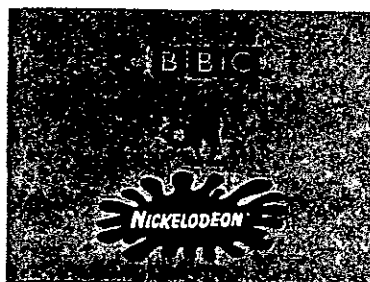
The BBC's proposals do not preclude it from showing imported programmes already available on Nickelodeon, Nick Jr. or other commercial channels, its library programmes that were previously available on Nickelodeon and Nick Jr., or independently produced programmes available on other channels. From the information provided in its submission, the BBC cannot demonstrate that its schedule(s) will be distinctive and the evidence below suggests otherwise:

Several of CBBC's top-performing programmes are Nickelodeon programmes such as Rugrats and Kenan and Kel and it is clear that the BBC intends to continue repeating the success of imported

⁸ Launch date 6/04/01

programmes on its new channels if they are approved. It has therefore proposed 22% and 10% of imported material for its older children's and pre-school services respectively. Although these percentages represent a minority of proposed overall output in terms of hours, it is highly likely that the BBC would schedule these programmes - which may well be Nickelodeon programmes - at peak viewing times for children. This would mean a majority of children's viewing on new BBC channels is of imported programmes. The DCMS would require proper scheduling details from by the BBC in order to assess the share of viewing for imported versus UK produced material, but this information has not been provided.

From 1995 until 1999, Nickelodeon broadcast a block of CBBC programming **without advertising**. It was branded "CBBC on Nickelodeon" and included programmes such as Teletubbies, Noddy, Postman Pat, Pingu and Fireman Sam, the very programmes the BBC intends to include in the schedule for its new pre-school service.



In 1999, the "CBBC on Nickelodeon" block was watched by over 1.25 million children, over 2 million adults and nearly 600,000 housewives with kids⁹. The same BBC programmes performed better on "CBBC on Nickelodeon" than they have subsequently performed on BBC Choice among both children and housewives with kids¹⁰.

The "CBBC on Nickelodeon" block maintained the CBBC brand, exposing children in multi-channel homes to the best of CBBC's programming as well as earning revenues for BBC Worldwide. Although Nickelodeon UK has expressed its interest in continuing this relationship, BBC Worldwide has refused to exploit its children's library further by stating that "BBC policy prevents BBC Worldwide from exploiting BBC children's programming in the UK television market". See appendix C.

Independently- or co-produced children's shows such as Bob the Builder, Pablo the Little Red Fox, Animals of Farthing Wood, Noah's Island, Wildlife, The Busy World of Richard Scarry, Little Bear Stories,

⁹ Source: BARB, Multi-channel homes, Jan-July 1999

¹⁰ Source: BARB, Multi-channel homes, K4-15, M-Fri, 07/06/99-18/07/99 (CBBC on Nick) v 03/01/00-08/10/00 (BBC Choice)

Wiggly Park, Sheep, Christopher Crocodile, Anthony Ant, Arthur, Mona the Vampire, Animorphs, Driven Crazy, Round the Twist and Rotten Ralph are on both Nickelodeon or Nick Jr. as well as CBBC. The BBC may be proposing to include many on these programmes on its new channels.

2.18 Children's advertising

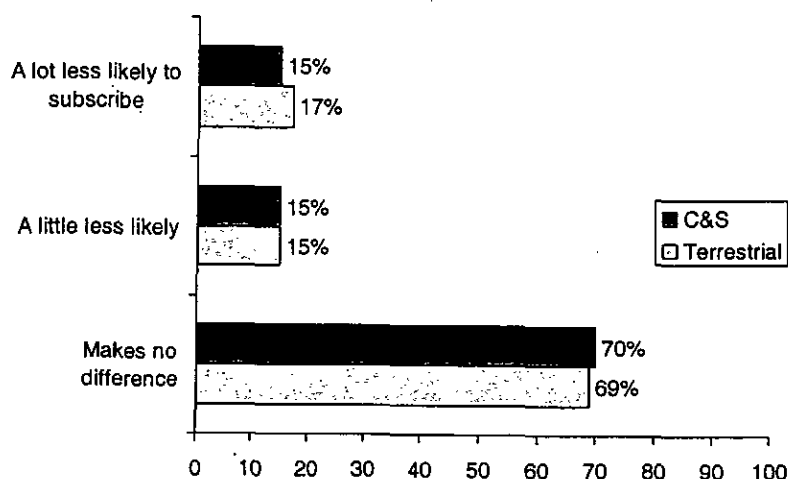
The BBC has often cited the desire of parents to have children's programming without advertising as a rationale for their proposals, and as a point of distinctiveness. However, both these arguments are overstated.

CBBC is not free from commercial influence. It promotes its commercial children's magazines on-air and promotes other commercial products and services through competitions. In addition, many of its programmes, such as Teletubbies and Tweenies, are supported by huge merchandising campaigns. It is not subject to the *stringent regulation on the undue prominence of commercial products and services* that applies to the commercial sector.

Nickelodeon UK talks to parents and parenting groups about its advertising practices and is responsive to their attitudes and feedback. For example, in addition to strict regulation on children's advertising by the ITC, Nickelodeon UK has introduced a further voluntary code to protect its young audience from inappropriate advertising. The code was initiated in 1998 and approved by the ITC and BACC.

Attitudes towards the existence of advertising on Nick Jr. were thoroughly researched before the launch of the channel.

4 - Attitudes to Advertising on the Nick Jr. Channel



Source: Nickelodeon/Continental Research, Feb 1999

A study conducted for Nickelodeon by Continental Research shows that for the vast majority of parents of pre-school children, both in multichannel and terrestrial homes, the existence of advertising makes no difference to their likelihood to subscribe¹¹. See figure 4.

As Nickelodeon demonstrated with its advertising-free CBBC block, there are ways of providing BBC programming on commercial channels without advertising. Furthermore, several commercial children's channels exist which do not show advertising.

¹¹ Source: Nickelodeon/Continental Research, Feb 1999

3. RESPONSE TO BBC SUBMISSION

- 3.1 The BBC claims that its new free to view channels will greatly increase the attractions of digital TV for the 30-40% of the population not currently persuaded to subscribe, and so act as a driver for analogue switch-off. However, even the BBC's own research does not support this argument in the case of children's programming, and it is not clear that new BBC services as a whole would be the most effective way of achieving digital take-up versus alternatives such as subsidy. Furthermore, the costs of BBC entry into the marketplace, in terms of reduced investment by commercial players and reduced overall choice and quality of children's provision, may have the opposite effect.

The ●Econ report "BBC Digital Services and the Take-up of Digital Television", prepared for the BBC and published in February 2000, "suggests that the BBC may have an important role in reaching out to those groups not currently interested in digital" because "BBC programming is likely to be attractive to those currently resistant to adopting digital". However, the report demonstrates that families with children are already well-represented among potential early adopters and that the range of genres more favoured by late adopters were factual, current affairs, education and news. Neither of these facts would support the case for BBC children's channels driving digital take-up although education or factual channels may do so.

Infact, the entry of BBC Services may have a significant negative impact on digital take-up. New BBC services are likely to lead to displacement of certain commercial channels from the basic tier of packages, as evidenced in the case of Sky News following free-to-air entry of BBC News 24, leading to more exclusion from these channels. It is also highly likely that commercial channels will close, as was the case in Germany when a public service children's channel was launched.

Furthermore, the appeal of the BBC's proposed children's services should not be taken as a foregone conclusion and, without proper substantiation by the BBC of its viewer projections and programme schedules, it is impossible to assess their likely appeal. Among the top-rating programmes shown by CBBC currently are shows including Nickelodeon's Rugrats and Kenan and Kel which are already offered on other existing children's channels. Pre-school programmes scheduled the BBC's proposed pre-school service such as Postman Pat, Noddy, Fireman Sam, Pingu and Teletubbies have been shown on Nickelodeon and Nick Jr. for the last few years.

- 3.2 The BBC claims its digital proposals will, as required by Clause 3.2 of the Charter, offer "more educational programmes, especially for children". However, the BBC has not provided sufficient details or indeed a commitment to the level of educational programming it will provide. There is no reference to an educational programming

commitment on the older children's channel, and only that the pre-school channel will have an "educational emphasis". Nick Jr. already has such an "educational emphasis".

- 3.3 The BBC has guaranteed that "new children's programmes made for the new children's channels will also be available to show on BBC ONE and TWO" but it has made no commitment to make BBC children's programmes available in the marketplace. As a public service broadcaster proposing to enter the market as a must-carry channel, it would do further damage to existing and planned commercial children's channels by employing such an anti-competitive "warehousing" strategy. DCMS should require the BBC to demonstrate that it is not acting anti-competitively in this way.
- 3.4 The BBC has stated that the BBC regions and regional independent companies will be "a significant provider of programming" but has given no commitment to the levels of regional production.

4. THE DIGITAL ECONOMY

- 4.1 The Government has expressed its concern at the widening trade deficit in programming in the UK, as well as its intention to encourage a vibrant and competitive broadcasting sector and investment in the digital economy. The entry of BBC children's services could undermine these objectives within the children's genre. As the Arthur Andersen model suggests, BBC services are likely to displace commercial services leading to a significant economic cost and a smaller sector going forward. This has a knock on effect in terms of training and innovation, as well as UK production. In the medium to long term this will damage the UK's creative industry for children.
- 4.2 In addition, the BBC - by launching its new channels - is restricting free trade in its programmes and reducing the availability of public service content to viewers. Since 1999, the BBC has refused to sell its children's library to dedicated channels. Nickelodeon wrote recently to ask if it could buy Teletubbies and Tweenies for Nick Jr. and the reply from BBC Worldwide stated:
"Currently, BBC policy prevents BBC Worldwide from exploiting BBC children's programming in the UK television market".
It appears that the BBC is withholding library programming for its proposed channels. It will therefore duplicate what existing channels have been and would be broadcasting. It has also been (and will be) foregoing commercial revenue streams.
- 4.3 The Davies Panel, led by the Vice-Chairman of the BBC Gavyn Davies, concluded that "some form of market failure must lie at the heart of any concept of public service broadcasting". The Davies report said BBC services were justified if "a combination of the private sector's profit motive, plus regulation, is insufficient to repair the market failure". Nickelodeon UK does not believe this to be the case in relation to children's programming.

Specifically, Nickelodeon UK contends that the provision of children's programming is not subject to market failure on any of the standard economic tests:

- The already significant provision of children's programming by the commercial sector demonstrates that the provision of children's broadcasting is commercially sustainable and is therefore not a public good.
- Children's programming is not in general a merit good (ie. a socially valuable good which consumers would tend to under-consume without government intervention). The general level of expenditure needed to provide children's television in the UK is significant, and high levels of viewers for socially valuable programmes are already achieved in the commercial sector. Many of the types of

programmes proposed by the BBC are non-educative and therefore are unlikely to have particular value as merit goods. "Halo" effects (ie. achieving higher viewing of merit-type programmes through scheduling next to popular programmes) will be increasingly ineffective with EPGs and therefore there is no basis of support for the BBC's overall proposed "bundle" of programmes.

- Consumers are increasingly well informed about programme options and quality. Many commercial channels offer a free trial before viewing, which enables consumers to make informed choices.
- There is no basis for believing the BBC (or any other player) should benefit from a natural monopoly. Indeed, the promise of the digital age is that there will be much greater diversity in broadcasting and this is already evident from the range of children's channels.

5. RECOMMENDATIONS

- 5.1 The Secretary of State should not approve the BBC's proposed children's services on the grounds that they are not distinctive from those provided or planned by commercial broadcasters and that the significant and demonstrable impact on the market will be disproportionate to any value to the public.
- 5.2 The BBC should be restricted to broadcasting children's services on BBC One and Two only and not on any further existing or future channels, including time-shifted channels. Commercial sector investment in children's programming will be encouraged by an environment of certainty (and severely damaged by one of uncertainty) so it is critical that clear boundaries are set for the BBC's expansion in this sector. Moreover, the DCMS should commit to rigorously examine any future proposals the BBC may have to amend any of its current services to include programmes designed to appeal to children.
- 5.3 The BBC should focus on new services of relevance to *all* licence fee payers, with a clear public service remit and no commercial agenda to raise revenues for BBC Worldwide. The proposed services do not represent the right choice for public funds from a multitude of opportunities.
- 5.2 The BBC should seek to realise commercial opportunities in children's programming in partnership with the commercial sector, by selling programmes or programme blocks onto other channels or entering into a joint venture. There are already several precedents and positive examples of partnership models: BBC/Flextech, BBC/Disney co-production, "CBBC on Nickelodeon" block. In addition, the Secretary of State should require that the BBC does not "warehouse" children's programmes.
- 5.3 If the Secretary of State is minded to approve one or both of the BBC's proposed children's services it is essential that the remit is tightly defined, transparently agreed and independently reviewed on a periodic basis. The remit must ensure that not only are the services truly distinctive overall but that there are no programmes within the services which are currently or would otherwise be shown by commercial channels. There should be no provision of imported material and regional production quotas should apply.