

Ofcom Review of Public Service Broadcasting

Response from Ofcom Consumer Panel to Phase 1

Background

1. The Consumer Panel has been established to advise on the consumer interest in the markets regulated by Ofcom - a requirement of Section 16(2) of the Communications Act 2003. The Panel is independent of Ofcom and sets its own agenda. It has a responsibility to understand consumer issues and concerns related to the communications sector (other than those related to content of advertising and programming) and to help to inform Ofcom's decision-making by raising specific issues relevant to the consumer interest.
2. The Panel will not respond to all Ofcom consultations and will be selective and strategic in its involvement with Ofcom. The Panel has identified the Review of Public Service Broadcasting as one of its priorities for its first year of operation.
3. The Panel's focus in preparing this submission has been very much on the consumer interest issues emerging in this and later phases of the review and it has strived to avoid drifting into matters related to content. The caveat to this is that there are inevitably instances where maintaining this purist distinction would have been unworkable and unnecessarily hindered sensible debate.

Introduction

4. With digital switchover in sight, the time is right for a fundamental review of the concept and provision of public service broadcasting and to look at the place publicly funded provision, of whatever means, will have in the broadcasting ecology of the future. The Consumer Panel has an interest in the PSB review as its conclusions are likely to have significant implications for consumers of television services, most notably in relation to access to services and content, in a post-swtichover world.
5. The Consumer Panel takes as its starting point the proposition that television consumers are best served by a well-functioning competitive market which delivers a wide range of output, including high-quality, informative and entertaining programming, from which all viewers can choose content they want to watch at prices they are prepared to pay.
6. Providing the issues of cost and access, which are significant, can be satisfactorily addressed, the post-swtichover market looks like approaching this ideal. But the danger of a mismatch between viewer, regulator and industry expectations and the ultimate reality is real.

7. To avoid a situation where the market opts out of less commercially viable programming, the Panel anticipates a continued requirement for financial or regulatory encouragement to ensure the provision of a base line of high quality public service output. Recent press speculation¹ suggests this may well already be in the minds of some public service broadcasters particularly in areas catering for vulnerable and/or minority (including national and regional) audiences, where the negative social consequences of provision at too a high price can not be ignored. Ofcom's research is already giving valuable indications of customer attitudes to such provision and the Panel would welcome its re-examination based on this evidence.
8. The Panel notes, however, the consumer rationale for PSB (expounded in the Ofcom review document at page 8) appears to assume that future market failures will be capable of a competition law solution, for instance, a market abuse capable of remedy. The real problem for public policy, however, may not be one that lends itself to a solution based on competition law alone. It is instead that citizen-consumers in the digital future may not be able to access public service broadcasting which they currently enjoy, or which is considered desirable for e.g. educational or social cohesion reasons, because market providers may see no economic justification to provide it. As such, specific systems to secure provision may continue to be required.
9. The Consumer Panel would encourage Ofcom to incorporate robust consumer detriment analysis into its review, distinguishing between 'market' and 'policy' failures and exploring the lessons of recent problems in the perceived quality of public service broadcasting revealed by its research. This must include analysis to determine detriment to more vulnerable consumers of television services in addition to an assessment of potential detriment across society as a whole.
10. Further research by Ofcom focussing on a close examination of the perceptions of vulnerable or disadvantaged citizen-consumers, including those who have very limited spending power or whose access is limited by geography or impairment, is likely to be necessary to establish the aspirations for public service broadcasting access held by these groups.
11. This close focus on groups disadvantaged in society is essential if Ofcom is to better understand the risks that would accompany a move to wholly free market provision of public service output.

Propositions for the transition to a fully digital world

12. The Panel offers comments on those propositions most closely aligned with its statutory remit to represent the interests of consumers in the markets regulated by Ofcom.

¹ See "ITV plans to cut back 'serious' broadcasts", Sunday Times page 7, 13 June 2004

13. In late 2004 the Panel's own research into the concerns and views of consumers will begin to come on stream as part of a major annual research initiative. In the meantime the Panel intends to raise questions that Ofcom must address if it is to remain focussed on consumer needs and expectations.

Ofcom Proposition 1

We need to examine the prospects for PSB funding and the case for seeking alternative resources. The existing commercial funding base for PSB is being eroded. Popular support for the TV licence fee may be jeopardised by increased audience fragmentation. So, new forms of explicit or implicit funding or support for PSB need to be considered for the longer terms. These should include areas such as electronic programme guide (EPG) positioning, digital multiplex access, commercial TV's payments to Treasury and other possible incentives

Consumer Panel comment

14. The research results published by Ofcom make it clear that amongst viewers moving to subscription-based viewing there is diminishing support for the licence fee. These viewers are exercising choice in the market and are paying an associated premium. The Panel would be interested to see further analysis of attitudes towards the amount of money in totality that consumers are prepared to spend on content in order to inform more detailed consideration of alternative support mechanisms for PSB.
15. The Panel will continue through the next phases of the review to argue against solutions that discriminate against the most vulnerable in society.

Ofcom propositions 2 and 9

Competition in the provision of PSB is at the heart of an effective system. In a digital world, a single, monopoly supplier of PSB is unlikely to be the most effective model for delivering PSB purposes or characteristics, or for securing plurality of views and perspectives. We need to examine the case for sharing existing funding streams among a greater number of broadcasters and allowing broadcasters and producers to bid for PSB funding

Independent producers make a major contribution to PSB purposes across most programme types. Apart from one or two specialist areas (e.g. news), our supposition is that there is more scope for independent production to enhance the delivery of PSB. Measures that need to be considered include raising the quota of programming which broadcasters must commission from independent producers.

Consumer Panel comment

16. The Panel agrees that there are inevitably negative impacts arising from a single monopoly supplier. Without competition there is little impetus to provide innovative and imaginative offerings. The current hybrid of public service provision in the UK has been successful - although not successful enough to avoid the criticisms revealed in Ofcom's research of too much copycat and stereotyped output and insufficient innovative programming.

Ofcom should not be reluctant to design new PSB funding structures specifically to secure the highest standards of programming in areas including art, science, culture, music, drama, current affairs and education.

17. The statutory requirement to source a minimum percentage of material from independent producers (not less than 25% of the time devoted to "qualifying programmes" on each PSB channel) enshrines a measure of competition, and is a useful mechanism to harness and develop creative talent in the provision of public service material. The Panel notes though that for the past three years these targets have not been met by the BBC² and the independent sector is vocal in its calls both to remedy this and to increase quotas for external commissioning at the BBC.
18. Press statements by PACT suggest that over three years this accounted for a loss in commissions worth approximately £77m to the independent sector.³
19. The Panel believes that a critical learning point for the success of the PSB review will be to analyse the contribution which competitive, innovative independent programme-making can offer to PSB in the new environment, through which business models, and what the trends and prospects are for a major increase in independent provision. It encourages Ofcom to attach high priority to this area in the consumer interest and to explore further the contribution that the independent sector can make to PSB provision, examining ways of increasing commissioning options.

Ofcom Proposition 5

The market is likely to produce significant amounts of programming which meets both the purposes and characteristics of PSB, and which can be defined as PSB. Some programming (and channels) supplied without public intervention already contribute to PSB purposes. Prior to switchover, we should work to explore how many of the purposes and characteristics of PSB can be provided, without market intervention, by the evolving TV broadcasting market.

Consumer Panel comment

20. The Panel urges Ofcom to exercise caution in its analysis here. Observation of the television market shows that there are clearly areas where the market is prepared to deliver high-quality coverage outside of the PSB environment e.g. news, but this is not repeated across all traditional PSB genres.

² *The Office of Fair Trading's tenth report on "independent productions transmitted by the BBC" (October 2003) noted that for the third consecutive year, the BBC missed the statutory target of ensuring that at least 25 per cent of 'qualifying programmes' shown on BBC1 and BBC2 were independent productions. In the period 1 April 2002 to 31 March 2003, only 21 per cent of qualifying programmes broadcast on BBC1 and BBC2 were independent productions.* Source - **Independent productions transmitted by the BBC (Oct 2003)**

(10th report) Broadcasting Act 1990, section 186. A report by the Office of Fair Trading to the Secretary of State for Culture, Media and Sport for the period 1 April 2002 to 31 March 2003

³ Source – PACT press release 31 October 2003 http://www.pact.co.uk/news/art_dtl.asp?art_id=1681

21. The Consumer Panel would welcome further debate on the methodology to be adopted in conducting this analysis, and the way in which the fundamental question "How much of the totality of television output meets PSB objectives?" is asked.
22. The robustness of Ofcom's consultation with consumers to elicit their perspective on the answer to the above will be critical.

Ofcom proposition 10

There are many significant challenges ahead. Once digital switchover has been achieved, public intervention to secure PSB may not be justified on its present scale, either because market failures are reduced considerably, or because it will prove impossible to secure the purpose and characteristics of PSB through television at a reasonable cost.

Consumer Panel comment

23. There are indeed significant challenges ahead. It will therefore be crucial to calibrate PSB provision for the future – how much is produced now, how much is wanted and how far does it meet consumer needs. There is a serious risk for consumers if the post-swatchover economics do not play out as anticipated - consumers could be denied access to content delivering PSB objectives with the real possibility that the cost of a return to public intervention to ensure delivery will then be commercially and politically unacceptable.
24. This argues for a carefully managed route to any alternative regime for PSB – be that wholly based on market provision or some alternative method of funding or regulation – careful steps not impossible leaps, well-tested and capable of remedy.
25. In the same way that the Consumer Panel has called in this submission for analysis of the lessons of and scope for expansion in independent programme making, the Panel would like to see Ofcom explore in greater depth the lessons that can be learnt from the Freeview experience to date.
26. As arguably a close prototype of the digital future, Freeview holds an invaluable set of clues. The remarkable, and to some, unexpected increase in Freeview box sales (up 19.5% to 3,929,200 in Q1 2004 from 3,287,000 in Q4 2003⁴), together with an analysis of Freeview customers use of and satisfaction with their choice of digital service choice could generate very valuable research and pointers for the future.
27. The recent announcement by BSkyB regarding its plans to make available a free digital satellite service for viewers (after an initial payment) is another sign of the significance of the Freeview approach and business model. It reinforces the importance that Ofcom should attach to fully

⁴ Source - Ofcom Digital Television Update Q1 2004
http://www.ofcom.org.uk/research/industry_market_research/m_i_index/dtv/

understanding it and extrapolating from it in the context of public service broadcasting for the future.

28. A thorough analysis therefore of Freeview's structure, consumer response, business model and prospective future may inform Ofcom's ability to look forward clearly to the digital world.

Licence fee

29. The Consumer Panel's analysis, which is based on a well functioning competitive market with plenty of choice for consumers at prices they are prepared to pay, suggests that still larger numbers of consumers in the digital world will wish to do what many do already – pay significant sums of available income towards broadening their access to digital output.

30. The Panel queries whether this in turn suggests an optimal point for the licence fee at which the level is:

- a. socially acceptable and consistent with a high level of compliance; but
- b. not so large a percentage of available disposable income as to prevent viewers from choosing programming which meets their requirements or indeed prevents them from viewing at all.

31. This issue, along with the considerations around wider distribution of current licence fee receipts to a wider range of organisations in order to facilitate greater competition and choice, are matters where the Panel will be looking forward to vigorous debate through subsequent phases of the Review. Throughout the process it will be seeking to make sure Ofcom keeps the interests of consumers, as well as citizens, at the heart of the process.

June 2004