

House of Lords Select Committee on Communications: Public service broadcasting in the age of video on demand

Consultation response from the Centre for Competition Policy

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This consultation response has been drafted by a named academic member of the Centre, who retains responsibility for its content.

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CCP Response to the House of Lords Select Committee on Communications: Public service broadcasting in the age of video on demand

1. I welcome the opportunity to submit to this Inquiry into Public service broadcasting in the age of video on demand. Public service broadcasting remains an important part of the media landscape and should continue to do so, and license fee funding should remain the cornerstone of this. The UK's unique combination of the license fee funded BBC working alongside commercial PSBs continues to be effective in most key areas. These broadcasters face several challenges from online competition for audience attention and advertising revenues from both catalogue-based video on-demand (VoD) services and video sharing platforms (VSPs). My colleague Sabine Jacques and I recently completed extensive research into the competition for advertising budgets and published our findings in a report entitled *The Playing Field in Audiovisual Advertising*, published on 3 April 2019.¹ Our findings and recommendations relate to the challenges facing the commercial public service broadcasters (PSBs) and speak directly to some of your questions.

Question 5: Have public service broadcasters responded adequately to market changes?

2. Our research showed that commercial PSBs are adapting to the new market conditions by innovating in advertising options such as in contextual advertising and addressable TV. It also showed that agencies and advertisers still view television advertising as indispensable and value the creativity and brand safety that characterises television. Nevertheless, commercial PSBs face some significant challenges stemming from the fact that they are nationally-based media competing with global companies. We found that in the competition for advertising, the large VSPs derive significant advantage from having extensive user bases from which they generate vast amounts of data. Several of these global companies provide the advertising inventory on the supply side and own the platforms used for buying advertising on the demand side.² Our interviews identified many concerns about dominance in this system related to the ability to own and use data that merit further investigation.
3. Another consideration in terms of the adaptability of PSBs to competition with global giants is in investment in production and content. PSBs are collaborating with some of these on joint productions, such as BBC's *Watership Down* collaboration with Netflix. Nevertheless, the imbalance in terms of their ability to pay for production and purchase premium content will be difficult to overcome. While global players like Netflix and Amazon are driving up the costs of production with their large budget projects, traditional audiovisual content producers have seen reduced budgets, particularly public service media.³ Collaboration with subscription VoD services could be encouraged, but it should be recognised that incentives stemming from their transnational audiences will frame such collaborations. The Government should consider offering support mechanisms for production that is specifically for UK audiences, especially for regionally and locally relevant programmes.

¹ Available at https://cerre.eu/sites/cerre/files/cerre_playingfieldaudiovisualadvertising_2019april.pdf

² A diagram of the ecosystem and elaboration are on page 16 of the report, *ibid*.

³ According to Ofcom, 'Communications Market Report 2018' p 34 spending by BBC ITV, Channel 4 and Channel 5 on new UK-made TV programmes fell to a 20-year low in 2017.

https://www.ofcom.org.uk/data/assets/pdf_file/0022/117256/CMR-2018-narrative-report.pdf

Question 8: Should there be new regulation of on-demand services? Does the revised Audio-visual Media Services Directive provide appropriate measures to ‘level the playing field’? How could on-demand services be encouraged to produce more content in the UK?

4. The revised AVMSD is a good step, but can only go a small way to level the playing field in audiovisual media services.⁴ The Directive evens out some of the advertising rules, which is important for the commercial PSBs, and the content quotas, which are important for all of them. Whereas the enforcement of the rules for broadcasters and VoD services is done by Ofcom, the enforcement of these rules for VSPs is to be left to co-regulatory regimes. Article 4a of the new AVMSD establishes some criteria for these mechanisms including that they: “provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and provide for effective enforcement including effective and proportionate sanctions.”⁵ The European Regulator’s Group recently came out with *Framework for Effective Co-regulation of Video Sharing Platforms*⁶ that will be also helpful. It is crucial that the UK invests in constructing an effective mechanism and resources the appropriate regulatory backstop (Ofcom) to be able to enforce rules on online services in an equivalent manner to broadcasting.
5. The rules are not even in relation to product placement as differences remain for VoD services, and VSPs have not been included in the exceptions to allowable product placement, (for example in children’s and consumer advice programmes). Product placement in online videos aimed at children, for example, is rampant and, so far, governed only by the guidance about disclosure issued by the CMA⁷, and the community standards of the VSPs. This has both competition and consumer welfare implications.
6. The Directive also raises the requirement for European works in VOD catalogues to 30% and allows levies to be placed on media services to fund content production.⁸ The Commission’s original wording on the imposition of financial contributions was changed from applying only to VoD service to applying to “media service providers” more generally.⁹ This is not a small change. It may ostensibly seem fairer, as it would apply to linear and on-demand services, however, providers of linear audiovisual media services, broadcasters, are still

⁴ See Broughton Micova, S. October 9, 2018 <https://blogs.lse.ac.uk/mediapolicyproject/2018/10/09/the-playing-field-between-youtube-and-television-will-be-a-bit-fairer-but-still-far-from-level/> and Broughton Micova, S. Hempel, F. and Jacques, S. 11 March, 2019 “Protecting Europe’s Content Production from US Giants” *Journal of Media Law* <https://www.tandfonline.com/doi/abs/10.1080/17577632.2019.1579296> (paywall, contact s.broughton-micova@uea.ac.uk for copy)

⁵ *ibid*, art. 4a(1).

⁶ http://erga-online.eu/wp-content/uploads/2019/01/ERGA-2018-09-SG4-Framework-for-Effective-CR-of-VSPs-vz_3.pdf

⁷ <https://www.gov.uk/government/publications/social-media-endorsements-guide-for-influencers/social-media-endorsements-being-transparent-with-your-followers>

⁸ Gilles Fontaine and Christian Grece, ‘Origin of films and TV content in VOD catalogues in the EU & Visibility of films on VOD services’ (EAO, 2016) <<https://rm.coe.int/1680783582>>.

⁹ European Parliament, ‘European Parliament legislative resolution of 2 October 2018 on the proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities (COM(2016)0287 – C8-0193/2016 – 2016/0151(COD))’ (2018) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0364+0+DOC+XML+V0//EN>>.

overwhelmingly the biggest investors in the production of European content.¹⁰ If the UK puts additional levies on such services it could create further imbalance, as broadcasters could end up contributing some of their already tight budgets to film funds or similar schemes that may not translate back into filling transmission time on their own services. Though the 30% quota largely reflects the existing situation on VoD services, the quota on catalogues may contribute in a small way towards encouraging Netflix, Amazon Prime and others to invest in buying or producing European content, but it is important that the UK and other member states do not impose levies that will apply to their domestic broadcasters.

Question 10: What are the implications of ‘Britbox’? Is there scope for more collaboration amongst public service broadcasters? What more could PSBs do to compete with on demand services?

7. There is not only more scope for co-operation among PSBs, there is an urgent need for it. The Britbox idea for a common platform is a good one that is similar to others that have actually been stopped in other jurisdictions by competition regulators. It is important that collaborations like this are allowed to proceed. Competition regulators and media plurality rules should adapt to the new balance of competition that includes the very large role that global media services are playing, because there are also other areas in which more collaboration among commercial PSBs should be encouraged.
8. Our research showed that nurturing relationships with media agencies and directly with advertisers remains crucially important in competition for advertising, and that there is a growing emphasis on meeting key performance indicators (KPIs) and short-term goals set by the finance and procurement sides of major advertisers. To address this there should be more collaboration among commercial PSBs on ‘selling’ the impact of their services and the new advertising options they have available, and on innovating in the area of metrics to create more reliable and audited metrics for the full range of advertising inventory they offer. This could include for example developing tools for making the most of addressable TV and establishing favourable relationships with cable and IPTV providers around the use of the data generated for and by addressable TV advertising. It could also include increasing the efforts being made through Thinkbox and through transnational collaboration with other broadcasters to educate advertisers, provide sales platforms and to invest relationship building at global level. The Government should consider supporting such initiatives through mechanisms similar to those used to support the film industry.

¹⁰Aside from news content, public and private broadcasters invest overwhelmingly more in fiction than VOD services. Gilles Fontaine, ‘TV fiction production in the European Union’ (EAO, 2017) <<https://rm.coe.int/tv-fiction-production-in-the-eu-2017/16807bb1c2>>.