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The Report of the Committee is published in Volume I (HL Paper 50–I) and the Evidence is published in Volume II (HL Paper 50–II).

Minutes of Evidence

TAKEN BEFORE THE BBC CHARTER REVIEW

TUESDAY 15 MARCH 2005

Present	Armstrong of Ilminster, L	Kalms, L
	Bonham-Carter of Yarnbury, B	King of Bridgwater, L
	Fowler, L (Chairman)	Maxton, L
	Gibson of Market Rasen, B	O'Neill of Bengarve, B
	Holme of Cheltenham, L	Peston, L
	Howe of Idlicote, B	

Examination of Witnesses

Witnesses: MR MICHAEL GRADE, Chairman of the BBC; MR MARK THOMPSON, Director General of the BBC; MR RICHARD TAIT, Governor of the BBC; Ms CAROLINE THOMSON, BBC Director of Policy and Legal; and MR NICHOLAS KROLL, BBC Director of Governance Unit, examined.

Q1 Chairman: Welcome, first of all. Thank you very much for coming at really quite short notice. You know we have been set up as a Select Committee of the House of Lords to consider the review of the BBC Charter and obviously, in particular, the Government's Green Paper. Time is not on our side. We cannot know what the outcome of the election will be or what impact, if any, it will have but we are planning on having our report ready by the end of October, so it does not leave us very much time. There is a sunset clause on our examination, an agreed one. Having said that, we intend to make this a thorough examination and we will be interviewing a whole range of witnesses with different views. This afternoon perhaps I could warn you that there may be votes. If so, we will adjourn for 10 minutes. I should also tell you that there will be a recording taken of the evidence. I gather it is being broadcast on BBC Parliament as well, and a transcript will be prepared, which obviously you can see. We have all read the BBC's document "Building Public Value" but before we go to questions, Mr Michael Grade, I wonder if you might like to first of all introduce your colleagues and then briefly give us your general reaction to the Green Paper.

Mr Michael Grade: Thank you very much, Chairman. I will just introduce Richard Tait, governor, former editor of ITN; Mark Thompson, recently appointed Director General, within the last year; Caroline Thomson, whose present title is Director Policy and Legal; Nicholas Kroll, who joined us most recently and works exclusively for the governors and is the first Director of the Governance Unit, which services governors. If I could just open by saying, Chairman, that with the exception of the section of the Green Paper on governance, which is obviously the crucial section of the Green Paper, the governors as a group, as a board, have not had a chance to debate the other

bits of the Green paper. I will endeavour obviously to give you as best informed a response to any questions on the Green Paper with the exception of the governance section, which the governors have endorsed. Everything else is part of ongoing debate inside the BBC. I will obviously give you as firm an opinion as I can, but I cannot bind the governors and we may have the opportunity, I understand, to come back here in due course, so I will be able to give you a definitive view. Overall, so far as the Green Paper is concerned, some parts of it are green and some parts of it are less green. We are much encouraged on behalf of the licence fee payers that the Government appears ready to commit to a ten-year Charter, and that they endorse the licence fee as the means of funding the BBC for the next 10 years, albeit with a review, a forward-looking review, at some point around digital switch-over. That really goes to some of the fundamental issues, and it is good to have them as settled as is possible at this stage, given that there is an election coming and everything else. On the governance issue, we think the Secretary of State's proposals are workable. They are not the route we would have chosen, but we understand how they have got to that point. Having arrived at the BBC under a year ago with a keen personal sense that the governance of the BBC was in dire need of modernising, I looked at it every which way, looked at the sort of principles that would have to lie behind any solution, and there were essentially five principles that shone out really which would be the test against any new model for governance. Independence, clearly, is number one, and really in equal measure, ability of the governance structure to be effective stewards of the public's money, the need to be directly and visibly accountable to the licence fee payers, clarity of roles within the BBC between the executive and the governors, or whatever they are

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going to be called, and workability—having worked both in the public and private sectors in various guises, that is very important. There are lots of people with theories on how the BBC should be run, quite often from people who have never actually run anything. It needs to be workable and practical and allow the executive to do their job, albeit within a framework that leaves it absolutely clear where responsibility lies. Against those principles, we developed what we called the Building Public Value model, which is part two of the Building Public Value model. The Government's response was, quite properly, within the Charter review framework, a big public debate, informed by many experts, and very, very good minds—Terry Burns and his panel and so on—informing the debate, and I think the Government's conclusion is really that our model goes so far but not far enough. It is not future-proof. It is much more of a behavioural response rather than a structural response, and might be deemed to be too reliant on the present personnel rather than the structural, constitution-embedded system. They have listened to the debate and come up with a model which I believe broadly meets those five principles, so it is very difficult for us to argue against it. I think we can make it work. On those three issues, the ten-year Charter, the licence fee and the governance model, which appear to be decisions of this Government, we are very supportive.

Q2 Chairman: You would prefer the board of governors to continue?

Mr Michael Grade: I think it is very difficult to say, because we are in the process of implementing a radical programme of reform, which separates the governors from management. The accusations that the governors of the BBC have historically been champions of management rather than champions of the BBC, and have been only able to make their judgments and pronouncements on the basis of evidence supplied by management, are very hard to refute. You can see the problems this has caused in terms of the response from the private sector on a number of occasions where the BBC has launched new services with scant regard to their impact on the private sector, so that the DCMS has had to be called in to police a row later, but the boat has sailed; the service has been launched. The governors should really be in a position to be doing that work, consulting with the private sector, measuring the impact on the private sector against the public value created by the potential new service, and then coming to a view, which is where the public value test comes in, the first time that the governors would use a very objective measure to explain how they had reached a decision, which I think would have gone a long way, but I understand that our model really was not

structural; it was much more behavioural, and that is probably not acceptable.

Q3 Chairman: You also go along with the idea of having an executive board with non-executives on. So you have a trust, and then you have an executive board with non-executives. I have personally not come across an executive board with non-executives on it.

Mr Michael Grade: I think the way it is delineated, where the respective roles of the two different boards are delineated and described in the Green Paper, makes it very clear that the executive board is very much an operational day-to-day implementation board. The responsibility for the public's money and the sovereignty of the BBC is vested in the trust, so everybody is very clear—the public, parliament—where the buck stops. It does not stop with the executive board; it does stop with the trustees. So I think there is real clarity. I also think that the executive themselves will benefit from having critical friends involved as they develop proposals which will ultimately have to come to the trust. I think they will benefit from that. I think it is workable.

Q4 Chairman: Just so I can understand how things work at present, if I can take the case of Brendan Fearon, the man who was paid £4,500, the serial burglar. How far up the chain would a decision like that be taken to pay money?

Mr Michael Grade: I think this is a question for the Director General, who is the editor in chief, and to whom the governors would delegate editorial decisions of that kind.

Mr Thompson: One important distinction to make is between decisions taken before a programme was transmitted, and then a set of judgments made after a programme was transmitted about whether it was right to make the programme in the way. One long-running and important distinction the BBC has made over many years, with only very occasional and, frankly, unfortunate exceptions is that it is for the management of the BBC to use their best efforts to make the right decisions up to the transmission of a programme.

Q5 Chairman: When you say management, do you actually mean the individual programme producers?

Mr Thompson: I will come on, if I may, in detail to what happens within the management, but the entire management system up to and including myself, as editor-in-chief, to make decisions prior to, up to and including the transmission of programmes, so that the board of governors and in the future perhaps the BBC trust, can then review all of these decisions not having been a direct party to them. If you become part of the decision-making process, it is then

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impossible to step back and say, “Was this the right decision to make?” The case of Brendan Fearon is a perfectly good example, and of course, there are examples every day, of the kind of decision-making which takes place within the BBC management. In this case—and this is a complicated case, because we have yet actually to have a programme on which to make a judgment about whether it should be transmitted or not, so there are other decisions still to make in this case—the question of whether or not it was appropriate in this case to pay a sum of money to this man was taken in consultation with one of my colleagues, who is called the controller of editorial policy, who is the guardian of the BBC’s producer guidelines and who can offer impartial advice from within this management system to individual programme makers and commissioners about whether or not, given the balance of argument about the various public benefits and disbenefits involved, it makes sense to take this action. Subsequently, when this programme is ready for transmission, the decision about whether to transmit it will be made within the management of the BBC. I sometimes personally will get involved in important and contentious programmes in watching programmes or listening to them before transmission to judge whether they are appropriate or not. Sometimes I will decide not to, not least so I too can then afterwards reflect on whether or not the right decisions have been taken. Once I become part of the decision-making process, then I too am unable to review it impartially afterwards.

Q6 Chairman: But the £4,500 has been paid?

Mr Thompson: That is a decision that was taken.

Q7 Chairman: It was taken not just at producer level, but it was taken on advice?

Mr Thompson: On advice, in the light of the BBC’s producer guidelines, and trying to weigh up the various arguments involved in this particular instance. The decision about whether or not to pay this man the money, a decision which, as you say, has been taken, is another decision where the board of governors may in due course wish to consider that and decide whether or not the BBC, the BBC management, have been right or not in doing so.

Q8 Chairman: The decision on whether to show the programme would be taken by yourself?

Mr Thompson: Yes, or I will delegate that to the Director of Television or some other executive, but I will certainly be responsible for that decision.

Q9 Chairman: Then, if there were a complaint on that, the complaint would go to the governors?

Mr Thompson: We have a complaints system. We have recently clarified and, I hope, improved our complaints system. There is an initial route for people to complain directly to a programme or to a service of the BBC but if the complainant is not satisfied with the BBC’s response in that first instance, they can then complain to the complaints committee of the board of governors to have the complaint considered there.

Mr Michael Grade: I should add, Chairman, if I may, that the governors are not entirely detached from this process. There is a regular reporting procedure through the monthly meeting of the governors where the Director General will report on these matters to the board of governors and obviously, when an issue like this arises, the Director General and the Chairman would have a preliminary conversation about it to see if there is any reason for the governors to get involved at an early stage.

Chairman: I will ask my colleagues to come in, but from the outside, it does sound quite an elaborate process when perhaps, certainly judging from the comments of the Minister downwards, it is not regarded as one of the greatest decisions the BBC has taken. One wonders whether there is not a quicker way of punching in without going through this kind of elaborate process.

Q10 Lord Armstrong of Iminster: Would Mr Thompson or the management ever consult the governors or you as Chairman of the governors before the transmission of a programme?

Mr Thompson: If I may perhaps respond initially, I think that what we might well wish to do, or indeed the governors might well wish to satisfy themselves that, as it were, due process was being applied. For example, in another recent incident, which was the decision to transmit the programme “Gerry Springer the Musical”, there was communication between the Chairman, Michael, and myself, the Chairman wishing to be satisfied that we were, as it were, going through due process in terms of considering the BBC’s guidelines and seeking legal advice and so forth, and I was able to satisfy them that that was taking place. I think that the issue of seeking advice as in “Do you think this is a good decision or not?” runs precisely the risk that I mentioned earlier, that having given that advice, you are then in a situation where the governors are being party to a decision which they have to adjudicate about subsequently. This is not new. This is a principle the BBC has adopted since well before the Second World War. The system which the BBC has operated, in my view successfully, for many decades is that management consider these matters carefully in advance as management, and then are held to account by the governors for their actions thereafter. One little

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addendum, if I may, which is one of the advantages of the Government's proposed system of governance and the inclusion of non-executive directors on the executive board is that this means that executives, myself and my fellow executives, will have recourse to colleagues, other directors, who potentially will bring experience and wisdom to the table, who can be, without any conflict of interest, critical friends, supporters and advisers to the management, but who will not in so doing be contaminated such that they cannot subsequently adjudicate on whether management have decided the right thing or not. So the Government's proposal obviates one of the main criticisms currently made of the governors, which is that they are at once at least in danger of being supporters and advisers to the management and also judges of what the management has done.

Q11 Lord Armstrong of Iliminster: I understand the principle. I just wonder whether practice always coincides with the principle.

Mr Thompson: In my, it must be said, rather brief experience as Director General, it does.

Mr Michael Grade: May I just add to that? The producer guidelines which are at the heart of the particular issue that you have raised, Chairman, are guidelines which are ultimately the responsibilities of the governors, and these are agreed and drawn up and approved ultimately by the governors, so obviously process is a key part. Where a judgment call is required, as it was in the Fearon case that you were describing, there is a judgment involved, obviously, the Director General and I have had a conversation about due process, which is the first issue, whether it has gone through the processes, and the second issue is whether the judgment was right. We will not know whether the judgment call was right or not until we are able to judge the public interest in the programme, and the Director General will make that decision, and we will be free and clear then to make a judgment ourselves as to whether his judgment was right or wrong.

Q12 Lord Maxton: I wonder if I could just switch towards what would be a very important issue in the coming 15 months—and there may be a General Election some time in that period—and that is the whole issue of impartiality and balance. I think it will be something which the BBC will be very closely examined on, particularly by the political parties. What research do you initiate to make sure that your programming, particularly your news coverage, is balanced and impartial? Do you do any research?

Mr Michael Grade: Recently we asked Lord Wilson to put a group of people together—this was at the governors' request—to look at our coverage of European issues, and a very good piece of work

emerged which was quite critical of the BBC's coverage of European issues. That is presently with the management for a response. I think the governors will be taking management's response shortly, and the governors will decide whether the response is adequate and meets the criticisms of the independent panel. That is the beginning of a process now where we will be quite proactive in looking at some of these issues.

Q13 Lord Maxton: It seems a very limited field of research. It seems to me that you ought to be commissioning, or rather maybe having someone else commission so that it is blind research, that where the person doing the research does not know who is actually paying for it, so that that research itself can be impartial, so that we do have a very good idea of exactly what the BBC are doing in this field, and we know whether people outside the BBC actually think they are impartial or not.

Mr Thompson: In addition to this programme, which is not going to be restricted to Europe, the Middle East and religious subjects were covered recently by the governors, so the governors have a roving programme of looking at different areas where the BBC may be judged to be partial or impartial. BBC management commissions continuous rolling surveys of public views about impartiality, both in terms of party political impartiality and broader measures of fair-mindedness in our coverage, and we also will respond, and do respond regularly, to either specific evidence from surveys or a pattern of complaints about a particular area, to look closely within our editorial community, our journalistic community, at whether or not there are lessons to learn about ways we can improve impartiality. I am very much of the view that impartiality is not a state of grace which you just occupy; it is something you have to strive towards in quite a difficult environment.

Q14 Lord Maxton: Can I just ask whether you are covered by the Freedom of Information Act as a publicly funded body? Can anybody request any of your research papers and find out exactly what the answer is?

Mr Thompson: We are.

Mr Michael Grade: Could I just add, Chairman, that there is a monthly rolling survey of impartiality which is pulled together and reported, and the findings of that tracking study of impartiality on all matters come to the governors every quarter so that we can see where the pinch points are and where we might have a problem.

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Q15 Baroness Howe of Idlicote: Just going back to the two cases that were brought up, it reminds me, of course, that in the new regime of Ofcom, of light-touch regulation, a lot of responsibility is on the BBC itself to self-regulate. I would be intrigued to know whether you think that was sufficient to fill a gap which was previously filled by something like the Broadcasting Standards Commission. That Commission produced guidelines; one of them certainly was on the payment of fees to those who had committed offences and so on. So you would then have had our guidelines and indeed our judgments, which you would have had to take into account in proceeding. Also looking to the new BBC trust, how is that trust going to show itself both independent and accountable to the licence fee payers? It is they who will be making complaints and will want to be certain you are independent.

Mr Michael Grade: The straightforward answer to that important question is that the responsibility of the old Broadcasting Standards Council has been subsumed by Ofcom and ultimately, on issues of taste and decency, the BBC is accountable to Ofcom on that issue, not the governors. We can take complaints ourselves but, in the end, you can complain to Ofcom and us, so you have two routes, but ultimately Ofcom is responsible for all those matters that used to be the responsibility of the Broadcasting Standards Council and that was as a result of the recent Communications Act.

Q16 Baroness Howe of Idlicote: Could you answer the second part of my question, which was how you see the actual trust being demonstrably accountable to those fee payers; not to Ofcom but to them.

Mr Michael Grade: In many ways. The first way is to be seen to have complaints procedures which are an awful lot more objective than they have been in the past, in the sense that, as the governors or the trustees are seen to separate, both structurally and behaviourally from management, so I hope people will begin to have more faith—licence fee payers, anyone who complains to the BBC—that the dice are not loaded or perceived to be loaded in favour of the management in the course of a complaint. I passionately believe that you can judge any organisation, commercial or public, on the basis of how it treats complaints, and the proper, fair, decent, transparent way that you deal promptly with these complaints. I think that the new governance arrangements will help people to understand that there is an objectivity in the complaints procedures. That is just one way in which we are going to be much more accountable to the public. The Government's decision to have a twin board structure unquestionably frees up the governors and lays a duty on them to be much more outward-facing and

to be the champions of the licence fee payers rather than the BBC. Exactly how we achieve that—there are lots of ideas in the works, including massive surveys, regular rolling surveys; the nations' and regions' broadcasting councils have a big role to play in informing and keeping the trust well informed in a devolved UK of how our services are being received and how we are meeting the objectives that have been set. Service licences, which we are going to introduce, will be subject to public consultation before they are put in place, but they will be the mechanism by which people will be able to judge. All those things are part of the accountability, which is a pretty radical departure from where we have been.

Q17 Lord Peston: If I may introduce a slightly discordant note, I am rather appalled by the weight you give to the complainants. After my 18 years in the House of Lords, I am perfectly well aware of how well organised the complaining business is nowadays. Surely it is a mistake to confuse the licence payers with the complainants. In many areas—we do not need to go into which ones at this moment—there are well organised complaining groups. I will not utter the sort of words I have replied to them, but the notion that you would respond to them sympathetically disturbs me.

Mr Michael Grade: I have a lot of sympathy for those comments. I think the best protection against the kind of submissiveness that you have described is not to weigh the seriousness of complaints on a numerical basis. You may get one complaint from one licence fee payer, and they may well be right. Just because there aren't thousands of letters does not mean that that single complainant can necessarily be dismissed. It is a very serious error to go down a complaints route on the basis of weighing the complaints rather than weighing the merit of the complaint. A single complainant can be right, but perhaps I could ask Richard Tait, who has the poison chalice of chairing the governors' complaints committee, to add something.

Mr Tait: Even a serial complainant may be right on occasion. One of the difficulties sometimes with serial complainants is that they have worn out the batteries of the complaint. You have to have a system that treats each complaint on its merits, and the approach that we have is to deal with the complaint rather than the complainant and to be conscious of the fact that, whereas in a more distant system, in a more separate system, at the end of the day the only thing a body adjudicating these things might be able to say is "We thought that was wrong," the governors have to go further and say, "Is there a systemic reason for it? Are there lessons that can be learnt? Are there things management have to do to try and ensure that these things do not happen again?" We do recognise

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people's right to complain. We also recognise that there are some people who seem to have more time to complain than others, but we have to treat the complaint on its merits, and they are a very useful form of feedback. I would rather take a serial complainant too seriously than miss a complaint where there was a germ of something from which the BBC could learn.

Q18 Lord Holme of Cheltenham: I have two questions, my Lord Chairman. The first one is structure and the second is on function. The question on structure is this: whether it is the BBC model or the Government model, in both of them the chairman would seem to play quite a pivotal role. I wonder how you see the role of chairman in each of these respective models and if you could tell us which one you prefer.

Mr Michael Grade: I think it is important from the licence fee payer's point of view, from parliament's point of view, that there is ultimately a single figure, a single individual, who is the chairman of the BBC, where the buck does finally stop and everybody knows where it stops. Most organisations have a titular leader. The check and balance on the chairman of the BBC, either the chairman of the governors or under the new trust, is that the chairman's power comes solely from his or her ability to persuade his or her fellow trustees that the course of action being proposed is the right one. But in the end, I think the public does need to know where the buck stops and who is leading the organisation and responsible ultimately, albeit with the board, of course.

Q19 Lord Holme of Cheltenham: If we take the analogy of the Guardian Media Group, there is the Scott Trust, which has a chairman, and there is the operational Guardian, which has a very effective chief executive.

Mr Michael Grade: The trading company, yes, of the Scott Trust.

Q20 Lord Holme of Cheltenham: Do you see in the Government's model the sort of role that used to be played by the chairman of the BBC being played by the chairman of the trust?

Mr Michael Grade: The Scott Trust model is a very effective model. The purpose of the Scott Trust is to protect the independence of the Guardian and so on. The big difference with the BBC, of course, is there is no public money involved. There is nobody who has to be responsible for public money. Inside the BBC, where somebody has to be seen to be quite clearly responsible for £2.8 billion of the public's money, you cannot afford to have the confusion: this chairman is sort of responsible for the money Monday to Friday

but Saturday and Sunday it is somebody else. You cannot have a muddle. You cannot have two people in a sense speaking for the BBC. You have to have a single chairman. It has to be very clear who is looking after the money. The executive board as proposed in the Green Paper I think will work well, because the intention is that the chief executive, the Director General, will chair that board, helped by three non-executives, who will help with of the quality of the decisions they are making on a day-to-day basis, but I think there is clarity in the Government's model in that nobody is in any doubt about where the buck finally stops.

Q21 Lord Holme of Cheltenham: Just following Lord Maxton on impartiality and accuracy, you will be aware that in the Communications Act there is a new responsibility laid in respect of current affairs on the BBC, which is that of not merely promoting debate, which obviously succeeds at the box office, and which the BBC, like other broadcasters, does very well, but of promoting civic understanding. What measures do you see being put in place in terms of governance to ensure that in news and current affairs you are promoting civic understanding?

Mr Michael Grade: In many ways I think this will become much clearer when we get to the new world of service licences, which is a contract really between the trust and the executive, who are required to implement it. Within those services licences will be embedded the core purposes of the BBC, right across all the services. In the Building Public Value document we are very clear that the BBC believes one of its core purposes is to deliver greater understanding of what it means to be a citizen, to be a voter and so on, and that will be reflected. It is for the management to decide what form the programmes take, but we would expect to see adequate provision and resources behind that core purpose of the BBC.

Mr Thompson: If I can just add, we would accept this has been and will be going forward a very, very important mission for the BBC across a broad spectrum of outlook. I think it is quite important to say I think current affairs—and we have recently announced a significant increase in money and air time for peak time current affairs on BBC 1, but I would argue that from Comic Relief last Friday through to, for example, discussions and phone-ins on BBC local radio through to some of the work we are trying to do in and around the digital curriculum and classrooms, we would regard the mission of trying to raise both knowledge and interest in the broadest sense communities and civic values as being a very important mission. Indeed, I would say we face some very big challenges coming forward, of which helping to inform the public about the issues which

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may be around a potential future referendum on the European constitution is a rather interesting and striking example, recognising as we do that many electors will be starting from a fairly low base of knowledge potentially when we consider those issues. The BBC essentially has a very important public role to play in trying to engage the public with those issues impartially.

Mr Tait: Following the Electoral Commission's most recent report on political engagement, we are all very conscious of the importance of the BBC as a trusted source of information about politics and about the wider world. One of the issues that, as Mark says, came very interestingly out of the European research which the governors commissioned was not that the BBC's coverage was partial. It was not that it was on one side or the other of the argument, but that it left the audience still confused and not sufficiently well informed about some of the issues. One of the main purposes of the sorts of detailed research that we are doing is to look at areas where the audience is simply baffled, or does not feel they have been given the background or the context to make informed judgments, not on one side or the other but just the basic knowledge that they need. I think that is a very good example of how the governors and the management are actually working in a very constructive way.

Mr Michael Grade: May I just add a quick coda? The BBC is committed to a policy which we have labelled Out of London. The way the market is developing in broadcasting in the UK is very national-centric, very London-centric, and the BBC is absolutely committed to a mission to move the debate.

Q22 Chairman: If I could interrupt, we will come on to that.

Mr Michael Grade: I think it is a very important part of what Lord Holme was saying.

Chairman: That is understood.

Q23 Lord King of Bridgwater: Dealing with this issue about complaints, the worst shock that came to me out of Hutton and Butler was the blizzard of complaints that came in absolutely continuously over the Today programme. I am interested to know at what stage and how you handle the problem. The producer may say, "It's them again," and he tries to deal with it as best he can. At what stage are the governors involved? Are the governors approached individually or directly on these occasions, particularly the regional governor, when the story is particularly applicable to a particular region? Do your proposals really protect you enough from the fact that you are all appointed by the Government in the end, indirectly, who may be making continuous representations to you about your work?

Mr Michael Grade: I personally have never been approached, but I have only been in the job just under a year, and there is potentially an election coming fairly soon—who knows? If I or any of my colleagues on the board of governors received a complaint directly from any vested interest, whether political or commercial or otherwise, we would advise them immediately to take it to the management, to the Director General, or we would pass it straight on to the Director General and hope that it would be resolved at that level. If it does not get resolved, it would come to the governors ultimately and we would have to make a decision about it, but I do not know that there have been in recent times any direct attempts by any senior or junior political people to try and leverage some kind of sympathetic response from the governors that are ultimately appointed by the Government. I think that would be very unwise. I think everybody would understand that would become public in two minutes and might rebound.

Q24 Lord King of Bridgwater: Do you think your proposals are going to improve the situation over the present unsatisfactory position?

Mr Michael Grade: I think that, if we can build confidence in our complaints procedures, which do need rebuilding, I have to say, I think that will go some way to easing matters, yes.

Q25 Baroness O'Neill of Bengarve: A complaints procedure is rather good at getting at a deficiency that supposedly has vexed or harmed an individual or identifiable organisation. How is a complaints procedure useful for more general quality issues, or is it not?

Mr Michael Grade: It is very hard to answer you without a specific case. If somebody felt that a particular programme was below the BBC's normal quality...

Q26 Baroness O'Neill of Bengarve: Suppose somebody said the journalism of attachment has no part in BBC broadcasting, and you have had at least two notable foreign correspondents who have publicly said that they are advocates of the journalism of attachment.

Mr Michael Grade: The BBC has a primary duty to be impartial.

Lord Peston: Before you answer, can we be told what the journalism of attachment is, please?

Q27 Baroness O'Neill of Bengarve: It is a Martin Bell phrase, when he started taking sides in Bosnia, followed up by Rageh Omah in Baghdad.

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Mr Thompson: Perhaps I should address this. Firstly, there are many ways. We should be careful about the use of the word “complaint”. We have been using the word “complaint” up until now to mean one or more specific complainants with a very particular—it might well be an issue which raises much wider questions but a particular issue about a particular programme. In addition to that, both management but also governors of the BBC would wish to track other concerns which are raised about BBC output. For example, in last year’s annual report, the governors noted from the broad tracking surveys a perception that the quality of programming on some of the television channels, or more broadly, the quality of BBC programming might be in decline, and initiated research, and indeed, asked the management to respond with research on the broader issue of standards of quality. In the example of what place, if any, does emotion have in journalism, that is a very good topic for exploration, both by the governors and also by senior editors. There are many, many ways. At any one time in the BBC there are probably half a dozen such broader concerns being debated internally, and in many cases separately considered by the governors.

Mr Tait: I think the answer to the question what the purpose is of the investigation of a complaint is that a complaint is a drilling down through various layers to try and see what has happened, and by doing that, in a sense, it gives the governors complaints committee the opportunity to exercise an editorial oversight which they would not have if they were operating on a more superficial level. You are right; there may be a complaint which has no significance beyond the fact that the BBC employs human beings that sometimes make mistakes, or there may be a complaint which has wider implications, which suggests there is something wrong with the systems or something wrong with the training, or something that needs addressing by the management.

Q28 Baroness O’Neill of Bengarve: That is not the question I am trying to raise. It is the question that complaints procedures are good for looking at defects in private goods, consumer goods. They are generally not of such use where the deficiency is in a public good. That is the problem. What when there is no complaint? There need be no complaint about the particular problem I raise, and a complaints procedure might not be the appropriate way to deal with it. I think you have answered it.

Mr Tait: No. In my experience—very limited so far; I’ve only been in this job for a few months—quite a lot of complainants are not really complaining about a specific incident; they are complaining about a perception of overall bias, a perception of an overall

mindset which they do not like, and therefore the only way you can test that is by looking at examples. *Mr Thompson:* There was one particular complaint made by a significant number of people about an incident where one of our correspondents on the programme “From our own Correspondent” said that she had found herself weeping when the dying Yasser Arafat was leaving Ramallah on his way, eventually, to death in Paris. What is interesting about this is firstly, BBC senior editorial management very quickly said we thought that this particular correspondent had been wrong to say what she said, but more broadly inside the BBC, this opened the very debate you are talking about, about whether or not and to what extent were there limits with which journalists could express emotion and question-mark attachment within their broadcasting. The conclusion in this case, in a sense, is that there are situations of extreme human suffering where it may well be highly appropriate to reflect that in tone of voice and emotion, but in this case the correspondent had stepped over the acceptable boundary.

Q29 Chairman: Speaking from experience, if you happen to be reporting a conflict and you are reporting from one side, you may bend over backwards to be fair, but actually you are always going to have a slight sympathy with where you are. *Mr Thompson:* In which case, you would hope that the totality of the coverage, with correspondents in different situations—one correspondent on one side, one on the other, another following events in London—that you will achieve a balance across the whole thing. The point I am trying to make is sometimes a specific complaint can lead to the very broader debate, if you like, the public good debate we were talking about.

Mr Michael Grade: Impartiality: if the BBC is not impartial, if the BBC’s news and current affairs cannot be regarded as impartial, we might as well all pack up and go home, frankly. Anybody who works for the BBC on a regular basis as a journalist must not do anything which calls into question their impartiality. There is room elsewhere in the schedule—on radio, on television, online—for personal opinion, for opinionated views of the world, which add to people’s understanding, but centrally the core is nobody who works for the BBC in a journalistic capacity must allow their impartiality to be questioned.

Q30 Lord Maxton: There is a rule you laid down very strictly following the Andrew Gilligan affair that none of your journalists should write pieces outside of the BBC. That is what destroys the impartiality of your journalists, if you can then read an article in the Daily Mail, as you could with Andrew Gilligan, and

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read a different point of view. Does that same rule cover your regional broadcasting as well, where certainly in Scotland you employ one journalist, Ian McWhirter as your major presenter of political programmes in Scotland, and yet at the same time he writes up to five political articles a week in newspapers in Scotland. How do you explain that?

Mr Thompson: I will, in the light of your question, look at the case you mention and I would be very happy to write to you about that case. Broadly, what happened after Hutton was not a total prohibition but fairly strict controls on the way in which journalists should be allowed to write articles outside their work for the BBC, absolutely with the intention of not blurring these lines, because understandably, the public, although we might argue punctiliously there is a difference between what a given journalist writes in a newspaper and what they broadcast on a BBC television or radio channel, nonetheless the public could be forgiven for blurring the two. There are controls and referrals, and frequently the answer to journalists about whether they should write or not is “No, you shouldn’t,” but there are not absolute prohibitions. I will look at the particular case of Ian McWhirter.

Q31 Lord Peston: I am a little worried about the concept of impartiality. I assume impartiality does not mean that you cannot tell the truth. Quite the contrary; it means that you tell what you see. So if you look, and on the one hand you see a government that locks people up, and then you see the opposition being locked up, if one of your journalists were to make clear who were the good guys and who are the bad guys, that does not mean that they are biased; it means they are telling the truth as they see it. That must cover an enormous amount of broadcasting. I take it your view is not that a journalist should be stopped from saying, “For those of you who don’t quite know in this case who are the good guys and who are the bad guys, those are one lot and that’s the other lot.” It would be horrifying if somehow they were stopped from doing that.

Mr Thompson: I am with you one hundred per cent when you talk about reporting the facts. When you start saying our journalists should be assigning and telling the public who are the good buys and who are the bad guys, I think the point is...

Q32 Lord Peston: I am sorry to interrupt, but in my case I need that because I am so ignorant. I do not know who is killing who.

Mr Thompson: My picture of BBC journalism would rather be this, that we would try with our journalists and with our entire news gathering operation to reveal what is going on in the world so that the viewer, the public, has the knowledge and the

equipment to make up their mind about what is going on, and who is praiseworthy and who is blameworthy. I do not think it is for us to lead them, nor should we need to. If our reporting is good and factual, the public will be able to decide for themselves.

Q33 Chairman: Trying to summarise in a few words, in terms of the structure that is being proposed by the Government in the Green Paper, you appear to be broadly content with that. As far as the complaints procedure, the way that complaints will be dealt with, you are also reasonably content with that and, as I understand, I do not think the specific question has been put. You are not in favour of having a sort of independent outside body, however defined, looking at complaints from the BBC.

Mr Michael Grade: I think that is a fair summary, if I could just add a tiny bit of gloss to that. There are about 50 areas where Ofcom has the responsibility for hearing complaints or compliance or regulatory issues. The Government’s structure does not impinge, where the trustees are called in to make a judgment, on their ability to effect structural change inside the BBC and to say to the Director General “These procedures must be changed. There is a serious question mark about this person or that person. Your structure is wrong.” We can require changes, and that is the importance of the trust having the influence inside the organisation, which Ofcom cannot do because they are just sitting in judgment on individual cases. They cannot then come back and say, “The Director General has got this wrong. He ought to be fired” or whatever.

Q34 Baroness Howe of Idlicote: On the future for the licence fee, it has been suggested for some time by other organisations that maybe in 10 years’ time another way of funding the BBC might be envisaged. The proposal there is that somewhere between now and the end of the ten-year period there will be a discussion and a review of the different methods. There are really two aspects of this. Is that a sufficient way to deal with this whole issue, and on the different models that might be looked at by you, which of them, if any, but if you had to, would you prefer? Could you do a little review of how you see the pluses and minuses?

Mr Michael Grade: Taking the first question first, it is quite right that when digital switch-over is more or less achieved, it will be time to start looking at the future of the BBC at that point, about eight years into the next Charter, which I think is what the Government is proposing. That seems a sensible moment, and it is quite right at Charter review time—and not every three months or six months or every year—to review the whole future of the licence fee.

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Do we want the BBC? What is the BBC for? How should we fund it? That seems to me perfectly right. So far as the question of how you fund the BBC, you have to ask other questions first, because there is a direct correlation between the method of funding and the outcome at the end, and you have got to decide what kind of BBC you want. Once you have decided that, you can decide how to fund it. If you want the BBC to continue to provide what it presently provides—perhaps even do it better than it does presently—there is only one way to achieve that outcome, and that is to give it secure and adequate income that is exclusive. You cannot expect the outcomes that you presently get from the BBC once you put the BBC into competition for revenue, either through advertising or subscription. The only two possibilities are the licence fee or direct grant in aid. Direct grant in aid undermines the principle, I think, of the independence of the BBC. The licence fee is a much more efficient way of doing it. The licence fee in my view is the only way to ensure that you create the conditions in which the BBC can go on delivering what it delivers. If you want a different kind of BBC, you can fund it differently, but I just cannot believe—and I have never believed and never will believe—that you can fund the BBC in a competitive environment and still get the same outcome. It just does not work that way.

Q35 Baroness Howe of Idlicote: What about the increasing competitive environment of the other broadcasters and the fact that they are also saying they will not be able to fund a degree of public service broadcasting? There is quite a strong feeling that top slicing perhaps of the whole amount that you are getting at the moment should be one of the ways. What is your view on that?

Mr Michael Grade: First of all, it is a matter for public policy where there should be some kind of public intervention to ensure plurality in public service broadcasting provision. It is quite clear that the market models now do not support what we would all understand as public service broadcasting provision. There will have to be a debate at some point. At the moment, there is plurality of public service broadcasting provision through Channel 4; to a lesser extent these days and historically on ITV but ITV is still a very important part of public service broadcasting provision in this country. It is a debate for the future. So far as the issue of contestable funding and top slicing, whatever various people call it, again that is part of that debate. If you start slicing up the licence fee, there goes accountability because the licence fee payer does not know where the money has gone and who is accountable for the money. “Who decided that out of my 120-odd quid 20 should go to the shareholders of ITV? That is not what I am

paying for. I am paying for the BBC.” I hope Parliament will support what we are all trying to do which is to create a climate of much clearer and greater accountability; this is what the whole government debate is about. Once you have top slicing or the licence fee is suddenly going to different people or it is up for grabs for everybody, how can you hope to have accountability?

Q36 Baroness Bonham-Carter of Yarnbury: At the moment, all the surveys show that the licence fee is pretty popular but looking to the future it might become less so. Has the BBC thought pre-emptively of ways of tackling the regressive nature of the licence fee which may become a big argument in the future?

Mr Thompson: In the end, the question whether you can improve the fairness and social impact of the licence fee is a matter for Parliament and government. We signal in *Building Public Value* we would be very happy to have conversations with all parties about what could be done to improve the fairness and mitigate whatever unfairness there is in the licence fee system. The DCMS consultation demonstrates that the support for the licence fee, which some years ago people were claiming by now would have collapsed, remains very high. When the public are asked to rank the licence fee against other funding models, they place the licence fee very high. Although it is a form of funding whose inelegance sometimes troubles some of one’s economist friends, it is a form of funding which continues to have very widespread support.

Q37 Baroness Bonham-Carter of Yarnbury: I appreciate that. One of our MPs did a survey in his constituency and that was shown. I see it is a government issue but there might be something which the BBC could be thinking about in that, when there is a multiplicity of channels, it might become less popular.

Mr Michael Grade: That does sort of keep us awake at night when we are allowed a moment to think slightly longer term, but we have to believe that what we are providing the British public, and in the different distribution ways that we will be able to deliver the content, that we are going to maintain overwhelming majority public support for the licence fee. If we do not believe that, it could become a self-fulfilling prophecy. We have to believe that we are sufficiently different from what is being provided in the private sector that we will maintain public support. That is why all the staff at the BBC and all of us get up in the morning, to deliver that and maintain that support. In a sense, I do not think it is an issue of technology or competition; it is an issue that is very much in the hands of the creative producers, programme makers and content creators

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of the BBC. I do not think technology is going to devalue what we do. In fact, I think it is going to enhance it because the public and private sectors of broadcasting are getting further and further apart. The difference between them is beginning to become more and more apparent.

Q38 Chairman: If you are told not to chase ratings with game shows etc., if you are not chasing ratings to some extent you are going to become a minority programme, are you not?

Mr Michael Grade: It depends how you achieve the ratings. Some of us—not many—are old enough to remember *Morecambe and Wise* on Christmas night getting 25 million watching. Nobody said the BBC had gone down market and was chasing ratings. Those were ratings achieved from the highest possible standards of British comedy that have ever been achieved on British television. *Monty Python* is the benchmark. There is no disgrace in getting ratings; it is how you get them. You have to earn ratings, not buy them.

Q39 Chairman: Ratings are still important.

Mr Michael Grade: Of course they are. The BBC should never apologise for being popular in certain regards provided what they are offering the public that is capturing the public's imagination—*Only Fools and Horses*, *The Office*—are the highest calibre, inventive, innovative, brilliantly executed, creative creations that are essentially British and capture the imagination of all demographic classes of people.

Mr Thompson: Our news programmes are some of the most popular and they do not become more popular by making them less serious. If you looked this last weekend at BBC1, *Comic Relief* on Friday night and this two part *Super Volcano* programme which had a lot of real science in it, I do not see why we cannot continue to have a portfolio of programmes, some of which will not be popular which will meet particular and more demanding interests, but some of which will be ambitious, creatively interesting and valuable and reach large audiences.

Q40 Lord Peston: As far as I know from economics literature, I have no alternative way of financing public service broadcasting than either directly from the taxpayer, which leads to the independence question, or the licence fee. My reading of economics literature is that those who oppose the licence fee have no sympathy for any public service things at all. I try to believe my own subject is objective but the people we are talking about are not objective at all. One of the benefits of being on this Committee is that one starts to think about things for the first time. I am quite in favour of public service broadcasting but what does anybody mean by public service

broadcasting? I can recognise it but I cannot explain what it is and, reading your document on page 26, you do not quite tell us. As a result of these choices you then have the UK definition of public service broadcasting. You tell us in a functional way what it is but you do not tell us in a more philosophical way what is public service in this regard and how will I recognise it.

Mr Michael Grade: The conditions prerequisite for a full public service content provision are that the editorial decisions that are made as to what to make and what not to make are made purely and simply with the public interest in mind. The public interest is not shared with shareholders, advertisers, the need to drive subscription or any other party. You make those decisions on the basis that you will make this programme because you believe it will interest, amuse, educate and inform the public. There is no other consideration whatsoever. That does not mean that the programme will be wonderful. There is a high failure rate in programme making in television because of the number of programmes that you have to make. The screen has a voracious appetite for programming. Those are the preconditions required. After that, you need sufficient funding, sufficient ambition and people who make the programmes and the decisions to understand the responsibility and what it means to be the spenders of 2.8 billion of the public's money.

Mr Thompson: If you turn to page eight of our document, it lists the five kinds of public value the BBC propose in *Building Public Value*: democratic value, cultural, creative value, educational value, social and community value and global value. With some improvements, these values are laid out in the Green Paper. The government adds a sixth value which is also mentioned in the notion of building a digital Britain. The claim for public service broadcasting would be that it is a public intervention against each of these five or six values. It is not what the market will not provide in each of these areas because there are providers who will provide; it is that the cultural intervention, which is public service broadcasting, can lead to greater public benefit against each of these public values than would have been achieved by the market on its own. It is an intervention aimed, if you like, at boosting the impact against each of these public purposes. In the jargon, you say that this is absolutely an area of public good. Free to air broadcasting is a public good. When public service broadcasting is pursuing these values, it is a merit good which also can have positive externalities in terms of not just directly but indirectly adding to benefits for society as a whole. That would be my philosophical and economic claim for public service broadcasting.

Mr Michael Grade: Also, in pursuing these values, the public can rely on the BBC as the major public service broadcaster to deliver these consistently. We are not

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subject to a downturn in advertising revenue where there are huge cutbacks and economic problems. If subscriptions are down, the share price is going down, we have to save money and do this or that. It is a perfectly reasonable proposition for the private sector but this is what is meant by the BBC as a cornerstone of British broadcasting. I think it is Douglas Hurd's phrase. The BBC is the public's guarantor of consistency of supply of these ambitions.

Q41 Lord Holme of Cheltenham: I think this public value notion is a step forward into this black hole which has characterised the definition of public service broadcasting. I do not think we are there yet and it is quite apparent from the Green Paper that the alignment of what you think is representing the BBC is not wholly aligned with what the government perceive, although that may just be a matter of language. The trap into which the BBC potentially falls is rather like that old sword that my Labour colleagues will find particularly amusing, which is that Socialism is what a Labour government does. Public service is what the BBC does. There is a general apprehension that if we renew the licence fee for a long period that is no longer adequate. You will have to get more specific. This question is related not to the quality of judgments but the quantity of judgments because I think it would be fair to say that, in recent years, the BBC has looked as though it was trying to be universalist. Every platform, every technology, every genre, whatever is going on, the BBC feels it has to be there. From the point of view of a healthy broadcasting ecology and from the point of view of the licence payers' funding, I wonder if that is right. I wonder if you have not to get a bit more focused and selective, rather than trying to be everywhere, doing everything.

Mr Michael Grade: That question goes to the heart of the government's problem with the BBC. You have encapsulated exactly why everyone perceives there has been a problem. That the BBC always gets old time religion around charter review is the same point. The whole purpose of the government's reforms that we have been implementing and that the government is going to implement, given certain obvious qualifications, is to make sure that we have a governance structure in place that will ensure that all the fine words and promises get enshrined in service and businesses, in taking the public's mind, in public debate, public consultation and so on. The whole edifice of governance and the government's modernisation has to be to ensure that there can be no slippage. That is why we are going to have service licences. That is why we have the public value test. That is why so much of what is being proposed both in our *Building Public Value* document and in the

Green Paper is designed to ensure that we cannot go back to the old days where public service broadcasting was whatever the BBC decided at that time. Who says so? The governors say so. On what authority? They are the governors. It is not good enough. We have to have a mandate from the licence fee payers. We must be able to show the world why this is a good policy, why we are doing this, why we are proposing to change the service. On the point of being all things to all people and trying to do everything, in fairness to the BBC, many decisions that have been made by my predecessor and Mark's predecessor have been brilliant decisions that have opened up new markets for a lot of people. Without BBC.co.uk, the internet market in this country would not be what it is today. Freeview is a huge success. Many commercial activities of the BBC have opened up new markets. There is some criticism in the Green Paper about the BBC being into all kinds of magazines. The BBC's entry into the magazine market many years ago in certain specialist areas has opened up the market in lots of areas. Lots of private sector players are now playing. They have motoring or cooking magazines that all started as a result of the BBC entering the market. The BBC has quite a potent effect in stimulating the market. There is a point where we have to say, "We have done it now. We need to withdraw from that and do something else." Withdrawing is not something the BBC does voluntarily.

Q42 Lord Holme of Cheltenham: Have you ever done it?

Mr Michael Grade: No. The Graf review of our online activities, a report commissioned by the DCMS: we could easily have commissioned that ourselves. As a result of the Graf review of our online activities, quite a few successful sites on the BBC website have been withdrawn. The market has taken care of that. There is no public value created by what we are doing so we withdraw.

Q43 Lord Holme of Cheltenham: As somebody who spends too much time abroad, the BBC World Service is one of the great creations of this country. I sometimes think it achieves more than the whole foreign service put together. There must be a question at least about what BBC world television represents. What is the strategy? What are the priorities? The funds produced for BBC World are presumably, ultimately licence payers' moneys, although we know that the World Service is financed differently. Abroad you have commercial partners of one sort or another. What I do not fully understand is why having at best a passable competitor for CNN is a key part of our national responsibility paid for by licence payers. When one of your values is a global value, the World

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Service which is differently financed amply exemplifies it. What is it that the World Service is intended to do? Will it work? Is it sensible? Where do we go?

Mr Thompson: The way we see the long term strategy is absolutely around the idea of global value and the notion of the BBC becoming the world's most trusted provider of international news and information and providing, where we can, a platform for the best of British talent and British programming in other markets. Part of our global strategy is BBC America. We have TV channels in many markets in the world and many television channels showing BBC programmes. The heart of the global mission is journalism. Let me explain how that works as to fact. The World Service is paid for by grant in aid, by the Foreign Office. Grant in aid money also helps pay for the distribution costs globally of our website. The BBC website—in particular the news part—is also a very significant way of delivering BBC journalism to consumers around the world. BBC World is not paid for by the licence payer; nor is it paid for by grant in aid. It is commercially funded. In my view, in recent years, it has been doing extremely well in growing its audiences, growing the commercial impact it gains around the world and also in growing its advertising revenue. The more its advertising revenue grows, the more we can invest in the editorial quality of BBC World. BBC World has come on leaps and bounds. It is now overtaking CNN in many markets around the world. We would like to secure better distribution for BBC World, particularly in the United States, a very key market, but at the moment our plan is to make a commercial success of BBC World, which is very important. If the tripod of our global journalism is the World Service, BBC World is the third leg of that tripod. The World Service too faces interesting challenges. Increasingly, we are trying to get FM distribution for the World Service in addition to short wave as around the world our listeners switch to FM. There are some questions in the Green Paper about the World Service's priorities, in particular the future of some language services, and other new challenges—for example, the idea of an Arabic television news service.

Chairman: Could we have some figures on what you were just saying about BBC World? It would be very interesting to see how the revenue has grown.

Q44 Lord Holme of Cheltenham: To the extent that BBC World is recycling BBC material, it is not quite true to say it is commercial. After all, BBC Enterprise has been very successful over the years in selling the rights to foreign television companies of a lot of the best of BBC products. Presumably the option exists to get the best of the BBC recognised around the world, wholesaling rather than retailing indirectly.

The notion that it is now commercial means that it is a profit centre in which I am suggesting that the costs are lower as a result of the licence payers' investment.

Ms Thomson: The costing basis of BBC World is done on the same basis that every other international news channel around the world works. In other words, it is costed at marginal cost, not at full cost. That is exactly the same as CNN International is done, as we understand it. It is audited regularly and we have bench marking figures done to show that that is the case. It operates commercially on exactly the same basis as every other commercial channel. Where it has specially commissioned material, it obviously pays the full costs for all its own special programmes.

Lord Holme of Cheltenham: Perhaps that underlines the Chairman's point about understanding what the business model is.

Q45 Lord Maxton: I have never been quite clear what audiences BBC World is aiming at. If I am travelling abroad along with many other British people for tourism, business or anything, I go to a hotel room and almost inevitably I can get Sky News. What I am getting is the Sky News from Britain and I can watch what is happening here, which is what I want to do. If I watch BBC World, I am getting something different. Are you aiming at the ex-pat Brit or are you aiming at the wider audience?

Mr Thompson: It is aimed at a global audience. It is aimed at English speaking, English understanding opinion formers around the world. It frequently commands an audience of very close to a million in the United States alone. It is reaching hundreds of millions of households around the world. The nature of the beast is, if you are aiming at such a broad spectrum of audience, you will perhaps not please any one person perfectly. Our website is a better way of getting precisely the news you want but we believe that World is very important.

Q46 Chairman: Are you aiming at exactly the same thing as the World Service?

Ms Thomson: That is absolutely right. As with the English language service of the World Service, World is targeted at a global audience, which is not to say that it does not in some regions specifically target a regional audience. What it does not do is target an ex-pat audience. For example, in the subcontinent, there are special programmes made for an Indian audience and a Pakistani audience which are particularly about their affairs, which is a very important part of its succeeding and overtaking CNN in that area.

Mr Thompson: We can provide much more information on this.

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Chairman: That would be helpful.

Q47 Lord King of Bridgwater: What do you see as the future of regional broadcasting in television and radio? I do not know if you look at them together or you have them as quite separate issues, local radio and regional television.

Mr Michael Grade: We see the expansion of broadcasting in television and radio online to nations and regions in these islands as a big, vital growth area for the BBC. We see an expansion of the provision of our services outside of London to the nations and the English regions as an absolute growth area for the BBC going forward. We see that the provision of high cost, high quality news, current affairs, local interest, community interest, nation's interests, national interests and so on for the British public is going to be less and less by the private sector. This is a key role for the BBC going forward.

Q48 Lord King of Bridgwater: Local radio has been technology driven. New technology makes it possible for far greater penetration, far smaller catchment areas. I note in my own constituency the way in which it started was with the radio station operating out of Bristol, for the whole of the west country. Then we had Somerset Sound coming in. Then we had something coming in to Bridgwater as the town and the target area was getting smaller and smaller. Are you going to chase it all the way down?

Mr Thompson: It is highly unlikely. There are some parts of England where the existing chain of BBC local radio stations does not serve large communities as well as it might. *Building Public Value* has one or two examples of areas where we think we can provide potentially good, additional local radio. We do not see an argument for a complete tier of community radio provided from the BBC. Where we can, we are trying to work with community radio and others who want to provide community to see if we can offer some of our skill and content to help them. However, in terms of online, both narrow band web and broad band, we are quite interested in whether these technologies might enable us to offer local television and local television news in particular; but also more broadly, as we already try to do, to offer web based services which are valuable at the level of community, at a smaller granularity than BBC local radio. We have over 40 local radio stations. That still means, as you imply, that a radio station in Bristol is covering quite a big catchment area in the west country. We think that the web is potentially an interesting and effective way of providing richer services at community level. This notion of local television via broad band may also be a better way of serving the regions of Scotland, Wales and Northern Ireland, where the BBC's focus has been quite a heavily

national one based in Glasgow, Cardiff and Belfast principally, rather than one which reflected the regions of Scotland, Wales and Northern Ireland as fully as we would like.

Q49 Lord King of Bridgwater: You segment your audiences in this local area on geography. What about going more for culture and ethnicity?

Mr Thompson: We already try to reflect ethnicity in our local as well as national services. We broadcast in many dozens of languages in the United Kingdom, as many as we do globally. These are programmes within local radio. In our web services we will have opportunities to reach other communities, both ethnic communities and other communities of interest, who define themselves by their interests or their sense of identity rather than where they happen to live in the United Kingdom. It is also very important that in our network programmes on television and radio we try and reflect the entire country we live in, including its minorities. In terms of the geographical spread of talent, voices and programme making around the United Kingdom but also in terms of the different communities of this country, ethnically and defined in other ways, we want to try harder than we have in the past to make sure that network television and network radio reflect the richness of the modern UK.

Q50 Lord King of Bridgwater: You said that you wanted to decentralise a lot of your production and creative facilities. How many locations do you envisage putting those in while still keeping an adequate critical mass of capability?

Mr Michael Grade: If you go back to the original federal, regional system of ITV, there were 15 centres of production throughout these islands. I do not think we would aspire to anywhere near 15. I do not think that is an economic, value for money model.

Q51 Lord King of Bridgwater: When you say "aspire", you are already doing it, are you not?

Mr Michael Grade: Not 15.

Q52 Lord King of Bridgwater: You are already putting in hand your programme to move people out of London.

Mr Michael Grade: Yes.

Q53 Lord King of Bridgwater: How many destinations have you at the moment?

Mr Thompson: In terms of network programming, we would not seek to increase the number of centres where we are making network programmes but rather to shift the balance between the amount of network programming we are making in London and the amount we are making in our existing centres

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which in England are principally Birmingham, Manchester and Bristol and, in the nations, Glasgow, Cardiff and Belfast. You have very substantially more in Manchester and rather less in London. We also want to try and find more opportunities for network programmes to be made in other major cities, for example, in the north east of England, where there may not be a complete BBC centre but nonetheless we can reflect a particular culture. The other thing is to try and develop what we have. One interesting example is the Asian network. This is a radio network which began as effectively an adjunct to local radio in Leicester and then in Leicester and Birmingham but which we are now providing digitally on digital radio and also digital television to the whole country. The Asian network is now becoming a UK-wide network, albeit aimed at listeners from the south Asian community in the whole of the UK.

Chairman: At some stage later on we would quite like to visit one or two of the regional centres, so perhaps we might move the questioning on.

Q54 Baroness Gibson of Market Rasen: You have indicated already to us that you are pretty satisfied with the fact that the Royal Charter will run for 10 years but obviously during that period there will be many technological changes. I was wondering about the implications of these. How future-proof do you think the proposals in the Green Paper are in relation to the 10 year Charter? When we were discussing public service broadcasting, you mentioned that that was a debate for the future, but how are you thinking of protecting and promoting public service broadcasting in the digital age?

Mr Michael Grade: The big event of the next 10 years as far as possible, forecasting it sitting here today, is going to be the digital switchover. The BBC will have a major role to play, yet to be clearly defined, in effecting smoothly and efficiently with all the other stakeholders an efficient switch off of the analogue. That is going to take to between 2008 and 2012 to achieve.

Q55 Baroness Gibson of Market Rasen: You do not currently have any sort of ideas about protecting public service broadcasting?

Mr Michael Grade: Yes. The licence fee, the 10 years, the endorsement of the licence fee as a means of funding the BBC and endorsement of the BBC in roughly its present shape and size we hope are the public's guarantees that the BBC will be able to continue, at least for the next 10 years of the next Charter, to go on delivering the range of services specifically and simply designed for their consumption through different technologies, not exclusively simply that TV box in the corner but

through digital radio, digital television, through the web, through 3G or 4G—who knows what is coming?—telephony and so on? Whatever distribution mechanisms there are will still require content. We will be there. The public's guarantee that there is going to be continuity of supply of high quality news, current affairs, education and entertainment is the 10 year Charter, underpinned by the licence fee.

Mr Thompson: The hope is that over the course of this Charter every household will be able to get all of the BBC's digital services. That is the connection, if you like, between the Charter and the digital switchover, that we can return to the universal provision of all our services and offer a much wider choice to the public into every household.

Q56 Lord Peston: On reflection, I can make no sense of why the Royal Charter should be for a finite time period. The more I think about it, the more I say, "Why is there not a permanent Charter?" You might say that is the same as an Act of Parliament. It is not obvious to me, unless governments simply want to interfere in things where they should not, why there is not a permanent charter. Do you have a view on this? What meaning is there to say 10 years?

Mr Michael Grade: I would love to agree with you wholeheartedly. It would be every BBC chairman's dream for there to be no Charter review. In the end, this is a large amount of public money and it is a good discipline for the BBC not too often—10 years is enough—but every 10 years in a democratic society I think it is right that the roots are lifted up and examined and hopefully carefully replanted with a bit of pruning, a bit of extra growth or a bit of Fison's or whatever.

Lord Peston: You could get all those changes with a permanent Charter. In an extreme case, imagine someone saying, "We will set the House of Lords up for 10 years and during the course of the last few years we will decide whether we want a House of Lords."

Chairman: I thought that is what we were doing!

Q57 Lord Armstrong of Ilminster: You always have had a Charter and there are those around who say, "Would it be a good idea if the BBC were governed by Act of Parliament like ITV is?" Indeed, the House of Commons select committee suggested that but the government has come out in favour of continuing with the Charter. Do you have any preferences? The issue for me is which gives you greater independence but some people think you would be more independent with an Act of Parliament than with a Charter.

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Mr Michael Grade: The answer is in the history of the BBC which has, a bit like China, been invaded many times but never conquered. The constitution of the BBC has stood it in good stead. Unless the BBC is independent, it is not worth having. Over its 77 year history as a corporation under Royal Charter, it has never lost its independence. There has to be some connection, given the attacks on the BBC by various governments over its history, and to take a risk with something that is proven to have been resilient to political attack or any other kind of attempted capture I think would be an unnecessary risk. I do not quite see what the argument is against the Charter. On the 10 year period, a statute can be revoked at any time on a political whim. The Charter allows the BBC to be one step removed from a vote in both Houses.

Mr Thompson: The 10 years therefore falls when it falls, not when a particular political moment arrives. That is one safeguard. The Charter rather, in some ways fruitfully, provokes a debate about the entirety of the BBC: its global role, its regional role, its technology, its future, its relationship to its licence payers and so forth. If you lock it into an Act of Parliament, a slight danger is that very quickly the debate, when it comes, will be about funding. I think seeing the BBC in the round and debating it once every 10 years in the round is probably a healthy thing to do.

(The Committee suspended from 5.13 pm to 5.23 pm for a division in the House)

Q58 Chairman: Am I right that Channel 4 is set up under statute? It has never seemed to me that being set up under statute has had any implications for its independence. You could say it is more sternly independent than most channels.

Mr Michael Grade: The answer is that there is no public money that can be cut off. Channel 4 has always earned all its revenue from the private sector. In the early days, it was ITV that gave a subvention to Channel 4 but all the money Channel 4 gets is earned from the private sector in competition.

Q59 Lord Maxton: As technology changes, if Channel 4 is no longer viable, it disappears presumably without changing the statute?

Mr Michael Grade: You have before you two former chief executives of Channel 4. I wait for my colleague to nod his head but I think Channel 4 is some way off disappearing.

Q60 Chairman: With this unique experience of Channel 4, you do not feel that the statute model had anything particularly going for it?

Mr Thompson: We are talking of quite a fine point here. On the balance of argument, the continuation of a Royal Charter for the BBC probably makes sense. If you told me that instead it was going to be run under statute, I think it is a 55/45 judgment. The better part of £3 billion is flowing through so £30 billion over a 10 year period arguably means that this once every 10 year guaranteed discussion about the BBC's value and future is quite a valuable part of the calendar and you might lose the scale and completeness of that debate if you went for statute.

Q61 Baroness Bonham-Carter of Yarnbury: Picking up on your idea of the window of creative competition, how would this proposal work in practice and how could you ensure it was fair? How independent do you intend commissioning to be from production?

(The Committee suspended from 5.27 pm to 5.35 pm for a division in the House)

Mr Thompson: It is absolutely important from the point of view of the producers that the BBC should have a system which is fair to them. Also, it is in the interests of the licence payer that the licence fee investment should go to the best ideas and the best talent. A clear, strong, fair commissioning system is the best way of getting the best programmes on the air. We have already begin the process of clarifying roles in BBC television amongst commissioners with fewer commissioners more empowered and with clearer lines of responsibility. We also hope to improve communication between commissioners and all providers of programmes, whether they are based in London, outside London, whether they are in-house or they are independent. Also, we are going to reduce the capacity we have for in-house—and this is intensely painful for the organisation—productions at the BBC in television somewhat. The numbers of people we have making programmes inside the BBC will reduce somewhat. The intention is to create the situation where we have a sensible and powerful in-house capacity. We think there are many areas where it is very important that the BBC should have a strong, skill-based critical mass of talent inside the organisation making programmes. We want to reduce that so that over and above the statutory quota—25 per cent independent production—there should be a big window of creative competition where there can be genuine competition between all the different producers to pitch for and hopefully get the best ideas commissioned in a way which reflects the commitment to have real talent and skills inside the organisation—it is not just good for the BBC but good for the whole industry—but also much more space for the independent sector to pitch into.

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Q62 Baroness Bonham-Carter of Yarnbury: How are you going to ensure that those doing the commissioning are not going to give their BBC colleagues the best slots?

Mr Thompson: In terms of the objectives we set them, the way we reward them, the way we structure them within the organisation to make sure that they are incentivised to come up with the best ideas for our channels, rather than simply to give Fred down the corridor the best programme ideas. In recent years the BBC failed to achieve the statutory quota of 25 per cent production. That will not happen again. We have not yet had the figures for last year validated by Ofcom but we believe last year in calendar 2004 we commissioned over 30 per cent of programmes for the independent sector. We are trying to move already from a position where, bluntly, in the BBC that 25 per cent was regarded as a ceiling as well as a floor to a point where it is very definitely a floor and the independent sector is encouraged to compete to get commissions over and above that floor.

Mr Michael Grade: The governors have approved in principle the executive's proposal for the window of creative competition but that approval will be subject to the governors themselves being absolutely satisfied that for once inside the BBC we are finally going to have an absolutely level playing field to resolve the conflict between in-house production capacity and the independent sector.

Q63 Baroness Howe of Idlicote: The BBC have played such an important part in training everybody in the broadcasting world, one wonders what impact the proposal is going to have on the training issue. Also, I am concerned about all the staff that have already been culled, as it were, and how many of them will have to come back recycled into this new creative area of mutual competition?

Mr Thompson: These are obviously difficult questions for the organisation. I believe it is essential that the BBC is driving the best possible value it can out of the licence fee. It is also important that the BBC is open to the best ideas from whatever source and does not have its editorial judgment skewed by the fact that it is carrying too much in-house capacity and production. The changes we are making, although they are very painful for people inside the organisation, are the right things to do. However, my view of the likely future of broadcasting and the changes we can expect is that the need for having skills and a properly trained workforce is going to grow, if anything. The BBC's historic role in being a trainer not just for its own needs but as a centre of excellence for training and for delivering skilled broadcasters who can go on in the independent sector, working with other broadcasters and working elsewhere in the audiovisual sector, will remain very

important. The Green Paper says that the BBC should play a vital role in helping to train in the broadcasting sector. We are very committed to doing that. We are working with Skillsets and other key stakeholders in training in the audiovisual and creative industries. Over the next couple of months, I will be bringing the BBC governors a long term strategy of training in the BBC. We think it is very important. It is one of the distinct contributions the BBC should make over the next Charter period to the industry as a whole.

Q64 Lord Maxton: If BBC Scotland commission into the private sector, are they going to be obliged to commission within Scotland rather than perhaps coming to a London company to do a commission for BBC Scotland? If that is the case, what I would describe as the role of the BBC is as a centre of culture within Glasgow and Edinburgh—in other words, by employing actors, by employing staff, they ensure that those people stay in Scotland and are able to work in the theatres in Scotland as well as just working in the BBC. It would be very dangerous if we lost that sense of the BBC as being a centre of culture within a nation like Scotland.

Mr Thompson: On the contrary, we are keen that we should increase that role. We have been very active with Channel 4 and others in trying to promote the independent sector within Scotland. For example, the merger of Ideal World and Clements in Scotland was something that the BBC and Channel 4 welcome because the creation of independent producers of scale within the nations as well as in London is one of the ways of strengthening the creative industries in Scotland, Wales and Northern Ireland and indeed in non-metropolitan England, as well as a continued commitment to in-house production in Scotland, Wales and Northern Ireland. The London audiovisual sector is very large. It can support a very big, diverse independent sector on its own as well as in-house production. We believe in the other creative cities in the UK it is quite important that broadcasters collaborate to try and make sure that you are building up opportunities, not just for in-house production but also for independent production and for the craft industry and craft skills that support this. I would very much agree with the thrust of your question. It is very important in the next decade that we make sure we do not see a flight of talent out from the rest of the UK to London, but on the contrary, that the BBC plays its part in building talents and skills across the whole of the UK.

Mr Michael Grade: Talent essentially follows the money. If the money is moving from London to Glasgow, Edinburgh, Aberdeen or wherever, the

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talent will find it. The local talent will find it first, which is where we want to get to.

Q65 Baroness O'Neill of Bengarve: I am going to put this as a set of questions around this notion of public value, which is clearly a key concept. You indicated earlier a couple of ways of defining it and one immediately comes to the contrast between public value and market value but then very quickly thereafter the realisation that there is no clear metric of public value as these five or six categories are united under that heading. Yet, judgments are going to have to be made about whether a certain line of activity would create more public value or whether it would not, and all of these decisions bear on competition with other broadcasters. I wondered how you are going to look at that and tell whether there is more public value in two proposals put up, for example, in the BBC or two proposals put up by the BBC management to the governors.

Mr Michael Grade: The position we are moving from is where the BBC has made decisions to start new services or change existing services without any regard whatsoever to the impact on the private sector. Services have been launched. There have been howls of rage, pain, anguish, impoverishment and so on from the private sector and the DCMS have had to come in, get some wise people with no vested interest to come in and look at what has happened after it has happened. That is the position ante. The position going forward is that there will be no radical change to any existing service. There will be no new service introduced until a full process of consultation has been gone through independently by the governors and trustees orchestrated and managed by the governance unit who owe their existence, their pay and rations, their enhancement, their hiring and firing only to the governors or to the trustees, not to the management which has been the case in the past, another radical change. There will be a full consultation with the private sector and a market impact assessment independently arrived at in consultation with Ofcom, which is what the Green Paper suggests—I think that is a mistake, personally—and the public value test will attempt to create some sense of what public value might be created. This is work in progress. In the end, it will come down to a judgment. If the case for public value is thin and not really evidentially strong enough and the case for damage done to the private sector pretty conclusive, there is only one decision the trustees and governors can make. How the public value test will work is work in progress presently. There will be wide consultation with all the stakeholders, including Ofcom, on how it will work. It may not be a perfect tool to begin with but it is the first time in the BBC's history that there has been an objective measurement

tool introduced before decisions are made, not afterwards.

Q66 Baroness O'Neill of Bengarve: I see what you are driving at but I also see how very difficult it will be to create that as an objective tool in that you do not have units there as far as I can see. Is that right?

Mr Thompson: I think you are right that the idea of a calculus, an algorithm, which you could crank through which would come up with an answer is not achievable. It is not just apples and oranges but very large numbers of different fruit and some of the things you are talking about will be, to some extent, subjective judgments. There is the notion of assembling a body of evidence which tries to weigh the benefits and disbenefits of a particular service. Amongst the benefits might be this idea of value that will be delivered to the individual as a consumer and also perhaps the idea of the value delivered to the individual as a citizen. In a sense, this is the notion of consumer value, merit good value and externality value. Using such measures, some of which are metric, of the realised reach of a service, its value for money which can be expressed numerically in terms of cost per user hour and so forth, slightly more subjectively impacts when you ask people, "Do you particularly remember this programme? Do you value this programme?"; the quality of a given programme, again perhaps measured in opinion surveys and so forth. That, balanced against the cost to the licence payer in terms of the millions of pounds of licence fees spent on the service, and also a market impact test where you are looking at the impact of this service on the rest of the market. We should not assume that that impact will always be entirely negative. There may well be evidence of market distortion but in the early stages of digital radio the impact on audiovisual services helped to establish digital radio and encouraged consumers to buy radios and also listen to and enjoy commercial digital radio. The idea that you assemble this body of evidence, the pros and cons, the benefits and disbenefits, and attempt to achieve a reasonable conclusion based on the balance of evidence on what the net benefits are seems rather better. This is what the board of governors, DCMS and others have always tried to do but the idea of beginning to codify what is going on into different categories of evidence, accepting that these have to be weighed against each other in a reasonable way, is an advance but what it is not is an exact calculus.

Q67 Baroness O'Neill of Bengarve: It is evidence based but it is not an algorithm. Will you be making this evidence base public?

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Mr Michael Grade: The objective is that when the trustees make their final judgment based on the evidence we can publish, explain and be very transparent and accountable and say, “This was the evidence we received. This is where we think the balance lies. We have therefore decided not to go ahead with this project” or, “We have decided to go ahead with it.” It will be very clear what the evidence was on which, in the end, the trustees made their judgment.

Q68 Lord Holme of Cheltenham: Is this assembly of evidence analysis or advocacy? The BBC are very good at advocacy. You have always spent a lot of time preparing cases very punctiliously and arguing them. Is this the BBC doing an analysis of the cost benefit alternatives etc., or is it the BBC saying, “We want to do this. Let’s get together the best case we can and put it to the trust”? Which is it?

Mr Michael Grade: The executive board will no doubt make the case. They will say, “We think there is a case for doing BBCX, a new service.” In the old days, the governors would have looked at that and been very quickly convinced it was a jolly good thing, rubber stamp it and then all hell breaks loose in the private sector. Under the new arrangements, the management would prepare the case, helped by the non-executives on the operating board. Hopefully it will be a good case. The trustees will then take that away and spend as long as they need to spend looking at it, examining it, applying the public value test, weighing the evidence on both sides and eventually making a judgment. It is certainly not advocacy.

Q69 Lord Holme of Cheltenham: The trustees would not be looking a counter case?

Mr Michael Grade: They would be looking at the case presented by the executive and they will take it away, consult widely with the private sector, stakeholders of all kinds and they will apply the public value test to see if it is possible to quantify the public value created, define it and then they will make a judgment. We may have further questions for the management at that point and we may not but it will be taken away from the management and examined objectively. It will be transparent and the evidence on which the judgment is made will be published. Nicholas Kroll is the midwife of the public value test.

Mr Kroll: This is why it is so important that the governance unit is separate from and independent from the executive side of the BBC, because my job would be to take this material and advise the governors on the basis of independent advice on the proposals as they come forward. I am absolutely able to do that independently of the executive side of the BBC.

Q70 Lord Peston: I did not understand the Green Paper on this and I still do not. I would have thought what the BBC ought to be doing is saying, “We can do this better than them.” At a very low level, the BBC music magazine is the best music magazine around. The BBC gardening magazine is the best gardening magazine around. When the BBC did test cricket, I am not saying that Sky were bad but the BBC were very much better. Why is the BBC not going to be in a position to say, “They are doing it but we can compete and we can do it better”? I do not see why the trusts should be involved in this. It seems to me the people who do the work should be taking this kind of decision.

Mr Thompson: We will be doing exactly that. We will be coming up with ideas and services very much based on what we think is in the best interests of the licence payer and strong, powerful services which the BBC can provide. Under the proposed system, the governance unit and the board of governors, in which the BBC trusts would be, would then be in a position to objectively weigh that claim by consulting other providers of these services to decide whether or not they believe that the claim that these services will be outstanding is true.

Q71 Lord Peston: I have never run a business in my life but would you run a business that way?

Mr Michael Grade: There is public money here. Magazines are commercial activities which do not involve any element of the licence fee. Therefore, the question is should the BBC be using its market clout, its distribution and marketing skills, to run magazines. The answer to that question is we believe we are quite good at magazines provided those magazines relate directly to the intellectual properties that we create on radio or television. For us suddenly to do a knitting magazine or—

Lord Peston: You could do a computer magazine which some of us would buy like a shot.

Q72 Baroness Howe of Idlicote: I see what you are going to be doing in this new formula but I want to be reassured of is that you will have some leeway for a purely qualitative judgment because that is crucially important.

Mr Michael Grade: When the trust is called upon to make judgments that are qualitative, it is still important that everyone, the private sector, the public licence fee payers, Parliament and so on, has confidence that the trustees have exercised that judgment not solely on evidence provided by management. We are moving to that point now very quickly and people will begin to accept that the decisions of the governors and the trustees are not decisions made in the old style, which is essentially

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just nodding through anything the management wants to do.

Lord Kalms: When we started talking about the trust at the beginning, I thought you damned it with faint praise. What is the trust? How many people are there? Is it a big organisation behind it? How often would you report to them? Are they your bosses? Is this another regulator?

Chairman: Can we just finish this point and come back to you?

Q73 Baroness O'Neill of Bengarve: I am having some difficulty in the light of that view of what the trust and the governors do understanding whether it is a top tier of management or whether its role is simply accountability, whether its judgments have a prospect of impact or largely retrospective impact.

Mr Michael Grade: The government's proposals make it clear that the trustees are the custodians of the public money, that the trustees are the sovereign board of the BBC. The executive board is there to implement policies, strategies, that have been approved by the licence fee payers and so on, by the trustees, and the management executive board, the three non-executives, are there to implement. The trustees are very much inside the BBC and that is for a good reason. That is why we are able to support it because, as trustees and as the body responsible for the public's money, we need to be in a position not just to sit in judgment after the mess has been made but to be there hopefully to stop the mess but, if the mess happens, to be able to influence what is done and who is responsible afterwards, rather than being an outside regulator who has no power.

Q74 Lord Kalms: How many people do they employ?

Mr Michael Grade: None of that has been—

Q75 Lord Kalms: If they are going to look at the stuff that you are producing, they must have a reasonably large organisation. They must be like any regulator and regulators grow like Topsy. There is going to be a top structure over you with a vast number of people looking at you stuff.

Mr Michael Grade: He runs the executive board and whoever succeeds him. I am top structure. The trust of which I would be chairman sits above the whole thing.

Mr Thompson: The Green Paper is something that we too are looking at with enormous interest. None of this is absolutely pinned down. It seems to me that the BBC trust is prospectively responsible for signing off on budget, overall strategy for the BBC and for setting service licences which set out the ways in which individual BBC services would meet the various kinds of public value which are set for them.

The task of delivering BBC services and the entire machinery of the organisations which deliver the programmes and content to the public is delegated to the executive board and the BBC trust examines in great detail retrospectively the extent to which the executive board and the BBC machine has delivered against the objectives they set in the budget, the strategy and the service licences.

Q76 Lord Kalms: What is the difference between this and a supervisory body board, a bog standard, German model supervisory board, supervising a management board?

Mr Thompson: The BBC trust has the licence fee and it is a supervisory board.

Lord Kalms: If you had said that right from the beginning and said that Michael is going to be the chairman of that, then you really would have said it in plain English. It should not be called a trust; it should be called a supervisory board. That is what it is.

Q77 Chairman: Is it a supervisory board? A supervisory board is a bit more distant, is it not?

Mr Michael Grade: It is more than that. The trust is responsible for 2.8 billion of the public's money and it has a much greater role than a supervisory board.

Chairman: It is a very important question and we need to get it clarified. I think we need to clarify it first with the minister and the government who are proposing the model.

Q78 Lord Kalms: We talked earlier about a BBC mission statement which is to sustain citizenship and civil society. On the whole, the BBC does a magnificent job but is there not a weakness in the way the BBC treats politicians? Politicians on the whole are not given sufficient respect and are disparaged quite often. Is it not becoming a style now that you take the people who lead our country, the politicians, whether you like them or not—that is the best system we have—and you knock them for six. There are several of our very excellent reporters who do that, almost as a matter of practice. I watched a television programme with Andrew Neill and there were six examples of where journalists have attacked politicians and the politicians have either walked out or crumbled. Do you have a policy on the way Paxman treats journalists? You talk about creating a civil society and at the same time you kick away from under their legs the impact and the respect that we should hold for them. You do it a little with royalty. You are not the worst for royalty. Some of the other media are 10 times worse, but do you have a view about royalty and about politicians?

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Mr Thompson: The controversy around political questioning by BBC interviewers is not a new one. Mr Robin Day in the 1960s interviewed politicians. You should look at the tapes of election programmes in the 1960s and 1970s. You would be surprised at how aggressive and similar the discourse was then. The balance one is trying to strike the whole time is between the proper task of scrutinising and using the traditional, British adversarial way, exploring issues with the politicians of the day and doing that in a way which genuinely exposes the underlying arguments and challenges the points politicians are making; and the danger of over stepping the mark into negativity and rudeness and so forth. Generally, I believe in the current affairs division we get that balance right much of the time.

Q79 Chairman: You would not mind if this Committee were to interview one or two of your interviewers and reporters?

Mr Thompson: Of course not.

Mr Michael Grade: It is a very good idea. I made a speech recently in which I talked about the fine line between the use of scepticism which is a genuine weapon in a journalist's armoury and cynicism. There are occasions where cynicism is masquerading as scepticism. That is something that we have to be very careful of.

Q80 Baroness Gibson of Market Rasen: Where I would disagree with you about Mr Robin Day is that he would ask a question aggressively and shut up. Unfortunately, two of the programmes that I listen to carefully are *News Night* and *Today*, and John Humphreys speaks more than the person he is interviewing. It is not good broadcasting because you cannot hear the answers of the politicians, be they whatever colour. The same happens on *News Night*. I wonder if you ever look at it from that viewpoint. I do not mind the aggression but it is the talking over of whoever is being interviewed. I find myself shouting at the radio and the television, to my husband's anger.

Mr Thompson: There are lessons on both sides to be learned, particularly when there is time pressure on an interview. A characteristic scenario is of a politician who has one or two points they are desperate to make. An interview is often trying to get a question of real substance and you get over-speaking, a clash and more heat than light. That is to be deprecated. That is not good broadcasting. There is an argument on both sides, reflecting on what is the best way from the public's point of view of exploring the issues of the day. There may well be lessons for BBC journalists and there are sometimes also lessons for politicians in what is the best way of getting light

onto the subject. It is something we should think about. Talking to the public, the public take a slightly different point of view than many politicians do about this. Many members of the public thoroughly enjoy the adversarial approach and many of the interviewers politicians worry most about are regarded as the most independent, the most fearless and the most valuable by the public.

Lord Maxton: John Reid was absolutely right to have a go at Paxman. What worries me is not news programmes and political programmes; it is the pervasive cynicism about politics that permeates the whole of the BBC across radio and television. I do not listen to Radio 1 but my sons do and they tell me that during a general election you have disc jockeys essentially saying, "I cannot see any reason to vote for any of them and I am not going to bother." If they are saying that to our youngsters, what can you expect our youngsters to do and say in response? If you listen to Michael Parkinson, it is a wonderful radio programme and it is one of the few that plays my type of music. Again, every so often Michael Parkinson or someone he is interviewing makes a totally off the cuff remark about politicians and politics. It is unnecessary and you should be above it.

Lord King of Bridgwater: The polls we took of public attitudes to politicians put them at equal bottom with estate agents, which was a message for politicians and a message for the media. Also, anybody who thinks Robin Day is a harmless old crusty, it is true that he stopped after he had said something tough. I remember on one occasion, "Why should the public listen to you, Secretary of State, as you are if I may say so here today and gone tomorrow?" He did stop there because John Mott had walked out of the room.

Q81 Chairman: Can we have a quick reply to Lord Maxton's question?

Mr Thompson: In so far as there is a broader cynicism in the media, I would agree. The BBC should be extremely careful. We have to reflect the reality of the broad range of public perceptions about politics and politicians.

Q82 Lord Maxton: But you make it.

Mr Thompson: Where we can find ways of engaging the public constructively in the great issues of the day, we should do that. We have just come to the end of a period where across BBC television and radio we have been focusing on Comic Relief. That was a good example of the BBC, not just on BBC1 but on Radio 1 and elsewhere, getting many millions of people focused upon what is a great public issue. They gave an extraordinary amount of money but they also watch documentaries and listen to stories about the

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Mr Michael Grade, Mr Mark Thompson, Mr Richard Tait,
Ms Caroline Thomson and Mr Nicholas Kroll

developing world which are remarkable. The BBC is not always cynical in the way it approaches the great issues of the day or even in the way it approaches politicians.

Q83 Baroness O'Neill of Bengarve: On the last day of last year, I was a so-called guest editor of the *Today* programme and the tsunami dominated, which was quite right. I listened to those assembled blaming governments, the United Nations and the NGOs out in the field. After I had been listening for sometime, I was asked in the last four minutes what I thought. I said that I thought those of us who were sitting comfortably in the studio were in no position to blame anybody for trying to do something about so great a tragedy. The response was both on air and subsequently that if we do not point out who is to blame who would. My response was I thought an explanation might be your task, not blame.

Mr Thompson: I agree.

Q84 Chairman: You said a very interesting thing earlier on in our discussion. As I understand it, you said that no politician, political leader, Cabinet minister or shadow Cabinet minister has sought to influence you in your period as chairman.

Mr Michael Grade: Absolutely not. I get letters from Members of both Houses. I get formal letters complaining and pointing things out. One knows the difference between a letter saying, "How can you have let this happen?", a formal letter, and a nudge-nudge, wink-wink telephone call or meeting. Never in my broadcasting career over 30 years has any politician of any persuasion at any level, from either House, tried to exercise undue influence on me.

Q85 Chairman: Is that the same with you, Mr Thompson?

Mr Thompson: I do not think I have been the subject of undue influence. I get a lot of phone calls from politicians complaining about things or worried about things that we are broadcasting.

Q86 Lord King of Bridgwater: You are talking about individual politicians but organisationally are you under pressure?

Mr Thompson: No. Political parties again have perspectives to share with us, of course, and sometimes they will share them with quite a lot of excitement and anger but nothing that I would regard as improper or undue.

Q87 Chairman: Are the representations that are made recorded? Does one have a league table of who is complaining where?

Mr Thompson: We do not keep a minute account. We make a broad note of what is going on and what different political parties and different individuals are asking us, simply because we want to get some sense of what is going on.

Q88 Chairman: Under the Freedom of Information Act we can find that out?

Mr Michael Grade: The corporate activity of the BBC comes under the Freedom of Information Act. Programme related matters are exempt.

Q89 Lord King of Bridgwater: If you minute for the attention of the government the amount of representations you are getting from one political party or another, that would become the subject of the Freedom of Information Act?

Mr Michael Grade: Yes.

Chairman: We have not dealt with digital switchover but a number of us had the benefit of a briefing yesterday for about two hours and we shall wish to come back to that whole area. In the meantime, I would like to thank you and your colleagues very much indeed for your patience during this vastly interrupted evidence and thank you very much for the way in which you have all answered questions. At the end of our inquiry, we would be very anxious to invite you back again to share these things with you.

Supplementary letter from the BBC

ISSUES ARISING FROM THE BBC EVIDENCE SESSION ON 15 MARCH

Following from the evidence session on the 15 March we agreed that there were three areas where Members would like further information from the BBC: the impact of "technofear" on the take-up of digital services; the position of Iain Macwhirter, who presents political programmes in Scotland and also writes newspaper articles; and background information on BBC World. We also agreed that I would provide information on how the BBC had improved its complaints procedures in the review that was implemented in February 2005.

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1. “TECHNOFEAR” AND THE IMPACT ON THE TAKE-UP OF DIGITAL SERVICES

From DTI research (*Generics March 2004*) approximately 5 per cent (1.25 million) of households said they would never be willing to convert from analogue. Some 60 per cent of these 1.25 million households said that they didn’t think they would be able to understand how to use digital TV or that it was too complicated (c 0.75 million).

So “technofear” is certainly an element in some people’s response to the digital offer, and it is particularly prevalent amongst certain groups: of the 5 per cent of the population that say they will never get digital television just 13 per cent are in full time employment, their mean age is 62, 35 per cent are in social grade E and 60 per cent are pensioners. Many are also concerned about affordability: the mean household income of the group is £5,400.

But the use of the word “fear” possibly over-estimates the level or nature of anxiety about technology *per se*. Technofear is more about a practical concern over the ability to install and operate new equipment (BBC qualitative research). There is evidence that those who reject digital have adopted some new technologies, such as mobile phones, the internet and DVDs: of those who currently receive analogue TV and say they “don’t like the idea of digital TV”, seven out of 10 have a mobile phone, half own a DVD and half use the internet—four in five of them at home (*TGI Target Group Index, a continuous survey sample size of c 25,000 per annum, December 2004*).

So other barriers are probably as significant to the non-adoption of digital as issues to do with new technology. Of those in analogue homes (9.7 million) 6.1 million say “TV is not important”, while 2.0 million say cost is prohibitive. (*TNS/BBC Survey January 2005*). For many, uptake of digital TV is about TV as much as about technology. People have established viewing patterns which they may not want to have disrupted. They may be ambivalent or negative about the idea of multi-channel and increased choice. They may simply be unwilling to actively research/finance/install a new way of accessing something they have been happily and passively receiving for decades. At the moment many aren’t even thinking about Digital TV—a point which emphasises the communications challenge around switchover.

2. IAIN MACWHIRTER

The BBC revised its guidelines on presenters writing newspaper articles in January 2004 as one of its responses to the Hutton enquiry. At that time, BBC Scotland management, in consultation with BBC Editorial Policy, considered the position of Iain Macwhirter against the new criteria. They agreed that Mr Macwhirter fell into the category of a presenter “. . . whose primary occupation or identity is not the presentation of broadcast news or current affairs”.

Mr Macwhirter has been writing opinion columns for newspapers and magazines since 1990 and the majority of his income and profile is derived from that source. In 2000 he was judged political Journalist of the Year in the Scottish press awards and has been nominated for numerous other prizes. In his frequent public appearances, he is always described as the Herald/Sunday Herald columnist, not as a BBC presenter. The Guidelines allow people with such a profile to present BBC political programmes; the only broadcasts explicitly ruled out are news bulletins and major daily current affairs programmes.

3. BBC WORLD

Purpose and objectives

The BBC’s Global News Division (GND) has a single purpose: to be the world’s best known and most respected voice in international news broadcasting, across radio, television and new media, thereby bringing credit to the UK and to the whole BBC.

Supporting this purpose are two objectives:

- To provide the most trusted and reliable news in the world, and an indispensable service of independent analysis and explanation which promotes greater understanding of complex issues.
- To connect and empower audiences by bringing individuals from different societies together in an informed and intelligent dialogue which transcends international borders and cultural divides.

The Global News Division provides services across radio, television and new media.

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Within the division the television service, *BBC World*, is commercially funded by advertising and subscription revenue. It aims to be the most authoritative global news and information channel on television, built on BBC News' reputation for journalistic excellence, specialist knowledge, impartiality and its unrivalled newsgathering capability, thereby building a growing and profitable business. It operates a 24-hour global news and information channel in English on television, available in over 270 million homes globally.

Target audience

BBC World targets English-speaking cosmopolitan decision-makers and opinion-formers across the globe from the least developed to developed countries. These tend to be highly-educated individuals, both men and women, who have an international attitude and an enthusiasm for news.

This is a valuable demographic which is attractive to advertisers and distributors alike. As noted above, BBC World seeks to be the most authoritative global news and information channel, portraying the key BBC news brand attributes of quality, impartiality and independence in its news coverage and overall channel positioning. Whilst this is central to the BBC's public service remit, research has demonstrated that these values are sought after by its target audience groups and are therefore also commercially valuable.

Channel content and costing

BBC World contracts with BBC News to provide the core news output for the channel through a dedicated team of around 70 BBC News staff. BBC World also commissions specific additional programming as part of the overall service provision. The contractual relationship and pricing between BBC World and BBC News is governed by the BBC's Fair Trading Guidelines and is audited as part of the corporation's Fair Trading audit by external Fair Trading auditors. A review of the application of the pricing principles is separately carried out annually by the BBC's financial auditors, who report their conclusions directly to the BBC Governors. This matter is reported in the BBC's Annual Report and Accounts.

In its response to the Lambert Report, which reviewed BBC News 24 against the conditions of its approval, the BBC committed to commissioning a triennial benchmarking exercise by independent consultants to confirm that the basis of the supplier arrangements between BBC News and BBC World—marginal cost pricing—remains valid in the marketplace. Separately, there would be annual verification by external auditors that the marginal costing principle is appropriately applied. The benchmarking exercise was most recently carried out in April this year by the consultants Booz Allen Hamilton and reviewed by the Governors' Fair Trading Compliance Committee in May 2004. The report confirmed that marginal cost pricing remains market practice.

Funding and accountability

Since December 2002, in addition to being part of the BBC's Global News Division, as a commercial operation the BBC World channel is managed through a separate company, BBC World Limited. This is a subsidiary of BBC Commercial Holdings Limited. In common with all other BBC commercial subsidiaries, BBC World reports monthly to the Board of Commercial Holdings and is subject to its authorisation, monitoring and control procedures.

As is common with pan-regional news channels, the BBC recognises that a substantial period of investment is to be expected before a global news channel like BBC World reaches profitability, and the channel is currently making losses. Its business plan forecasts that it should reach break-even around the end of the decade and BBC World is currently operating in line with plan.

Investment in the channel is provided through long-term loans at market rates of interest which will be repayable once the channel reaches profitability. The loans are sourced from other commercial profits of the BBC group and there is no use of licence fee funding.

Operations and performance

Initially BBC World operated through a number of regional marketing, sales and distribution partners. However, in the late 1990s, BBC World moved away from its historic reliance on partners and began to develop its own sales and marketing teams globally, taking ownership of the complete value chain. This provided the opportunity to develop a forward-looking and consistent global strategy for the channel as a

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whole and to adopt an integrated approach to the market. Since then, BBC World has performed strongly against the key underlying indicators of growth in audience household distribution and revenues, demonstrating that this strategy has proved successful in substantially expanding the channel's global presence and commercial opportunity.

Indeed, recent surveys have shown that the channel has continued to grow its audience year-on-year whereas the competition has either remained static or dropped.

Audience figures

BBC World now reaches 59 million viewers per week (an increase of 10 per cent on the prior year) and has the largest reach of any BBC channel. Reach amongst target audience groups has also shown strong growth, in particular compared with its main competitors.

- According to the EMS European survey, researching households in the top 20 per cent income bracket, BBC World is the only pan-European news channel to have grown audiences every year since 1995. The compound annual growth rate (CAGR) in weekly reach for this period is 24.3 per cent compared to less than 1 per cent for CNNI. Weekly reach at 10.6 per cent (2003–04) is now 58 per cent that of CNNI.
- In Asia, the PAX survey shows BBC World's audience reach amongst business decision makers and affluent adults has remained stable since the peak viewing period around the Iraq war whilst CNNI's audience has dropped by 5 per cent over the same period. Across 11 markets BBC World's reach amongst this target of 8.1 per cent (2004) is 55 per cent that of CNNI.
- In India, recent astronomic growth in competition means that the channel's weekly reach of 11 per cent (2004) is roughly static, but remains more than twice that of CNNI.
- The channel is also growing in reputation. In the recent Media Brand Values survey, BBC World ranked No 1 amongst news channels across Europe for being trustworthy and impartial as well as stimulating. This survey is also being rolled out in Asia and results will be available in the autumn.
- BBC World was named the "Best News Channel in Europe" at the Hot Bird TV awards, the third time in seven years that it has received the accolade, something no other channel has achieved.

Household distribution

The channel's full-time household distribution has increased by at least 10 per cent *per annum* for every year since 1996 and shows a CAGR of approximately 15 per cent over this period. Full-time distribution for BBC World is now 127 million households. When part-time distribution is also included (less than 24 hours per day) the channel's total household distribution is now 270 million.

Revenues and channel results

Since developing its own sales teams, BBC World's revenues have grown strongly. However, airtime sales are primarily contracted in US dollars and distribution revenues are contracted in multiple currencies with a significant US dollar element. Since 2000 the US dollar has devalued by more than 30 per cent against sterling and this has had a significant adverse impact on overall sterling revenues reported.

In underlying currency, airtime sales have shown double-digit annual growth for every year since the team was set up, with the exception of 2001–02 when the events of September 11th had a devastating affect on global economic growth. The CAGR for the period since 1998 is over 30 per cent.

Because distribution revenues are derived in multiple currencies, growth is monitored in sterling although this understates the underlying revenue growth. Since 1998 sterling distribution revenues show a CAGR of more than 10 per cent.

These growth rates have been achieved despite the continued and significant levels of uncertainty that have existed in the global economy since the beginning of the decade, exacerbated by specific events such as the Iraq war, the SARS epidemic and multiple corporate financial scandals. This uncertainty has had a severe impact on the advertising market and in particular on the types of company which advertise on pan-regional news channels.

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A summary of the channel's revenues and loss before interest and tax is shown in the accompanying table. The analysis is at summary level only on the grounds of commercial confidentiality. It should be noted that BBC World Limited does prepare and file full statutory accounts. BBC World's primary competitors do not provide this level of data as the channels form part of larger corporate entities.

<i>Summary Data (£m)</i>	<i>2000–01</i>	<i>2001–02</i>	<i>2002–03</i>	<i>2003–04</i>
Sales	23.9	23.8	25.2	26.0
Loss before interest and tax	13.2	15.3	15.2	16.5

4. BBC COMPLAINTS PROCEDURES

How the BBC handles complaints is one of the most important demonstrations of its commitment to serving the public interest. Complainants should have fair and equal access to a transparent, objective process, with the BBC Board of Governors acting in difficult cases as final arbiters on compliance with the BBC's editorial guidelines. The BBC should show that it is willing to admit mistakes and put things right.

Recognising previous failings, the BBC has already undertaken a fundamental review of its complaints processes, with the result that a wholly transformed system was launched in February:

- The BBC has made it much easier for the public to know how to complain—through a new Code of Practice, improved publicity material and through the development of a dedicated complaints website on bbc.co.uk—www.bbc.co.uk/complaints. The Code of Practice sets out the BBC's procedures and promises, and the BBC promises to respond as speedily as possible and certainly within 10 working days.
- In streamlining the procedures, there are now just two routes for complaints in the first instance. Complainants may direct their complaint to BBC Information or, if they prefer, to the relevant BBC division. The aim will be to resolve all complaints at the point of first contact. All complainants are now treated equally.
- There is now a three stage procedure for handling editorial complaints and appeals:
 - handling at point of initial contact;
 - appeal to the Editorial Complaints Unit;
 - appeal to the Governors' Programme Complaints Committee GPCC.
- The BBC will always try to resolve the complaint at Stage One. However, after two exchanges of correspondence a complainant on an editorial matter is offered the option of appealing to the Editorial Complaints Unit for independent investigation of the complaint. Very serious complaints (for example, from parties directly concerned) will be "red flagged" and after two exchanges the divisions themselves will consult the ECU about referral.
- The Programme Complaints Unit, renamed The Editorial Complaints Unit, investigates complaints independently from programme makers and its findings are now binding on divisions.
- Complaints Guidelines have been introduced for all BBC areas, setting out guiding principles (easy access, clear complaints routes, speedy, fair, effective and accountable), service standards and procedures for handling complaints.

There will be a greater willingness to admit mistakes, and learn from them where taken, and to publish corrections.

- On each divisional board there is a nominated complaints co-ordinator responsible for the proper handling and reporting of complaints in their area and for ensuring that any lessons to be learned are fed back into editorial and managerial processes.
- A new Complaints Management Board, chaired by the Deputy Director-General, has been established to oversee complaints handling within the Management and ensure best practice, and to ensure that the lessons are shared at all levels across the BBC.

The GPCC is also currently considering proposals to strengthen its own procedures and will consult the public on these in the coming months. They include, for example, provision for complainants to be more involved in the most serious cases.

I hope that Members will find this supplemental information useful in their deliberations and would, of course, be very happy to supply any further data that might assist the Select Committee.

12 May 2005

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Supplementary letter from the BBC

You asked about the BBC's R&D function and its relationship with commercial companies and sent a copy of the submission to the Select Committee by the Digital TV Group.

I should begin by saying that BBC sees a strong, vibrant and world class technology function as key to our ability to create a digital BBC which is at the heart of, and indeed helps to create, a fully Digital Britain.

We have recently undertaken a review of technology. The Governors have approved the broad framework of the proposal and management is currently undertaking further, more detailed work, around implementation. A key point from the review is that R&D will come into the heart of the BBC and be integrated with our technology strategists in a new Technology Group. The pan-BBC targets for value-for-money headcount savings will not be applied to this group; however some headcount savings have been identified as a result of the reviews.

R&D will build on its world class track record for research focus and funding, increasing the visibility and impact of its innovation work, both within and without the BBC. There will be a move towards doing more true "blue sky" work, while also narrowing our focus to those areas where the market cannot provide, or where we have to take leadership in order to develop the market. There will also be a move towards new, more formal, collaboration and partnerships with industry and academia which will serve to gear-up funding for R&D.

When the BBC develops any technology itself, our normal practice is to license it to commercial companies on a fair and non-discriminatory basis. Usually, although not absolutely always, the basis is non-exclusive so that later entrants can also be licensed provided it is not on more preferable terms than the early licensees.

The only exception is when intellectual property is developed as part of a collaborative project, where the project itself may have alternative arrangements specified in the contractual arrangements and we therefore need to abide by these terms. However in practice many of the funding agencies for collaborative projects (eg the European Commission or Department of Trade and Industry) are seeking to ensure widespread deployment of the technology being developed and therefore require similar contractual terms to those for the commercialisation of BBC developed intellectual property.

6 June 2005

Supplementary letter from the BBC

I have sought to give the most recent data, for the financial year 2004–05, and to reference this to the Annual Report where possible. In answer to the detailed questions on TV by genre (Q4 and Q5) the figures refer to the 2004 calendar year (as this is the period we report on for Ofcom); on Q3 I have given both the calendar and financial year totals, the latter for consistency with Q2.

1. A HEAD COUNT FOR STAFF IN BBC POLICY AND PLANNING, PUBLIC AFFAIRS AND STRATEGY

There is no longer a Division called Policy and Planning; the Division which most closely maps on to those responsibilities is now called BBC Strategy. The division includes the Corporate Legal Department and has a current budgeted headcount of 193. Of that number, there are six posts in Public Affairs and 38 posts in Strategy. It is important to remember that these figures are before implementation of the Value for Money programme, which will reduce the headcount by more than a quarter over the next two years.

2. PROGRAMME BUDGETS AND EXPENDITURE FOR THE LAST YEAR (FOR WHICH FIGURES ARE AVAILABLE) FOR:

- (a) BBC 1,2,3,4.
- (b) Radio 1,2,3,4,5,6,7, Asian Network, 1Xtra and local radio.
- (c) BBCi

(the committee would also like to know if there is any double counting in these figures eg attribution costs of news production and/or sports rights).

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The BBC does not break-down programme budgets by channel. The data for the actual expenditure by channel for the 2004–05 financial year are:

	<i>£m</i>
BBC1	872.9
BBC2	374.5
BBC3	92.9
BBC4	41.1
Radio 1	17.8
Radio 2	23.8
Radio 3	32.0
Radio 4	71.3
Radio 5	53.8
Radio 6	4.5
Radio 7	4.8
Asian Network	5.4
1 Xtra	5.7
Local Radio	142.2 (including the national stations)
BBCi	17.1 (including e-TV)
bbc.co.uk	69.2
Digital Curriculum	8.3

There is no double counting of these figures (the source is note 2b from the annual report published on 12 July).

3. THE NUMBER OF HOURS OF TELEVISION PROGRAMMING IN THE LAST YEAR (FOR WHICH FIGURES ARE AVAILABLE) FOR ACQUIRED PROGRAMMING, INDEPENDENT PRODUCTION AND IN-HOUSE PRODUCTION

	2004–05	2004
Acquired programming	1,208 hours	1,178 hours
Independent production	2,621 hours	2,725 hours
In-house production	26,232 hours	26,001 hours

(First transmission hours of TV programming, source: 04/05 hours are from Annual Report, 2004 hours are from BBC's data submission to Ofcom)

4. The figures from (3) to be broken down for each of the following genres: comedy, drama (sub-divided into single dramas, series and serials), children's programmes, current affairs, documentary and sport; and

5. The annual expenditure for the same genres in the same three categories (acquired, independent, in house) and how overhead and common costs are attributed and included. Please note these numbers are for the calendar year 2004 as this is the period for which the BBC is assessed against the independent quota.

TELEVISION PROGRAMMING 2004

	Grand Total		Qualifying Independents		Non Qualifying Independents		BBC In-house	
	£000,s	hours	£000,s	hours	£000,s	hours	£000,s	hours
Originated Programming								
Eligible Programmes:								
Comedy	56,866	103	32,256	58			24,610	46
Drama Serial	143,453	314	50,073	63			93,379	251
Drama Series	104,272	164	19,170	23			85,103	140
Drama Single	20,380	38	8,887	16			11,494	22
Childrens	81,372	1,147	30,105	286			51,267	861
Current Affairs	44,952	556	6,736	130	274	3	37,942	423
Documentary/Factual	212,646	1,863	77,168	780	2,569	43	132,910	1,040
Sport	85,806	1,540	6,400	407			79,406	1,133
Education	5,434	45	410	2			5,025	43
Entertainment	126,728	825	51,206	323	7,903	44	67,619	458
Music & Arts	54,350	488	14,231	100	478	3	39,641	385
Religion	13,140	123	1,328	12			11,812	111
Regional Programming	82,054	1,454	20,056	431			61,998	1,024
Total Eligible Programmes	1,031,453	8,661	318,026	2,631	11,223	94	702,204	5,936

15 March 2005

	<i>Grand Total</i>		<i>Qualifying Independents</i>		<i>Non Qualifying Independents</i>		<i>BBC In-house</i>	
	<i>£000,s</i>	<i>hours</i>	<i>£000,s</i>	<i>hours</i>	<i>£000,s</i>	<i>hours</i>	<i>£000,s</i>	<i>hours</i>
Non Eligible Programmes:								
OU (Open University)	—	9	—	—	—	—	—	9
News	234,534	20,056	—	—	—	—	234,534	20,056
Total Non Eligible Programmes	234,534	20,065	—	—	—	—	234,534	20,065
Total Originated Programming	1,265,987	28,726	318,026	2,631	11,223	94	936,738	26,001
Non Originated Programming								
Acquired Programming (First transmission)	74,938	1,178						
Repeat Programming	80,236	25,941						

Notes:

Eligible programming represent programmes that are eligible for the Independent Quota.

Data representations calendar year 2004 position as this is the basis on which the BBC is measured for the Independent Quota.

News represents Network News, News24, BBC Parliament and local News.

Acquired programming represents feature films and programming made for other broadcasters. The BBC buys a licence for this programming which is primarily non UK.

Repeat programming represents repeats of BBC commissioned and acquired programming.

Notes regarding costs:

Overheads and common costs are included in all programme costs shown above.

The proportion of overheads to other production costs included varies depending on the genre but generally between 10–15 per cent of the cost of programmes produced in house is classed as an overhead.

This allocation covers divisional management staff costs, accommodation, IT, telephony, training, insurance, recharged costs from the corporate centre and other office costs.

Independent productions carry a similar level of overheads on average, although a detailed breakdown of what the overheads are made up of is not provided by independent producers.

<i>Acquired Programming—First Transmissions</i>	<i>£000's</i>	<i>hours</i>
Film	24,595	310
Comedy	2,458	13
Drama Serial	10,366	82
Drama Series	3,413	70
Drama Single	3,065	10
Childrens	3,607	185
Current Affairs	103	205
Documentary	2,225	64
Sport	20,568	125
Education	207	6
Entertainment	3,382	50
Music & Arts	935	41
Religion	13	1
Regional Programming	329	16
Grand Total	74,938	1,178

6. THE PERCENTAGE OF ONLINE CONTENT PRODUCED IN-HOUSE AND BY INDEPENDENT COMPANIES

New Media is due to begin reporting this data in the current financial year (2005–06) with a target of 25 per cent of eligible online funding being spent with external/independent companies by the financial year 2006–07. “Eligible online funding” is essentially online expenditure with the exception of News activities.

Based on previous data, New Media spend ~£6 million, 14 per cent, of its £44 million of eligible funding with external/independent companies.

7. THE GROUNDS ON WHICH THE BBC CLAIMS PRIMACY AS THE UK'S LEADING REGIONAL TELEVISION BROADCASTER (EG DATA ON SPEND OUTSIDE LONDON, NUMBER OF PROGRAMME HOURS AND RATINGS FOR REGIONAL PROGRAMMES)

The BBC does not claim to be the UK's leading regional TV broadcaster. In our submission to the Committee, we said that the BBC “spends more outside London than any other broadcaster and makes more regional programming than any other broadcaster.”

Because of the way ITV was founded it has traditionally undertaken more regional television broadcasting than the BBC. However in addition to over 6,000 hours a year of originated regional TV programming, the BBC also does over 260,000 hours of Local Radio broadcasting a year, as well as running 58 “Where I Live” sites. This means that the BBC, without question, spends more outside London than any other broadcaster—£855 million in 2004–05.

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Of the total broadcasting TV hours in 2004–05 (57,703 hours) 13,313 hours were produced outside London while of the total broadcasting Radio hours over the same period (344,882 hours) 272,856 hours were produced outside London (the TV figures here do not reconcile with those provided in answer to Q3 as the total broadcasting figure here includes repeats).

As you will know, Ofcom has allowed ITV to reduce its non-news regional programming from the current 3 hrs/week in England to 1.5hrs/week, with a further reduction to 0.5 hrs/week after switchover. The BBC accepts it will need to take the lead in services for the Nations and English regions, as ITV's presence and obligations are reduced.

The BBC has already increased regional output in England in a number of distinctive ways that have responded directly to audience need and resulted in substantial audience take-up, for instance *British Isles: A Natural History*, *Inside Out* and landmark programming (on fox-hunting, devolution debates, anniversary of the Birmingham pub bombings etc.). In regional news, the BBC has recently launched new TV services in London, Tunbridge Wells (splitting the old South East), Hull, Oxford and Cambridge.

Audiences hugely value the BBC's regional news—the 6:30 programme reaches more viewers than any other news programme in the UK and beats the ITV competition in every part of Great Britain.

To deepen this commitment, the BBC has also proposed creating a highly local television news service, to make television news as local as local radio, with around 60 areas across the UK being offered locally produced news and information throughout the day and on demand.

Do please let me know if you would like further information or clarification on any of these areas.

8 July 2005

 TUESDAY 22 MARCH 2005

Present	Armstrong of Ilminster, L	Kalms, L
	Bonham-Carter of Yarnbury, B	King of Bridgwater, L
	Fowler, L (Chairman)	Manchester, Bp
	Gibson of Market Rasen, B	Maxton, L
	Holme of Cheltenham, L	Peston, L
	Howe of Idlicote, B	

Examination of Witnesses

Witnesses: LORD MCINTOSH OF HARINGEY, a Member of the House, Minister for Media and Heritage, and MR JON ZEFF, Head of Broadcasting Policy Division, Department for Culture, Media and Sport, examined.

Q90 Chairman: Minister, welcome. As you know, we have been set up as a Select Committee of the House of Lords to consider the review of the BBC Charter and in particular the Government's Green Paper. Time is not exactly on our side as far as this review is concerned. We cannot know what the outcome of the Election is going to be or what impact, if any, that will have, but our timetable is to have the report ready by the end of October and obviously we will seek and intend to make this as thorough an examination as we possibly can. I should warn you, and perhaps you do not need any warning, that there may be divisions during your evidence but of all people you are used to that. You have with you Mr Zeff. Mr Zeff, could you just introduce yourself very briefly for us?

Mr Zeff: I am the Head of the Broadcasting Policy Division in DCMS where I have been for coming up to two years now. I have been in the Department in various other roles before that since about 1988.

Chairman: Thank you very much. Let's get down to the questioning. Can I start with the title of the Green Paper: a *strong BBC independent of Government*.

Q91 Lord King of Bridgwater: Could I ask a question arising out of what you said at the start because you said we are going to report in October. The paper I have seen says the Government is going to give three months to consultation. Before we start can we be clear that our contribution in October will be in time for it to be taken into account, if it is only three months from now?

Lord McIntosh of Haringey: I can certainly give that assurance.

Q92 Chairman: We had checked that actually.

Lord McIntosh of Haringey: The date for public consultation is 31 May but of course an august body of this kind will have its views taken into account whenever they arise.

Q93 Lord King of Bridgwater: Six months after the public consultation has finished?

Lord McIntosh of Haringey: If necessary.

Q94 Chairman: We like your flattery and it goes a long way with this Committee! Minister, can I begin then by saying the title of the Green Paper was a *strong BBC, independent of government*. Do not governments—any government—talk about the independence of the BBC up to the point that their interests are adversely affected by the reports of the BBC?

Lord McIntosh of Haringey: All governments are in a state of creative conflict with all broadcasting and press organisations. That is a fact of life. The media are the Fourth Estate and the Government is not and therefore they are bound to be in conflict. I have to say that I do not think that conflict between the media and particularly the BBC and Government has been a feature at any stage of our consideration of the BBC's Charter Review.

Q95 Chairman: But as far as the BBC is concerned, you have respect for their impartiality and the fairness of their reports?

Lord McIntosh of Haringey: We started off with the phrase that you used. We started off by saying that the outcome of this review would be a strong BBC, independent of government, and that was our only opening position. As we have progressed with the consultation and with the research that we did and with the work of Lord Burns's Committee, we have the very strong impression that a strong BBC, independent of government is what the people of this country want. That is the response that they are giving to us. We landed up not only confirmed in that but confirmed in the view that it was possible to maintain that in the future governance and funding of the BBC.

Q96 Chairman: To some extent it rather depends on the Government itself, does it not, and what its relations are and what pressure any government tries to place upon the BBC? Just looking back on the Hutton Report, I notice there that what Greg Dyke said in his evidence was that he believed that the

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letters and the pressure from Alastair Campbell was “a general attack on the BBC and its coverage of the Iraq war”. That does not sound like respect for the independence of the BBC.

Lord McIntosh of Haringey: I think there are three things I would want to say about that, Chairman. The first thing is that what encouraged me about the whole of the Charter Review process is that we have been looking forward and not backward and there has not been any reference to that sort of dispute or disagreement. The second thing is that we said right at the outset, indeed even before Lord Hutton reported, that the recommendations he made would be taken into account in the way in which we considered the BBC’s Charter and agreement, and that is exactly what has happened. I forgot what the third thing is but those will do.

Q97 Chairman: Fine. Would it be unfair to characterise that as meaning that in the Hutton Report and Inquiry and what happened there, where there were undoubtedly lessons for the BBC, there were any lessons for the Government?

Lord McIntosh of Haringey: There were lessons for the BBC which the BBC took very seriously because they instigated their own inquiry under Ron Neill into BBC broadcast journalism, and that was their privilege, and it seems to me that they made a very thorough job of it. Lessons for the Government, insofar as there are lessons in Lord Hutton’s recommendations, are taken account of in the preparation of the Green Paper.

Q98 Chairman: It was not so much the preparation of the Green Paper I was considering. It was the day-by-day relationship between government and the BBC. Is there not a danger—and did Hutton not touch on this—that when there is a general pressure, if you like, upon the BBC, there is a tendency to cry wolf and when a particular issue which may be justified comes up it leads to a defence from the BBC because they are being attacked on so many other fronts already?

Lord McIntosh of Haringey: Well, it is not for me to say what the BBC feel. I think both Michael Grade and Mark Thompson said it to you when they gave evidence to you last week. Both of them said, as I understand it, that there was no undue pressure on them. That is the current situation. I am not prepared to spend time particularly speculating on past situations. If that is the current situation, that is good enough for me.

Q99 Chairman: It is the current situation as far as the Government is concerned?

Lord McIntosh of Haringey: Yes, we would agree with that. We would agree with what they say.

Chairman: Right, no undue pressure. Okay. Lord Maxton?

Q100 Lord Maxton: Lord McIntosh, there is often considerable anger among all politicians about whether the BBC is biased or not. Let me give you one example straight away from Sunday evening I did not see the *Panorama* programme on the Iraq war but there has been very, very considerable anger expressed to me by some of my colleagues in the other House about its totally biased nature. That is a matter of opinion, but what research does your Department finance, independent of the BBC and, to be fair, independent of Government, to look at the whole question of balance on the BBC. There are university media departments who could undertake this sort of research. Is it done? If it is not done, why not? And if it is done, is it published?

Lord McIntosh of Haringey: As far as the Charter Review process is concerned, we carried out very considerable research. We carried out qualitative and quantitative research and in that research one of the issues that was raised with people was the issue of impartiality and there was a very, very strong endorsement of the BBC for impartiality from ordinary people in this country. I do not deny what you say about politicians getting angry at the BBC. I remember Harold Wilson getting angry with the BBC. I am sure it is endemic with governments of all parties. The research that we did about impartiality certainly showed that there is a great deal of respect for the impartiality, accuracy and objectivity of the BBC. That is not same as your question.

Q101 Lord Maxton:—No, it is not.

Lord McIntosh of Haringey:—which is about analysis of programmes of the kind the Glasgow Media Group used to do. I do not consider it is the responsibility of government to do that. I consider it is the responsibility of broadcasters to do that. They have been doing it and they are doing it and it is very welcome.

Q102 Lord Maxton: The BBC did not say they were doing it.

Lord McIntosh of Haringey: I do not know what the BBC were saying.

Q103 Baroness Howe of Idlicote: Lord McIntosh, I just wondered how you felt with the trust doing this role whether the impartiality and accuracy would be more effective, less effective, about the same. I am asking this really because I gather there is some query going on as far as the Commons code is concerned about who should be responsible for impartiality and accuracy.

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Lord McIntosh of Haringey: I am not aware of any query. It is our proposal that the BBC trust, which is not within the BBC but is specifically the BBC, shall have responsibility for handling issues of accuracy and impartiality, and I take that as being part of the role of oversight which they have more generally.

Q104 Chairman: Would it be more effective if it was a body separate from the BBC?

Lord McIntosh of Haringey: It is a body on the fringe of the BBC is the only way to describe it. It is not within the BBC and it does not have other responsibilities than the BBC. There were two alternatives which we have described in the Green Paper. One of them was the Building Public Value alternative of the BBC itself, which Michael Grade described to you last week. I think he himself acknowledges that that took the existing BBC Board of Governors and applied behavioral change to it rather than structural change to it, and I think he is coming round to the view that structural change as well as behavioral change is necessary. And then the other was the view of Lord Burns and his panel to which we paid—as to Michael Grade’s views—a great deal of respect, but we took the view (and his proposal was to have a body which had other responsibilities than the BBC, to have responsibility for the licence fee more generally, and possible other uses of the licence fee) that the right conclusion, which took the best of both of these, was to have a body specific to the BBC but independent of it.

Q105 Chairman: Just to be clear; that is your definition of the trust?

Lord McIntosh of Haringey: Well, oddly enough, it is not a trust in the legal sense. “Trust” is a working title and it is the best that we could come up with. If you come up with a better name we will look at it very seriously.

Q106 Chairman: I think we have got to understand it first. I was intrigued, I think you called it a “fringe body” at one stage.

Lord McIntosh of Haringey: I called it on the fringe of being within the BBC, yes.

Q107 Lord Armstrong of Ilminster: Can it be on the fringe if it sets all the strategic objectives, measures performance, approves service licences and regulates programme standards? That is not on the fringe of the BBC; it is part of the BBC, frankly.

Lord McIntosh of Haringey: No, the extent to which it comes to be on the fringe of the BBC is the extent to which it is the BBC trust and is specific to the BBC. What you say about its responsibilities, Lord Armstrong, is of course entirely correct and those are the responsibilities of oversight, which we do not believe can be properly carried out by a body such as

the BBC governors within the BBC structure as it is now.

Q108 Baroness Bonham-Carter of Yarnbury: With hindsight I think it was maybe a little curious, although it was at our invitation, that Michael Grade and Mark Thompson came and gave evidence together considering that they are trying to show detachment. Who is Michael Grade as Chairman of this trust accountable to; the licence fee payer or Mark Thompson?

Lord McIntosh of Haringey: Yes, that is exactly the key, that Michael Grade as the Chairman of the BBC trust will be responsible to the licence fee payer and it is on behalf of the licence fee payer that he and his trust will be responsible for the oversight of the BBC, Whereas Mark Thompson, as the Executive Board, will be responsible for delivery.

Q109 Lord Holme of Cheltenham: I was very glad to hear you say that there would be no undue pressure but of course that implies there is an area left which we might call “due pressure”. If I might just explore that a little bit. It seems to me that there are two natural points of tension between the BBC and Government. The first seems inevitable which is the licence fee itself and the arrangements for that from time to time, but the other of course is the fact that your own Secretary of State has to approve certain new channels and offerings from the BBC and, as it were, give them permission to go ahead. I am curious whether a situation in which the Government has some specific oversight about what the BBC does and can do, does not necessarily create a relationship between the Government and the BBC which is not detached but one of tension. How do you see those sorts of decisions that the Secretary of State for Culture, Media and Sport has been making in the immediate past working in the new governance situation of the BBC? Will that still be the Secretary of State making those decisions?

Lord McIntosh of Haringey: The first point I would like to make is about the phrase “undue pressure” and your extension to “due pressure”. It was not my phrase. “Undue pressure” was what Michael Grade and Mark Thompson said to you and when your Chairman said did we agree with the fact that there had been no undue pressure, I agreed with it. That did not mean that I invented the phrase or that I take responsibility for it.

Q110 Lord Holme of Cheltenham: You are implying that you and the BBC might have agreed there were due pressures?

Lord McIntosh of Haringey: I do not know what due pressure is. I have never heard of due pressure. What Michael Grade and Mark Thompson said to you was that people rang them up and complained about

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things. Why not? All of us are free to do that. They have open lines for members of the public to ring them up and complain about things. If that is due pressure, that is fine by me.

Q111 Lord Holme of Cheltenham: Hence the second part of my question is trying to explore why a telephone call from the Government might be taken more seriously than a telephone call from myself.

Lord McIntosh of Haringey: They did not seem to be worried by it. It is not a thing that swims across my ken at all. Your more important question is about the backstop role of the Secretary of State and clearly the next phase of consultation between the Green Paper and the White Paper will be fleshing that out, I am not saying that we have final answers about that at the moment, but as we set out the responsibilities of the BBC trust in the White Paper, following further consultation and following your report we will spell out whether there are any areas, and if so what areas, which would still be reserved to the Secretary of State. My view is that the areas reserved to the Secretary of State such as the responsibility she has for service licences at the moment, as she had on BBC Three, would become very significantly less when we have a BBC trust which is independent of the BBC because it will be the trust that will have the responsibility for assessing any new service proposals which come before them from the Executive Board. The Government will have final approval but only on the basis of whether the trust has followed proper processes in considering those applications for licences.

Chairman: Lord Kalms, do you want to come in now on this whole question of governance?

Q112 Lord Kalms: I think we would all agree that the structure you have for managing the BBC is the heart of the whole of the Green Paper.

Lord McIntosh of Haringey: Indeed.

Q113 Lord Kalms: And you have uniquely come up with a new formulation against the traditional unitary board and you have called it a trust for want of a better name. There are two other names you could call it. You could call it, and it is one that comes to mind quite easily, a supervisory board or you could call it, if you like, a regulatory board. Having given up the normal unitary board, why are we in this vacant area of not being absolutely clear what we have? Supervisory boards in this country are not popular. They have a limited use in Germany and maybe in Holland, but they have been tested and not found satisfactory. Even within your own paper there is no clear link between the two. There is quite clearly a gap and you yourself say that the trust has not been clearly defined. Could we have a bit more meat on the relationship between the board, which surprisingly

includes non-executive directors, which is something else I want to pose to you because normally management boards do not have non-executive directors, that is usually an exclusive area for unitary boards so perhaps you could put some more meat on the relationship between board and the trust—and I will call it a trust until we can think of a better name.

Lord McIntosh of Haringey: Thank you. There are two points I want to make. One is about this supervisory board on the German model and the relationship between what we are proposing and the German model. I think they are very different in very significant ways. The German principle of co-determination means that the supervisory board contains all of the stakeholders in the company. That is the workers' representatives, the management, the bankers, the shareholders, and so on. Our trust will not be attempting to represent all stakeholders. It will be about protecting the interests of the licence fee holder alone, so it is a very different body in that sense. It will be different in the way it works. For example, the audit committee is a creature of the supervisory board in Germany but it will not be here; it will be part of the Executive Board. The non-executive function, as you rightly say, in Germany is in the supervisory board and there are no non-executives in the management board. We think that the analogy with the private sector is that the body which is responsible for delivery could benefit from having a minority of non-executive directors, so it is very considerably different from the supervisory board model. Then coming on to your second point about, as you say, putting more flesh on the trust, we have got a whole list of functions of the trust set out in the Green Paper. They are there for consultation. We have not made a hard and fast decision in advance of that consultation process. As I indicated in response to an earlier question, what remains for the Secretary of State is something which will arise out of that consultation process and I do not think that it would be appropriate for me to foreclose on the options which we have set out in the Green Paper and which will be discussed over the coming months.

Q114 Lord Kalms: You have gone against the advice very distinctly of Tony Burns, who was very much in favour of the unitary board, and others who are in the field of governance, so you are taking a substantial risk here in going into a new model which has not yet been tested. You make an interesting point that the German supervisory board is a co-determination board but in reality the trust is also because it represents the interests of the stakeholders, so it has the same common theme and it does represent, albeit not a wide choice of names, one major body, the stakeholder, which is the public, so it does fulfill the same role as a supervisory board. What we have done is created a totally new, untested model for this major

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public service and I am not comfortable that having turned down the advice of those who are closest to it—and I have tested this right across the board—that you really have found the right model.

Lord McIntosh of Haringey: I would contest the argument that we have turned down a lot of what Lord Burns recommended. I think we have adopted a great deal of what he recommended.

Q115 Lord Kalms: On this point?

Lord McIntosh of Haringey: Where we have not agreed with him is on his suggestion that what he calls the Public Service Broadcasting Board should also be responsible for matters other than the BBC, but in many other respects I think we reflect the wisdom of Lord Burns and his panel. Then, conversely, we have accepted that Michael Grade in his Building Public Value has moved towards a distinction between the two roles—the role of oversight and the role of delivery—in the governance of the BBC, and we have welcomed that and we have extended it. So it may be something which has not been done in quite that form before but it does, in my view, adopt and use the best elements of the two contrasting models that we were presented with.

Q116 Lord Peston: I take it that we are essentially in the whole governance area now. Lord Armstrong read out to you what the Green Paper says about what the trust would do, which seemed an enormous amount of work to me—I may be very naive—but it leads to one or two fairly obvious questions. Are they going to be part-time amateurs that were the Governors in the past with no obvious qualifications for any job at all, as far as I could see? Or will we move into a model where these people will have to demonstrate skills of a supervisory or regulatory nature, which leads also to the question of who pays them and how they should be paid. Beyond all of that, there is the question of how they get appointed. In the Green Paper there is a statement that says essentially this will be prime ministerial patronage as in the past and that somebody like the Prime Minister will recommend to her Majesty et cetera, et cetera. Apart from the fact that it now looks as if there is going to be no change, I was horrified that in contemplating a major change in the future we would stick to that model. It may well be just my ignorance. I put it to you as a question: are we really going to reconsider (a) who gets on the board (b) how they get appointed (c) are they full time or part time and d) how much do they get paid, given the jobs that Lord Armstrong read out that they are supposed to do? It may well be that you have just not thought this through yet. There is certainly nothing in the Green Paper that tells us.

Lord McIntosh of Haringey: I would be horrified and surprised if the Green Paper says anywhere that this is prime ministerial patronage.

Q117 Lord Peston: It does. There is no other way of reading that sentence.

Lord McIntosh of Haringey: You are using the word “patronage” but what you are not saying is that we have a Commissioner for Public Appointments and we have rules. We have the Nolan procedures for public appointments. This was not the case when it used to be that the Chairman of the BBC came from one party and the Vice Chairman of the BBC came from the opposition party. That is not the proposition and it has not been the case ever since we adopted the Nolan procedures, and that will continue and yes the appointment will be formally (because it is a Royal Charter) by the Queen on the recommendation of the Prime Minister but it will be an open advertisement, an open applications procedure, independent of the people making the appointment, and it will not be the prime ministerial patronage which we have had in the past.

Q118 Chairman: And who makes the decision?

Lord McIntosh of Haringey: The recommendation of the people who carry out the interviews will have a very strong influence on the decision that the Prime Minister makes, as always in these things.

Lord Peston: I am sorry, that does not answer the question. First of all, if we look at what you say has happened, it does not look any different to me from what used to happen. We were all, as you know, tremendously strong supporters of the Nolan Rules but it is hard to believe—

Lord Armstrong of Ilminster:—Not all.

Q119 Lord Peston: Sorry, I meant Andrew and me, but it looks as if they are followed more by default than by positively going for them because it does not seem to me—and it is not my business really—that the sort of people we are getting are any different. It is news to me that we no longer go for political balance. *Lord McIntosh of Haringey:* I think there are two different elements in that. One is whether we follow the procedures properly, and I will not comment on whether they are followed properly outside the BBC. I have only seen them as far as this inquiry is concerned. Then the second thing is whether we get the right people. I am not going to contest what you say about that.

Chairman: We will briefly adjourn for 10 minutes.

The Committee suspended from 4.03 pm to 4.15 pm for a division in the House.

Chairman: I think we will take the opportunity of you being here and we will continue. If we have time, which I slightly doubt, we might come back to governance and regulation, but I would quite like to

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move on, if I might, to measuring public value. Lord Holme?

Lord Holme of Cheltenham: May I on the previous point have a supplementary as I go in?

Chairman: If you insist!

Q120 Lord Holme of Cheltenham: “Insist” would be too strong but I would be grateful if you would allow me to have the opportunity. Listening to what the Minister said about the trustees and the methods of selection, which I quite accept, if you were to describe the sort of balance of composition of a desirable group of trustees in this new set-up (because presumably there will have to be some sort of brief of the selectors, however “Nolanised” they are, of what we are trying to achieve and what sort of group of trustees would we like) what would the brief be? What would be the sort of body, following Lord Peston, which you would like to see in this role?

Lord McIntosh of Haringey: I think I would rather listen than prognosticate on that. I would rather hear what other people’s views are. The White bit of this proposal is the division of responsibilities, the Green bit is how it works in practice, and I can imagine a whole range of different models, and the Green Paper itself sets out what we expect to be the case between them. Trust members need to be able to reflect the interests of a wide range of different UK communities, with the knowledge and expertise to understand and articulate the interests of individual developed nations, and they have to have a range of expertise in broadcasting and media industries, financial, legal and corporate, organising public opinion and research and consultation in civil society. That is an awful lot for a limited body of people. I think that is as much flesh as I want to put on it. The question we are asking is how many members that needs, whether you agree with what we are proposing on skills and expertise, and whether there is anybody you think we have left out.

Q121 Lord Holme of Cheltenham: So if that were something on which this Committee were to develop views you would be content?

Lord McIntosh of Haringey: Absolutely.

Q122 Lord Holme of Cheltenham: Perhaps I can now ask the question which the Chairman intended me to ask on the issue of measuring public value. We all have this difficulty, which I am quite aware the Government shares, of trying to define what public service broadcasting is. It is extremely important that we manage to do that because the BBC in the present broadcasting ecology is the gold standard of public service broadcasting. There are traces of it in other broadcasting organisations but the gold standard is the BBC. I am struck by the fact that although the Green Paper is quite eloquent about the core public

purposes of the BBC, equally the BBC is very eloquent about something they call “public value”, and they enumerate that, and although there is some significant overlap between what the Green Paper outlines as the core public purposes and the BBC’s new definition of public values, they are nevertheless different and drafted differently, and therefore we are still left with this Philosopher’s Stone, which we cannot quite get hold of, of what public service broadcasting is. That is important because if we move into this more accountable framework, which everybody has agreed is desirable, the question will arise and should arise how do we measure performance against what is expected of the BBC. It does seem perhaps that it would be a good first step that the definitions that the BBC are giving and that the Government are giving of what these desirable public purposes are should get a line.

Lord McIntosh of Haringey: I think we have the advantage of what Shaw said: “Shakespeare was a greater dramatist than I but I stand on Shakespeare’s shoulders”. We have developed our public purposes taking into account the BBC’s description of “public value” and it is our expression of the public purposes that we think we have to defend and explain and enlarge on. I will not go into what the BBC says but I will say something about the way in which we propose to use the core public purposes as we set them out in the Green Paper. We think that the five public purposes which we have set out and which are well-known are capable of being measured by a wide range of indicators. Some of them of course will be qualitative, and Lord Maxton referred in a different context to the work of media analysts, and that certainly is valuable. Some of them will be audience measurements. Some of them will be the equivalent of the appreciation indices. Some of them will be much less quantitative and will be based on the views of opinion formers and non-opinion formers. The point about the five public purposes is that they do seem to us, and I hope they will seem to you, to be setting out a good deal of clarity of purpose, and I think that is more than there has been in the past.

Q123 Lord Holme of Cheltenham: I certainly think both in the case of the BBC’s public values and indeed the Government’s own statement of core public purposes these do represent a significant step forward, but when it comes to the new landscape in which we are all looking to the BBC to be more independent, accountable and responsible, it does seem that there is probably still some work to be done in translating broad thrusts into specific goals and objectives against which performance can be measured in a way that we can all be satisfied that the licence fee is being used properly. I am still curious how you see us getting from here, agreeing as I am that we are in the right ball-park now, and how we

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now turn those into objectives and goals and measurable benchmarks against which the licence payer and parliamentarians like ourselves can either say they are doing it or not; the BBC is either living up to its purposes or it is not.

Lord McIntosh of Haringey: There is one model of how to do it which comes from the Communications Act of course because in the Communications Act, the formula is that public service broadcasters (in this case largely commercial public service broadcasters) produce programme policy statements. Ofcom looks at the programme policy statements and they assess whether they are adequate to meet the objectives of public service broadcasting as set out in the Act. The broadcasters go along and they produce their programmes and after a suitable interval they come back and say, "Here is what we did in response to our policy proposals and our policy statement," and Ofcom says, "You did do it or you did not do it and if you did not do it we will fine you." That is one way of doing it. I am not suggesting that is the only way because I am not foreclosing on this discussion, I am suggesting that there are ways of doing this and I am looking forward to the coming months to help us to clarify the ways in which we might do it. I do not think there is any doubt that there are ways, alternatives to that no doubt, which could be thought of, for closing the gap that you describe.

Q124 Lord Holme of Cheltenham: Just one final specific point, my Lord Chairman. Your final objective in public purposes is bringing the world to the UK. Listening to Michael Grade and Mark Thompson last week, and I must say agreeing with them, it seemed that what they thought they were doing was taking the UK to the world, and I am unclear what you see the main flow as being in terms of the international ambitions and activities of the BBC?

Lord McIntosh of Haringey: The core purpose is very clearly in both directions. In other words, taking the UK to the world is the responsibility of the BBC World Service and of BBC World and of BBC Online, which is available internationally, and bringing the world to the UK is ensuring that the programmes for domestic consumption contain adequate coverage of international issues, of other cultures, of all the things that make us part of the world communities.

Lord Holme of Cheltenham: Two-way traffic.

Chairman: We will perhaps come on to some of those issues a little later.

Q125 Lord Maxton: Can you differentiate for me between what I term "public service broadcasting" and "public broadcasting" because the BBC is public broadcasting in the sense it is funded by the public and is expected to provide more than just what is here

to the public. After all, if I am a licence fee payer I am entitled, to be honest with you, to be entertained as well as to be educated, to be part of the civil society, to see creative programmes, etcetera, am I not?

Lord McIntosh of Haringey: Those are the core purposes and education and learning.

Q126 Lord Maxton: What about entertainment? Straight, honest, people being entertained?

Lord McIntosh of Haringey: We set it out. In fact there is a word at the end of that list, John.

Mr Zeff: Engagement.

Lord McIntosh of Haringey: Yes, "engaging", and I take that to be referring to entertainment. Nobody said it better than Reith at the beginning: "Inform, educate and entertain". What we are doing is expanding on that.

Q127 Lord Maxton: But there is a grave danger that what the Secretary of State said in terms of chasing the ratings can be seen as running contrary to the concept of entertainment, that you are not giving people what they want to see on their television, you are giving what an elite sees as ought to be the proper entertainment for them.

Lord McIntosh of Haringey: I think she was very specific in what she said about chasing the ratings. She was talking about repeat programmes, she was talking about copy-cat programmes. I do not think she was in any way going back on the obligation to entertain.

Chairman: Let's move to the licence fee. Lady Howe?

Q128 Baroness Howe of Idlicote: On the licence fee and the essential independence of the BBC, which I think the Green Paper is arguing is necessary for that (and indeed as I think you yourself said earlier) the public out there quite clearly are particularly keen on this independence in their support for the licence fee. I wondered what other measures you had thought about, looking a little further on when there is a further view. What other systems would you consider viable as either supplementing or replacing the licence fee looking into the future?

Lord McIntosh of Haringey: The Charter Review process looked at any alternatives that people were willing to come forward with. I really think there are only three: one of them is advertising; one of them is subscription; one of them is direct funding from taxation in the form of grant-in-aid. That together with the licence fee are the four alternatives which were proposed to us and which we considered. The conclusion of our work, of the work of Lord Burns's Committee, and of the consultation process we went through was that even in combination, let alone as stand-alone alternatives there was nothing which stood up to the licence fee in terms of giving the security of a strong BBC, independent of government

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and that is why we came to that conclusion. We do recognise—and maybe I am going ahead of your question now—that the support for the licence fee is in very considerable part based on the fact that a very high proportion of people watch the BBC and listen to BBC Radio and if in future that comes under threat from the growth of multi-channel television and radio, then the issue will have to be looked at again.

Q129 Baroness Howe of Idlicote: It is interesting perhaps that the German system, which has already been mentioned, does in fact include some advertising at some level. I wondered whether in fact you have considered this?

Lord McIntosh of Haringey: That is why I said a combination of them and we did look at the possibility of combinations of them. I do not think we particularly looked at the German model but, as you say, they do have a mixture of 85 per cent licence fee and 15 per cent advertising and they do determine it by an independent commission. I do not know how often they determine it so I do not know how far it approximates to grant-in-aid and is different from a licence fee, which is set for a considerable period of time.

Q130 Baroness Howe of Idlicote: One other point, looking at alternative models, all of them that I have looked at seemed to have one common core and that was that public service broadcasting was in fact supported by some state money? You would want that to be the case?

Lord McIntosh of Haringey: Yes but it has to be done in a way that does not compromise the BBC's editorial independence. I think that was the key issue of our response to the Commons Select Committee report.

Q131 Chairman: When will you look at it again? You said an interesting thing to Lady Howe that you are not looking at it now. When do you envisage that you will look at it again?

Lord McIntosh of Haringey: We are proposing that the licence fee should continue unchanged for the 10 years of the Charter Review period, in other words up to 31 December 2016, and we are proposing in the meantime that there should be two reviews, one of which should look at alternative forms of funding, and any conclusions that that review comes to would only take place on or after 1 January 2017, so although we have to be prepared for it and we have to look at the changes brought about by changes in technology (and not just multi-channel households but the prospect of television becoming available other than through broadcasting, becoming available through broader band, for example) we do not know

how far the market will push that by the end of this licence fee period, but we have to be prepared for it.

Q132 Chairman: Are you committed still to RPI plus 1.5 per cent?

Lord McIntosh of Haringey: No, neither one way nor the other. The Government will be carrying out over the coming months, to conclude before the end of this year, a review of the actual funding needs of the BBC and therefore coming to a conclusion about the licence fee from 1 January 2007.

Q133 Chairman: So why have you gone back from RPI plus 1.5?

Lord McIntosh of Haringey: We have not gone back from it. We have just not decided. It runs until 31 December 2006 and we will consider whether a change in the formula is required thereafter. A minor correction; it runs out in April 2007, not on 31 December 2006.

Q134 Lord King of Bridgwater: Has any study been done of the effectiveness of government oversight of the licence fee? In other words, if the Government had no right to oversee the licence fee and it was entirely a matter for the BBC to fix their own licence fee, has any study been done of how BBC proposals and Government decisions have either diverged or coincided? Has it merely been a bureaucratic exercise in validating what the BBC ask for? Has any work been done? The BBC is very keen to hang on to the licence fee as a measure of independence, that is quite clear.

Lord McIntosh of Haringey: Indeed they are.

Q135 Lord King of Bridgwater: Therefore they have a key interest in ensuring that they do not attract opprobrium by seeing the licence fee rise above what might be considered in the public eye good value for money. The role of the Government in this is a way of interfering with the independence of the BBC because they are dependent on getting government agreement to the application that they make. I am just interested at the end of the day was there much difference between what they asked for and what they got?

Lord McIntosh of Haringey: I think the fundamental principle is that it must be government that sets the licence fee, that people are not allowed to decide their own funding.

Q136 Lord King of Bridgwater: Why not?

Lord McIntosh of Haringey: Because otherwise there would be no control—

Q137 Lord King of Bridgwater: As you have set out in your paper, it is not part of the annual reviews, it is not part of budget setting, so the Chancellor in that sense does not have that concern about it. The BBC

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are the people most affected if people think they are not getting value for money. They have a keen self-interest in not putting the licence fee at a level that would attract public hostility.

Lord McIntosh of Haringey: Indeed, and the role of the executive board will be to show to the trust that value for money is indeed being achieved. I do not know of any organisation—except possibly the House of Lords and the House of Commons—which can set its own budgets without anybody being able to interfere. So it has been a principle over the last 70 years or even 77 years that the level of the licence fee has been set by government.

Q138 Lord King of Bridgwater: Do you happen to know of any work that has been done on this?

Lord McIntosh of Haringey: No, I was very interested in what you said. Somebody will get a very good PhD if they could actually inquire into the negotiation process, and that might be helped by the Freedom of Information Act. We have not done it.

Q139 Lord King of Bridgwater: A further point on that is you said that it is the duty of the executive board to persuade the trust on value for money. Then the trust has to persuade the Government under your proposal?

Lord McIntosh of Haringey: No, the Government will set a licence fee for however many years it thinks it is appropriate to do so. Then the responsibility of the trust to the licence fee payers will be to show that value for money has been achieved.

Q140 Lord King of Bridgwater: In the question of a negotiation of a change in the licence fee, this will be done by the executive board to the trust and by the trust to the Government. Is that right?

Lord McIntosh of Haringey: I do not think I said that, no. I was talking about the assessment of value for money—the role of the executive board and the trust in assessing value for money. Setting the licence fee is the responsibility of government and the BBC will no doubt make its representations to the Government about what they want.

Q141 Lord King of Bridgwater: My point is, in respect of those negotiations, who is the BBC? Is it the trust or—

Lord McIntosh of Haringey: At the moment it is the BBC governors.

Q142 Lord King of Bridgwater: Not at the moment—in your proposals. Who will negotiate? You said the BBC, but we have now got a two-tier system you are proposing. You have said that the board have to convince the trust of value for money. That is all tied in with the discussion about the level

of the licence fee. I am just interested in what the structure will be.

Lord McIntosh of Haringey: It is not a thing which is dealt with explicitly in the Green Paper, but what I think is likely to happen—and this is subject to consultation—is that it would be the executive board which produced a budget and which set out what are seen to be the needs of the BBC for funding in X years to come. The trust would have to accept or reject that, and then would have to negotiate with government for a level of licence fee funding. However, I do not know that we have made up our minds finally on that point, have we Jon?

Mr Zeff: No. It is not formally a negotiation as such; the Government makes an assessment based on—

Q143 Lord King of Bridgwater: Well, you have fooled somebody at the BBC—

Lord McIntosh of Haringey: I cannot imagine us sitting down and giving a figure without having an idea of what the BBC itself thinks it needs.

Q144 Lord King of Bridgwater: I am sorry, that is not right at all, is it? There have been some really tough negotiations over what the level of the licence fee should be. I have never worked for the BBC but my understanding is that that is certainly the case. Not with the DCMS, maybe with the Treasury.

Mr Zeff: As the Minister said, the Government makes an assessment and, of course, the BBC makes its views known, but there is not a formal negotiation process.

Q145 Lord Peston: Just to make sure I understand what you are saying; essentially, in broad terms, the BBC's income from all this sort of thing is the licence fee times the number of households—

Lord McIntosh of Haringey: Plus its earnings from sales and—

Q146 Lord Peston: Plus some other things, but its main income is the licence fee times the number of households.

Lord McIntosh of Haringey: And the Foreign Office grant-in-aid for the World Service.

Q147 Lord Peston: They are still fairly small relative to the main income, which is the licence fee times the number of households.

Lord McIntosh of Haringey: Yes.

Q148 Lord Peston: As we know, that is independent of whether any of those television sets are used to watch the BBC—which is a classic objection to the whole thing. It would still be the case, since that is how the number is arrived at, that the income relative to what the BBC does would either look incredibly generous if few people were watching the BBC or

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incredibly ungenerous if vast numbers were watching. So the question of who watches the BBC has to be part of this (to use Lord King's word) negotiation. It is not clear to me how—and it is irrelevant—it happened in the past, but are you giving some thought to how it may happen in the future, bearing in mind all we have been told about the new technology? In other words, we may end up—I hope we do not—with everybody somehow watching the equivalent of television or listening to the radio via their computers, for which you do not pay a licence fee, and yet the BBC still having this large income. Can you guide us as to how we ought to think this through?

Lord McIntosh of Haringey: What Jon Zeff and I were saying was that there is no formal negotiating process but, of course, there is an informal negotiating process. As Lord King rightly says, sometimes it can get a bit rough, and one of the considerations, inevitably, is going to be what the advertising people call cost-per-view—how many people are watching.

Q149 Lord King of Bridgwater: And whether there is an election coming up.

Lord McIntosh of Haringey: You cannot ignore that.

Q150 Lord Maxton: We never think about elections in this House. You have given the BBC a major role in achieving digital switchover from analogue to digital television, which I think it is suggested should be, in any age, 98 per cent of people?

Lord McIntosh of Haringey: The undertaking which Chris Smith gave in 1999 was that switchover would only take place when the criteria of accessibility and affordability were achieved. Accessibility was taken as being the equivalent number of people being able to get digital as now can get analogue, which is 98.5 per cent.

Q151 Lord Maxton: You have given the BBC a fairly major role to play in this. How exactly are they going to be doing this? I am an elderly widow, maybe even still with a black and white television. How is the BBC going to persuade me to switch over to some form of digital, either Freeview or Sky or cable, when it is going to cost me £30, £40 or £50?

Lord McIntosh of Haringey: First of all, the formal way in which the BBC will be involved in switchover is that the BBC will be a critical stakeholder in the organisation which we are calling Switchco, which will be formally incorporated, I hope, on April 4 (unless anything technical or legal goes wrong). That will include the BBC, it will include other commercial broadcasters and it will have representatives of the supply chain—in other words, manufacturers, retailers and others—and it will be responsible for seeing that the process of contracting between broadcasters, multiplex operators and transmission

operators is carried out so that the actual physical work of converting the mast proceeds according to a predetermined schedule. We have said that the BBC will also have responsibility for its own share—which is a very significant share—of the work of communicating (I think this is coming back to your question) the details and the principles behind digital switchover to people who will be affected by it, and we are considering, although we have not yet reached a conclusion, the extent to which there will have to be assistance for people most in need. That will almost certainly be older people who will have difficulty not so much with the money but with the actual details of installation, and possibly disabled people and people on key benefits.

Q152 Lord Maxton: Do I take that to mean that at some point the Government, through the BBC or by whatever source, will pay to ensure everybody has it? Is that what you are saying?

Lord McIntosh of Haringey: It will pay according to a programme of assistance which is intended to achieve that purpose, yes.

Q153 Lord Maxton: You did say that broadband is somewhere out there in the future, in terms of television. Broadband is here, it is now, it is already happening; Home Choice in London, offer television broadband down the telephone line to anybody who wants it. That is broadband television by any other name. Other countries—South Korea, I believe—supply television almost exclusively by broadband means, not by satellite or by cable but by broadband. Whereas in this country the highest broadband is about 4 megabits, in Japan they are talking about 50 megabits on DSL systems. Once you get to that, which will be very rapid over the next few years, does not all this argument about digital switchover become irrelevant? We are going to have entertainment systems within our houses based on broadband technology and wireless hub which will allow us to use all sorts of devices around the house in order to get whatever form of entertainment we happen to be looking for at that particular point in time.

Lord McIntosh of Haringey: We are getting a bit away from the BBC, at the moment.

Q154 Lord Maxton: But the BBC is going to have to be fitted into that within the ten-year period.

Lord McIntosh of Haringey: I am not saying I am not going to answer. The answer to that is that because of the demonstrated cost-benefit analysis of digital switchover we are proceeding with digital switchover led by the Government, although implemented by the broadcasters, the retailers and the aerial installers, and so on. What you are describing, which for brevity we call broader band, not the half megabit or one

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megabit that you get at the moment, but 4, 6 or 8 megabit, which is capable of transmitting television, we anticipate as being market-led and we anticipate that as coming over a considerable period of time, although perhaps starting relatively soon. That does not meet the commitment that we made when we announced the conditions for digital switchover in 1999, where we talked about affordability and accessibility. Just because some people can have television made accessible in other ways and on other platforms does not mean that we should abandon our commitment to going ahead to digital for everybody.

Q155 Baroness Bonham-Carter of Yarnbury: Whilst I do not think I believe Lord Maxton is a widower with a black and white television, the Government, as you have been saying, has been encouraging the BBC to be very involved in switchover, but it has never been clear itself about when this is going to occur. Is it not necessary for the BBC, if it is going to plan and co-operate in the way you are suggesting—indeed, presumably, its contribution to the costs of switchover will be part of the licence fee negotiations—for the Government to actually tell us when this is going to happen?

Lord McIntosh of Haringey: We are very close to that. We have published the final report of the digital television project, which sets out all of these things. Ofcom published, for consultation at the beginning of February for responses by the end of March, a programme for the technical aspects of Spectrum management, which includes an indication of which major transmitter regions would be switched over in which year. That gives everybody warning of where it will be, in Birmingham or Carlisle or Plymouth, or wherever it may be. The Government will have to make an announcement and it will have to make an announcement within the next six months or so, tying up all of these aspects, making firm decisions on Spectrum, on help for the elderly and those most in need, on the actual mechanics of the switchover, and the detailed timetable—all of these things will have to be announced because they are going to be necessary for the licences of the broadcasters, particularly the commercial broadcasters.

Q156 Baroness Bonham-Carter of Yarnbury: As I am sure you know, Stephen Carter (?) said it has got to be early Spring/Summer for the date to be announced.

Lord McIntosh of Haringey: Yes. He has a view on that. He will have a firmer view when they have analysed the results of their present Spectrum consultation.

Q157 Baroness Howe of Idlicote: Quite clearly, in the past, a lot of pressure has been put on the BBC to play a leading role, and that is going to continue. Indeed,

it appears to be part of the negotiations. They have clearly done a great deal through set-top boxes, and so on, to spread the number of channels via the digital system. What is slightly worrying me, I must say, is whether its performance should be seen to be all that independent within the commercial set-up, given that the set-top boxes did not work on an interoperable process so that it was not easy to switch in from those set-top boxes to Sky. I wonder whether that side of the real independence has been thought through, and whether it should be made clear that whatever they do, whatever other system they are going to help raise awareness by, actually does make it open for the commercial side as well as for the BBC.

Lord McIntosh of Haringey: I do not think we should think that the march of technology has come to a halt. Yes, the set-top boxes, whose prices have been reduced to about £40, are pretty minimal; they do not have conditional access, they do not have standby mode, they do not have a return path. There are all sorts of things where it is the cheapest and crudest way of getting a limited amount of digital, but I do not think we should assume that set-top boxes are the only way in which people are going to go digital. As the dates become widely known beyond which analogue will not be available, then the market for integrated digital television, the market for more sophisticated set-top boxes and all of those will open up region-by-region. It is true that the BBC has, in its publicity, been talking about set-top boxes but it is not the only way in which people are going to go digital, and people are going to be demanding more sophisticated characteristics. That is fine, because they will buy a more sophisticated box and the original, simple box will go into the bedroom or the kitchen.

Q158 Bishop of Manchester: I want to go back to the Communications Act, which you referred to earlier in our sessions, and to recall the debates that we had on public service broadcasting and the definition that we reached there, which I think I am right in saying is the first time that such a definition has been enshrined in law. Could you just clarify exactly what status that definition now has in the eyes of the Government? I ask that because I want, in a moment, to talk about the continuing debate about public service broadcasting in the light of some of the things that have been said by Ofcom, but I want to know where we are in terms of what is in the Act itself.

Lord McIntosh of Haringey: It is still there and it is still law. Ofcom have, in parallel to the Charter review process, as you know, been carrying out their review of public service broadcasting, and in the course of that they have been producing other definitions of public service broadcasting, some of which are more helpful than others. For example, an aspect which I find particularly helpful is that they are now

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distinguishing between obligations to consumers and obligations to citizens, which was an issue which we debated at great length during the passage of the Communications Act. However, they are entitled to define public service broadcasting, for the purpose of their review, as they wish, but the definition the Government adheres to is the definition of the Communications Act.

Q159 *Bishop of Manchester:* Thank you; I am helped by that clarification. Just to move on from that, how do you see the public service broadcasting provision being available nationally, regionally and locally, and not least in terms of the publishing proposals for the PSB that Ofcom has put forward?

Lord McIntosh of Haringey: We see public service broadcasting as being very significantly the responsibility of the BBC, but not only the responsibility of the BBC, which is why both we and Ofcom talk on many occasions about plurality because we believe having a number of public service broadcasters with public service broadcasting and public service output is critical to the full realisation of the objectives of public service broadcasting. Having said that, how that is achieved is going to depend on things that have not happened yet. It is certainly the case that in multi-channel households, and even more so in pay-per-view households, the share of advertising revenue which is available to the major public service broadcasting channels—ITV, Channel 4, Channel 5 and so on—is reduced, in other words they get fewer viewers than they do in analogue households. That is likely to affect their revenue in due course and in due course they are going to come and say “We need either to be given money or to be relieved of some of our existing obligations”. That is the occasion of our second review which we are proposing in the middle of this Charter review period towards the end of the digital switchover period and we will be listening to what they say at that time. When you see that ITV’s profits have gone up very substantially and Channel 4’s share of viewing has gone up as well, I do not think we are in a desperate hurry to take emergency action on this.

Q160 *Bishop of Manchester:* So you were not happy with the Ofcom model of a Public Service Publisher?

Lord McIntosh of Haringey: I think we say in the Green Paper it is an exciting model and it is one which we will certainly consider as part of that process. I have to say that it was raised in the summer of last year and in their phase three report last month they have not closed the debate on that, they have left us with a number of options about how that can operate. I have a lot of questions on how that could operate but I do not think it is the role of Government to respond to those options, it is for

Ofcom to make up its mind more clearly what it wants and then we will respond.

Q161 *Bishop of Manchester:* You said a moment ago, and I entirely agree with the point you made, that we would not want public service broadcasting to be the preserve of the BBC only. I wonder if you could just expand a little on your own views about how public service broadcasting can be enhanced in order to make sure that it is across the board and not simply left with the BBC.

Lord McIntosh of Haringey: The first thing to say is that public service broadcasting can happen without any Government intervention whatsoever by any definition of public service broadcasting such as that in the Communications Act. A lot of Sky output meets the standard of public service broadcasting although it is not obliged to and we have no editorial control whatsoever over Sky. Public service broadcasting in its broadest definition of being high quality broadcasting of all kinds, coming back to Lord Maxton’s point about the area of entertainment, will continue but the question is under what financial and regulatory conditions it will flourish. Those are the issues for our second review.

Q162 *Baroness Gibson of Market Rasen:* I want to return briefly to the question of the licence fee granting the BBC independence because there is a view that a grant-in-aid would compromise independence. Could you explain to us the difference, therefore, in relation to the World Service which is funded through grant-in-aid rather than the licence fee? What guarantees its political independence there? What are the characteristics, please?

Lord McIntosh of Haringey: The World Service is funded by grant-in-aid because it cannot be funded by the licence fee because the people who benefit from the World Service are not the people who pay the licence fee. That is the starting point. We can hardly expect people paying the licence fee to pay for what people are watching in Japan or Brazil or Croatia, so we cannot have the licence fee in its classic sense as the funding for the World Service. This is an issue of what we call public diplomacy and the Government has asked Lord Carter of Coles to produce a report on that on which he will be reporting later this year and he will be able to give you more definitive answers than I am able to. I think it is accepted that one of the core purposes of the BBC is to represent the United Kingdom to the world as a whole and we consider that if it cannot be funded by the licence fee it has to be funded by Government. This has been so right since the very beginning and it works in the sense that the BBC World Service is widely accepted as being independent and authoritative. I do not know that you can justify it in theory but certainly it works in practice.

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Q163 Baroness Gibson of Market Rasen: Will the report cover the questions of political interference and editorial independence?

Lord McIntosh of Haringey: Yes, of course. Under the agreement with the Foreign and Commonwealth Office editorial independence is guaranteed but the Foreign Office has to agree the audiences served and the languages used, so they do have an input into the way that it operates but they do not have control over editorial policy.

Q164 Lord Peston: Is it not the case that what really gives us this guarantee is what we might call the public service culture of the BBC? In other words, it does not require anybody outside in the case of the overseas service to tell them what to do. If you compare it with the appalling propaganda that comes from the American stations right across the world, this is a cultural thing. It has nothing to do with control as I see it, I think the BBC would simply refuse to become a propaganda agency for this country. Surely that is something immensely valuable to us.

Lord McIntosh of Haringey: I agree with that.

Q165 Chairman: We are accustomed, although we are only in the second session, to hearing great praise being placed on the World Service, which I think quite a lot of us would echo, but what about television? It is all very well being foremost in radio but television is probably more important, or is getting to be more important, it must be.

Lord McIntosh of Haringey: It would cost a lot of money to have a publicly funded television equivalent of World Service radio. The way in which the BBC has approached it is through BBC World which is intended to be funded by advertising and other sources. I suppose the ideal situation would be that the Foreign Office would provide enough for a number of television channels—I can think particularly of the need for an Arab television channel to cover all of the Arab speaking countries—but if that is not possible it seems to me the way it has been approached through BBC World is the best that is available to us.

Q166 Chairman: It must be possible, must it not, to do just what you have described at pretty low cost, frankly? As far as I read the Green Paper, basically what the Green Paper says is you think this might be a good idea but you will just keep it within the existing budget.

Lord McIntosh of Haringey: I am not sure that is literally true in terms of spectrum. I think television spectrum is a good deal scarcer than shortwave spectrum, which is what we have at the moment. I am not sure technically whether it would be possible to

get anything like the same coverage for television even if we could afford it.

Q167 Chairman: You do not sound to me to be giving much hope that extra resources are going to be devoted on the television side.

Lord McIntosh of Haringey: I am not answering for the Foreign Office. I will ask them.

Q168 Lord Holme of Cheltenham: Is it not a fact that there are, in fact, some public resources devoted to world television in the sense of transfer prices of material made for the British licence payer broadcasting here? The transfer prices of those to BBC World television are such that there is, in fact—I would be interested to know whether you think this is desirable or not—an element of indirect subsidy of BBC World television from the British licence payer.

Lord McIntosh of Haringey: I am not familiar enough with the finances of BBC World to say whether that is the case or not but I guess we, or the BBC, could write to you about that.

Q169 Lord Holme of Cheltenham: In fact, the BBC has undertaken to give us some more information on that but I think the premise is right.

Lord McIntosh of Haringey: They are better informers than I am on that.

Q170 Lord Holme of Cheltenham: Is that something that would concern you or would you think that is desirable?

Lord McIntosh of Haringey: Yes, of course. As I said, we think it is in the interests of that public purpose of the BBC of our taking the UK to the world to be television as well as radio.

Q171 Chairman: There is always going to be an element of cross-subsidy, is there not? You are using the same correspondents, the same bases, things of that kind.

Lord McIntosh of Haringey: Different regimes at the BBC have treated these matters differently. Some regimes at the BBC have had news and current affairs for both radio and television and some have kept them separate. I do not presume to judge on these operational issues. I do not know how it works in practice but the principle is that they have to be separately financed.

Q172 Bishop of Manchester: Can I have some information which my colleagues may well already have. It is just to find out from you exactly what the role of the Foreign Office is in all this, what kind of control it is likely to continue to have in the World Service, what control it has over the available financing. I was very interested in your response

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about the Foreign Office and saying “Well, go and ask them”.

Lord McIntosh of Haringey: Jon, I think you know more about this than I do. Is there anything you would like to say?

Mr Zeff: On the future role of the—

Lord McIntosh of Haringey: The future relationship between the Foreign Office and the World Service.

Mr Zeff: The future relationship and the future of the World Service is an issue that is raised broadly in the Green Paper. As the Minister said, it is an issue that comes within the scope of the Carter review of public diplomacy. I imagine those sorts of issues will be looked at there. The relationship between the Foreign Office and the World Service now is, as the Minister set out, one in which they fund the World Service through grant-in-aid and the World Service has editorial independence but the Foreign Office does set broad objectives in terms of the audiences and the numbers of languages that are provided, for example.

Q173 *Bishop of Manchester:* Given the fact of the importance of the World Service it would be pertinent to explore that further with them.

Lord McIntosh of Haringey: Yes, it certainly would.

Chairman: Obviously we are going to have to do some more work on this; we have already identified that area. Can we go on to regional broadcasting?

Q174 *Lord Maxton:* At the present time, not in the regions but certainly in the nations of the United Kingdom—Scotland, Wales and Northern Ireland—their positions in the BBC are protected by having a national governor to represent them and having a Broadcasting Council, of which he is normally the chairman, to get the views of those nations. Will that continue under the new structure?

Lord McIntosh of Haringey: That is the green bit of the paper. We have set out the role of the trust and of the executive board. As to how the trust should be composed, that is a matter on which we shall listen to what people say.

Q175 *Lord Maxton:* Can I just go marginally greener then and ask if we are going to have national governors on the new trust, will the new devolved parliaments and assemblies have any say in who is appointed, even if it is just in making recommendations which will then be approved by the Secretary of State?

Lord McIntosh of Haringey: I do not accept the premise that we will necessarily have regional or national governors so I cannot answer about the composition.

Q176 *Lord Maxton:* In that case—

Lord McIntosh of Haringey: There could be, but that is something we are going to listen to people about.

Q177 *Lord Maxton:* There would be a very considerable outcry in Scotland in particular if there was no national governor, no representation on the BBC trust to at least represent the views of the Scottish people on the BBC.

Lord McIntosh of Haringey: They will have an opportunity to express that view. That is something on which the mechanics of how to achieve a proper reflection of the needs of the regions and nations of this country is something on which we recognise the need but we are open as to the way that it is achieved.

Q178 *Lord Maxton:* How do you ensure productions are done by the nations and the regions? I know the BBC has made promises about this but if there is no representation on the trust how do you ensure that promise is carried out? To me, that would be the role of the national governors, to make sure that BBC Scotland gets its fair share in terms of the broadcasting done by the BBC.

Lord McIntosh of Haringey: That is a legitimate point of view but we have not reached a conclusion on it.

Lord Maxton: I think I will try to make sure it is in the report.

Q179 *Lord Peston:* My Lord Chairman, can I join in because there is another model which is the model of the Monetary Policy Committee of the Bank of England, which is the best example of an independent body, and they quite rightly rejected any such concept of regional representation or anything else. They said they had a set of criteria to stick to and that was how they were going to operate. It is not obvious it seems to me, and this Committee is a long way off coming to a conclusion, that you get regional interests represented by having people from the region.

Lord McIntosh of Haringey: I hear that view too.

Chairman: I think we can have that internal debate at some other stage. Anyone else on the regional side? Let us go on to the issue of the Royal Charter and perhaps the difference between Royal Charter and statute as well.

Q180 *Lord Armstrong of Ilminster:* The Government is proposing that the new Charter should run for a period of 10 years from 2006. It is a time when electronic communications generally are changing and developing extremely rapidly. I wonder whether in this situation 10 years is too long to peer ahead into the future about the BBC and whether we risk finding ourselves towards the end of those 10 years with a dinosaur which perhaps distorts the market by virtue of its very size and scale. This would be an argument

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for having a rather shorter period for the Charter. I wonder if you have any comment on that.

Lord McIntosh of Haringey: That view was certainly expressed to us during the period of consultation. It was expressed at some of Lord Burns' seminars and it is a very serious point of view which we have taken into consideration. The balance we have to maintain is between the degree of security which enables the BBC to plan ahead and response to technological change. I think you put that very correctly in your question. The difficulty is that we do not know enough about the direction of technological change. We can make some assumptions, and Lord Maxton was making some very reasonable assumptions about it, but the conclusion that we came to was that the need for security of funding, the need for continuity for the BBC, was appropriately balanced by a 10 year Charter period with a review in the middle towards the end of the digital switchover period which would examine exactly the issues that you raised in your question and the issues we have been talking about, whether broadcasting in its classic sense on the existing platforms—cable, satellite, terrestrial and so on—is going to be around for all of that period. I imagine the consensus would be that a very considerable number of people will be on different platforms, they will be on broader band platforms, but since these will be market driven they will not be universal and they will not enable us to switch off digital television in due course for a very considerable period after that.

Q181 Lord Armstrong of Iminster: I thought the mid-term review was about the licence fee.

Lord McIntosh of Haringey: Two mid-term reviews, one about the licence fee and one about the issues of—

Mr Zeff: The other one is about the issue of whether any wider public funding, including the licence fee, is needed for public service broadcasting beyond the BBC.

Q182 Lord Armstrong of Iminster: Presumably if the process of change went very fast and the kinds of fears that were being expressed came to pass you would start the process of having another Charter earlier than 10 years. There is nothing to stop you saying “We will bring this Charter to an end and we will replace it by another one”.

Lord McIntosh of Haringey: I had not thought of that. I do not know what the legal position is on the Charter and whether it is capable of being unilaterally abrogated. If it is thought to be important I could write on that but it is not something that had occurred to us.

Q183 Lord Armstrong of Iminster: There are lots of arguments for keeping it to 10 years, and I agree with that, I just wonder from previous experience whether, if it was felt desirable, you could say “Let us bring this Charter to an end earlier than 10 years and have something else in its place”.

Lord McIntosh of Haringey: I do not know what the legal answer is to that question but I will find out.

Q184 Chairman: Does it not come on to the other question about whether you have more flexibility? If it is by statute it is just an Act and not a Royal Charter. I think this is what the House of Commons Select Committee proposed.

Lord McIntosh of Haringey: Yes. It is because of the need to give institutional security, so to speak, to such a major and valued institution that we chose to remain with the Royal Charter rather than move to statute. We think it gives the BBC the stability to plan and yet gives it the flexibility to respond to changes.

Q185 Chairman: But Channel 4 has got statute and it seems to get on perfectly well.

Lord McIntosh of Haringey: Remember, Channel 4 does not get Government money. A Charter which is based on a licence fee is not appropriate for Channel 4; Channel 4 raises its own money. It works according to principles which have not changed significantly since it was set up, in fact. There is no need for a 10 yearly review and there has not been any need for intermediate changes in statute. In fact, the remit of Channel 4 as set out in the original Act was repeated in the Communications Act 2003.

Chairman: Competition. Lord King.

Q186 Lord King of Bridgwater: I have got a question here about the 2003 *Altmark* ruling. I thought the *Altmark* was a ship on which there were a lot of British sailors in a Norwegian fjord. I had not heard about the *Altmark* ruling. Is this going to interfere?

Lord McIntosh of Haringey: The *Altmark* ruling is about public transport, it is not about broadcasting at all.

Q187 Lord King of Bridgwater: The clever question is whether it is a basic condition for public procurement.

Lord McIntosh of Haringey: I do not think it is. The *Altmark* ruling may be but the issue we are confronted with here is the issue of state aid and that is what I think we should be concerned with. There have been recent judgments in Germany on state aid which affect the relationship between the German public service broadcasters and the rest of German commercial television. The position on that is we are confident that we are fully protected in our arrangements for the BBC. It may be that there is some state aid involved in some of the arrangements

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we have but the state aid which we have is consistent with the Treaty and we continue to notify everything that happens to the European Commission and we have had that confirmed.

Q188 Lord King of Bridgwater: Just on the general point, if I can widen it on commercial services, the thing that really strikes me is what a very poor return the BBC gets for what are some pretty high quality things that they do and some pretty high quality products that they have to offer. I see that is one of the ambitions. Over the issue about transparency and fair competition, obviously there are continual grumbles, and Lord Holme raised the point about the transfer pricing of programmes to BBC World, but how serious are the complaints really? I can see Mr Murdoch would be complaining continually that it is all unfair competition but do you get much of that?

Lord McIntosh of Haringey: We have a procedure for dealing with complaints about unfair competition and that is the responsibility of Ofcom who have the responsibility of doing what they call market impact tests. If you put on one side public value, which is the benefits, then the costs could be market impact tests which could include negative financial or economic effects on competitors and could include any way in which the BBC oversteps the mark in relation with its competitors, and this has been raised on some of the BBC publishing activities, for example, where they have agreed that their publications should be related to their broadcasting or online output rather than be totally separate from them and competitive with the private sector. We have carried out now three different reviews of the potential danger of market impact: Philip Graf on the online side; Paddy Barwise and Tim Gardam on radio and television. We think we know pretty well where we stand and Ofcom, being totally separate from the BBC, has the responsibility for seeing that there is no abuse in terms of market impact.

Q189 Lord King of Bridgwater: Provided there is not cross subsidy going out from the public service broadcasting, so money can only go one way, it can come in from commercial services to help sustain public service broadcasting?

Lord McIntosh of Haringey: That is right.

Q190 Lord King of Bridgwater: Your position is the Secretary of State is going to stand back from deciding whether the BBC stops things or starts new ventures. He is no longer going to take an interest in that and it is up to the BBC to make as much money as they can as long as they do not exploit unfairly their public sector broadcasting position.

Lord McIntosh of Haringey: Issues of exploitation of negative market impact in the way that I have been defining are the responsibility of Ofcom who have full

competition powers in relation to the BBC and they can consider complaints from competitors and nobody can say that they are in the pockets of the BBC.

Q191 Lord Maxton: How do you apply that to BBC Online in terms of competition where you are not competing just with commercial operators in this country but you are competing across the world because all BBC radio stations are available, BBC television news services are available and even things like the rugby Five Nations was available online throughout the world last weekend?

Lord McIntosh of Haringey: The BBC website is probably the most successful website in the whole world. It has more hits than any other website. The notion of competition worldwide is a rather less definable notion as far as online is concerned than that which is covered by competition law in this country.

Q192 Lord Maxton: Do you get any complaints coming from elsewhere saying the BBC should not be doing that?

Lord McIntosh of Haringey: I do not know whether the BBC has complaints but Ofcom could consider complaints of that kind, yes.

Lord King of Bridgwater: Under which part of BBC Commercial Holdings is BBC Online?

Q193 Lord Maxton: It is free.

Lord McIntosh of Haringey: It is a public service but the commercial side of it is under the heading of BBC Worldwide.

Chairman: Can we go on to the commissioning of programmes. Lady Bonham-Carter.

Q194 Baroness Bonham-Carter of Yarnbury: Picking up on what has been said, this Window of Creative Competition which the BBC are suggesting, which will increase their commitment to commissioning from independents, I think there is some concern that if they do follow this with vigour it will adversely affect other channels, such as Channel 4, because they might just grab the big indies, which are doing particularly well at the moment, and that will leave Channel 4 floundering slightly. Have you had any thoughts about regulating how this 50 per cent commissioning should be taken?

Lord McIntosh of Haringey: I suppose I should declare an interest having a daughter-in-law who works for Chicken Shed, which has just successfully gone public. Yes, I hear what you say about consolidation among indies and the big indies are doing very well. I think that the BBC's proposal for a Window of Creative Competition is a very interesting idea. I do not know how they are going to make it work and I do not think it is for me to decide how they are going

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to make it work. There are minimum obligations for independent commissioning and, indeed, for regional commissioning and regional production on the BBC. We think it is desirable in general for the BBC to have the freedom and an obligation to go for the best programmes wherever they come from, to be more meritocratic. We do not rule out any increase in the current quota but I do not think it is for us to say how that is achieved.

Q195 Baroness Bonham-Carter of Yarnbury: I just wondered if you might think about regional quotas or the size of independent companies.

Lord McIntosh of Haringey: We will think about that and that is one of the issues on which we are consulting now as to how that should be achieved.

Q196 Bishop of Manchester: Could I just ask a question on BBC programme making itself, going back to the regional issue. I chair a broadcasting awards panel which quite often finds itself giving awards to regional programmes which have beaten the network programmes very convincingly. In terms of encouraging regional programme making, particularly within the BBC, are you satisfied with the current plans the BBC has for strengthening its already existing regions? In a way I am delighted, being Bishop of Manchester, that they are doing so much more in Manchester, but is that really creative enough from your point of view and would you like to see them opening up new places?

Lord McIntosh of Haringey: I think they are a move in the right direction. Their determination to get outside the M25 is admirable. When I was doing my rounds of the country last year as part of the Charter review process and we were talking not only to viewers but also talking to people in the industry, producers and people in the BBC, the view was expressed to me by independent producers in places like Belfast, Glasgow, Edinburgh and Cardiff that they make great programmes but it is very difficult to get them networked. The view was also expressed that since they do not have access to the main schedulers in London, except by travelling up to London, the indies in London had an unfair start on them. I listened to that view.

Q197 Baroness Howe of Idlicote: I see that you have asked a number of questions in the Green Paper about how the BBC intends to operate the Window of Creative Competition and I presume the answers to those will be important.

Lord McIntosh of Haringey: Yes.

Q198 Baroness Howe of Idlicote: As far as the regional side is concerned, I just wonder how far do you think they should be playing a leading part in

going wider on the radio side as opposed to the television side.

Lord McIntosh of Haringey: I do not think we should go further than saying that they should find ways of getting the best ideas commissioned, whether they are television or radio. That is where people with more expertise and personal knowledge should respond to the consultation.

Q199 Chairman: Thank you, you have been very patient. Could we have just one or two wrap-up questions? Going back to where we started on the governance and regulation of the BBC. Did you ever give any consideration to just having what I regard as a standard board which you would find in commercial life? In a plc you would have a non-executive chairman, you would have non-executives and then under that you would have the management board. Did you give that any thought?

Lord McIntosh of Haringey: Yes. We gave a lot of thought to that and we discussed it with Lord Burns and his panel. We looked at the combined code and at Cadbury and all the rest. We looked at the provision whereby you have a unitary board with a majority of non-executive directors, as is recommended. We quite understand that is appropriate for an organisation or a company which is responsible to its shareholders and other stakeholders but we took the view, and Lord Burns took the view as well, that to have a separation of the kind that we have proposed with something which is specific to the BBC and yet not within the BBC, combined with having a minority of non-executive directors to assist the executive board in its role of delivery as opposed to the role of oversight, combined the best of the private sector with the best of the public sector. I accept your assertion that we are taking a risk by doing something new.

Q200 Chairman: Is Michael Grade a non-executive chairman or an executive chairman?

Lord McIntosh of Haringey: Non-executive chairman.

Q201 Chairman: He is a non-executive chairman?

Lord McIntosh of Haringey: He is a non-executive chairman of the governors now.

Q202 Chairman: And will be non-executive chairman going forward?

Lord McIntosh of Haringey: There will be no executive members of the trust. We are misled by the word "trust" because we are looking at it—

Q203 Chairman: It is your word.

Lord McIntosh of Haringey: We are looking at it with charity trustees and it is not like that. As I say, if you can think of a better name, do. The concept is right even if we have not got the words right.

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Q204 Lord King of Bridgwater: Will they be non-executive trustees or executive trustees?

Lord McIntosh of Haringey: No, all members of the trust will be non-executive.

Q205 Lord King of Bridgwater: But with a pretty heavy work commitment for part-time staff, that was the point that Lord Peston made.

Lord McIntosh of Haringey: Let us consider that in the consultation. I do not think we are proposing that, as with the Monetary Policy Committee, they should do nothing else.

Q206 Lord Peston: Obviously you will know, since you did the Bill, it started off that they were part-time and they discovered they should be full-time, but that is by the way. I must say I am still totally lost—this is early days for us—I am still not clear what they do. That is what has left me in some difficulty. I take it you could not give us a paper on what they do because you have not made up your minds.

Lord McIntosh of Haringey: We have given a great deal of paper in the Green Paper itself on what they do. It is in two places. It starts at page 12 and is found again on page 72. There is a great deal about what they do.

Q207 Lord Peston: I have read all that. My problem is I assume they go to meetings, they are non-executive so, therefore, they do not take any decisions, or at least if they do take decisions I am not clear what decisions they take. I am sure I am at fault here and not you.

Lord McIntosh of Haringey: Non-executive does not mean that they do not take decisions; non-executive means that they are not full-time salaried.

Q208 Chairman: But when you come to the non-executives on the executive board, which on the face of it does sound a contradiction in terms, we were told last week this was in charge of the day-to-day running of the BBC and a non-executive on a day-to-day board does seem to be a very difficult concept to get your mind round.

Lord McIntosh of Haringey: If you think of the majority of the executive board being heads of the important functions within the BBC, the present management board,—Lord Kalms has it more in his head than I do because I only ran a very small company—they will be assisted by people who are not salaried employees of the BBC but are there with outside experience, whether it is financial or legal or whatever, who will be able to help them in that delivery function.

Q209 Chairman: Purely in terms of turning up, how many times are you expecting the non-executives on the executive board to turn up? It is easy for the

executives to turn up, they are there, that is what their job is, but non-executives are not in that position.

Lord McIntosh of Haringey: Some non-executives do more work than others.

Lord Armstrong of Ilminster: The board of management meets once a week, I believe. I assume that the executive board will be very much the same and presumably the non-executive directors would not be in the BBC between meetings, or they might be occasionally, but they will turn up for meetings.

Q210 Chairman: Is that how you would view it?

Lord McIntosh of Haringey: I am not going to prejudge what this consultation will show. With the experience around this table, your views are very helpful. We have not prescribed exactly how many days a week, days a month, remuneration, we have not got that far.

Q211 Lord Kalms: It is not me for me to tell you something, but you are aware that the trust board has a large staff of its own. It has 32 staff of its own, so presumably it will have its own chief executive.

Lord McIntosh of Haringey: I do know they pinched Nicholas Kroll from the department to do the job.

Q212 Lord Kalms: You have got a group of people within and I think that is a danger in itself. You have a conflicting group monitoring another group and the overlap seems to be dangerous. That is where we are going to come from when we give you our critique.

Lord McIntosh of Haringey: I see what you are saying. The criticism of the BBC governors under the existing regime was that they did not have any independent advice from that available to the management and, therefore, they were in thrall to management. I am not saying whether that was true for part or all of the time, but certainly that was the criticism that was widespread of the existing system and that is what the BBC is proposing. We are not proposing it, that is what the BBC has proposed to deal with by their governance.

Q213 Chairman: I think it is self-evident that we are going to come back to this issue. Lady Howe has got a question which is not about governance.

Lord McIntosh of Haringey: Before you ask your question, Lady Howe, I think I have something additional I want to say on that previous subject which is the role of the non-executive directors. The point is, in the private sector the role of the non-executive directors is to represent the shareholders. In our model, the trustees are there to represent the licence fee payers, which is why we do not have a majority of non-executive directors on the executive board. We are not prescriptive about how many non-executive directors there will be on the executive

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board and what the exact relationship to the executive directors should be because it depends on the number of people who have to be on the management board and it depends on the variety of outside experience that will need to be provided by non-executive directors.

Q214 Baroness Howe of Idlicote: My question is on a completely different subject which has not been mentioned: training. I am not asking you to answer this question. At the moment the BBC is clearly making a large number of cuts and it feels it is necessary to do this. Practically everybody within the broadcasting world has been trained by the BBC as far as one can gather. Are you, the Government, expecting the BBC to continue to play an important part in training? Is this being taken into account when you are working out what the licence fee should be?

Lord McIntosh of Haringey: Yes, we are expecting the BBC to continue to play an important role in training. I think we are expecting that to happen not

only for BBC purposes but it is a fact of life that those who are trained by large organisations very often go out to work for other organisations. That does not enable me to make any judgment on what the BBC is doing now about its numbers but I would certainly say that in framing the licence fee policy we would take account of the BBC's training programme.

Q215 Chairman: Any other questions? We were tipped the wink that it would be very much to your liking if you were able to get away by 1740 and it is now 1739.

Lord McIntosh of Haringey: Lord Chairman, I am at your service.

Q216 Chairman: That is very kind of you. Thank you very much indeed, you have been very patient and we are very grateful.

Lord McIntosh of Haringey: If you want me to come back later on, of course I will be happy to do that.

Chairman: Thank you.

TUESDAY 5 APRIL 2005

Present	Armstrong of Ilminster, L Bonham-Carter of Yarnbury, B Fowler, L. (Chairman) Holme of Cheltenham, L Howe of Idlicote, B Kalms, L	King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Examination of Witness

Witness: LORD BURNS, a Member of the House, Independent Advisor to the Secretary of State for Culture, Media and Sport, examined.

Q217 Chairman: Lord Burns, welcome. Thank you very much for coming. As you know, we have been set up as a Select Committee in the House of Lords to consider the Review of the BBC Charter and, in particular, obviously, the Government's Green Paper. A General Election campaign will now intervene in our consideration and, obviously, we cannot know what the outcome or impact will be. Individually, we are in a rather different position from our colleagues in the House of Commons. We hope the Committee will be re-appointed after the Election. We hope to have our report ready by the end of October. That is the background. Thank you very much for the two papers you have sent to us. If I may say so, I think both were very well argued and both were very succinct. Perhaps we can explore those papers now. Can you tell us firstly exactly how your panel was set up and what the purpose of it was?

Lord Burns: Of course. I shall be enormously interested to hear what this Committee decides on the subject of the Green Paper and on this whole subject. I have spent a good deal of time now looking at these issues. My appointment was as an independent adviser to the Secretary of State, covering the issue of Charter renewal. I spent some time helping the Department draft the consultation document in the first place. I have been working with the Department through the process, having regular meetings with the Secretary of State and with senior DCMS officials in terms of planning the work. As part of that role as an independent adviser, I agreed with the Secretary of State that we would set up a small panel in order to hold a number of seminars, and out of those seminars to provide advice to the Secretary of State about what we thought would be major issues. The panel was set up jointly, although we agreed the names between us on the basis that people came from a variety of backgrounds with a variety of skills, who had no conflict of interest in this subject. The panel and I agreed on a series of topics about which we would hold seminars. There were quite a lot of them and we took a lot of time. They were filmed, the transcripts are all available and we covered a huge amount of ground. The BBC co-operated fully with them. They

produced a lot of papers for those seminars themselves and we had a lot of exchange. After we finished the second of the papers, the panel's work was finished, but I have continued, for the time being, in the role that I had before; attending the meetings with DCMS officials and continuing to help to plan the work. That is now not a large investment.

Q218 Chairman: Does that make you an independent adviser? In other words, do you feel you are bound now by what the Department says?

Lord Burns: No. When it says independent adviser, it means independent adviser. I am glad to give my advice on a range of topics they have been dealing with. Although to a large extent the Green Paper reflected the seminars and I think to a very large extent it reflected the advice we gave in the papers, clearly there are some issues where there is a difference of opinion and where the Secretary of State did not follow the advice we gave. I am not about to say now, "sorry, I was wrong, I should have seen the light a bit earlier". I continue to hold the position that I did when we submitted that advice. On the other hand, I think it is important to recognise that I have been working closely with the Department and with the Secretary of State. She has known the views of the panel as they emerged. I talked to her several times whilst she was making up her mind about what to propose. As I said in another context yesterday when I was talking to some journalists about football, if you are in the business of advice, you know full well that it is your job to give advice and it is ministers' job to make decisions. I have spent the best part of 25 years in that relationship. I am very familiar with it and I am very comfortable with it. The fact that in the end you do not have all of your advice taken is not to me a matter for throwing up the papers and saying, "I want no more of this". If I had taken that view, I would have given up quite a long time ago.

Q219 Lord King of Bridgwater: I am not quite clear what your position is. One could say the nemesis would be overtaken.

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Lord Burns: Correct.

Q220 Lord King of Bridgwater: We are talking about a Green Paper. If I may reiterate the Chairman's comments, I thought your paper was very clearly argued. Having been set up with the caliber of your independent advisory panel, it must have been pretty irritating to have your primary recommendation chucked out, and I would understand your concern about this. Are you still an adviser? You were an adviser up until the Green Paper. Is the advisory panel now defunct?

Lord Burns: The advisory panel has now finished its work, but I have continued to attend monthly meetings with the team of officials in DCMS who are planning this work. I have just been giving them some advice about the next stage of the work, which is how to deal with the consultation responses from the Green Paper. There are some further pieces of work, particularly to do with the level of the licence fee, which have not yet been done.

Q221 Lord King of Bridgwater: You will be taking part in the review of our report?

Lord Burns: At present, I regard this role as an independent adviser to the Secretary of State, as coming to an end with this Parliament.

Q222 Chairman: At the end of this week?

Lord Burns: As of this week.

Q223 Lord King of Bridgwater: Really?

Lord Burns: If the Secretary of State was re-appointed to that position, then I am sure we would have a conversation and there would be a question as to whether or not I carry on. I have taken on another task doing a review of the Football Association, so I now regard my role in this as being substantially completed.

Q224 Chairman: You seem to be going from one problem to another, do you not? Let us go into some of the specifics because it might clarify the issues. Can we start with the question of governance and regulation. It seems to me what you were saying was that there are broadly two separate functions, the managing and running of the BBC and regulating the BBC, for example, receiving complaints and things like that. For running the BBC, I think, in effect, you are proposing a standard PLC board: a non-executive chairman, non-executive directors and the top of the BBC as executive directors on the board. Would that be broadly right?

Lord Burns: Correct, yes.

Q225 Chairman: That would be subject to the combined code and all that. You think that is a good model as far as the BBC is concerned? It has been

argued to us that is a commercial model and not something totally appropriate for the BBC.

Lord Burns: I do not accept that it is purely a commercial model. I now sit on a number of boards which are constructed like this. I think it is a very effective basis for running an organisation. It means the executives are well represented, both when it comes to the actual execution and, also, in the design and monitoring of that strategy. Also, it brings to bear the influence and challenge of a non-executive group and together they forge a strategy which is then left to the executive to carry out. I think it is a model which is applicable in a great deal of circumstances. It creates the right kind of tension between those people who are permanently engaged in running the business and those people who can come to challenge, to ask questions and to be supporters, but, nevertheless, challenging to try to ask the questions that the executives may not themselves have come to. I think the fact that we now see it working in the way that it does across large parts of business activity in the UK is a reflection of that success. The BBC is a very large commercial organisation. It is by any standards as a business a very big and complex business. It seems to me that it requires the best form of governance that we can find. The executive do need to be fully involved but they need the right kind of challenge. They need to be discussing this with a range of skilled people who can together design and forge a strategy for the way going forward. It is then a matter for the executive to execute that strategy. It is not at all clear to me why one would think that because it is in the business of making public service television that model would not be a successful model in that context either. I repeat: it is a big business. It is heavily engaged in commercial activity. It has got a huge number of customers. It is subject to all of the problems that many other businesses have, dealing with complaints, adapting to its customers. That is the position that I came to. I thought about it very hard. I discussed it with the panel many times and we were very much in agreement that this model would be suitable for the BBC subject to having another body which would be giving the necessary oversight to the BBC because there are some other tasks that the board of the company cannot do.

Q226 Chairman: Take us to the next stage because for the regulation of the BBC, not the running of it, you proposed a new Public Service Broadcasting Commission which would be separate, obviously, from the BBC. Why was that? Take us through your thoughts there.

Lord Burns: First of all, the BBC is an organisation that is using such a large amount of public money, that is engaged in what is a delicate task of producing public service broadcasting. It is an organisation that we all rely on enormously for a wide range of services

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and in several aspects is effectively a monopoly and requires a degree of regulation. The panel accepted that we had to have this regulation. Ofcom has been set up in order to do certain types of regulation with regard to all broadcasters more widely. But we felt that there was a particular aspect of the BBC which was to do with the other side of the range of programmes that it does—how it is that it spends the money; how we ensure that we get value for money for the licence fee payer and that it is delivering the kinds of programmes that are in its remit—and that that needed to be done by a separate body. The body that is running the organisation cannot give that kind of oversight.

Q227 Chairman: Separateness is vital?

Lord Burns: Indeed, but in this debate I think it is now accepted that there needs to be a greater degree of separation than there has been in the past. There are very few people who think that the model that has been operating prior to the last couple of years is the way forward. The BBC themselves have come forward with a proposal which they call *Building Public Value* which brought to bear a degree of separation and Michael Grade has been a very powerful advocate as to why reform (or what he describes as modernisation) has been necessary. Our view, having looked at this, was that that was very helpful, that there were some very good ideas in it, but it did not go far enough, and that you needed a greater degree of separation between the executive role and the oversight role. The Secretary of State has come to another model which I think probably lies somewhere between *Building Public Value* and the panels proposal.

Q228 Chairman: I suppose what everyone is interested to know is, therefore, what is your view of the trust which has been proposed?

Lord Burns: I think it is a huge improvement on what we had before. I think it is a significant improvement on the original proposals that were put forward in *Building Public Value* but my personal view is that it does not go far enough as far as the separation is concerned and I think that there are some characteristics of the Executive Board which could be improved upon. I do not like the idea of a minority of non-executive directors on a management board. I do not like the proposal that the Chairman of the Executive Board should be chosen by the Trust. It seems to me that the body responsible for oversight should not be choosing the people it is going to oversee. They are my main concerns and I explained earlier why I think a unitary board is better. I would have preferred a greater degree of separation so that they were clearly seen as distinct animals rather than being two animals within one organisation. I do not want to go overboard on this. I do think that what is

being proposed is a significant advance on where it is that we have been. It is not my job now, having worked with the department, and with the Secretary of State, to start to be enormously critical of what has been proposed. I just think (not surprisingly) that the model that I was involved in proposing was a better one.

Chairman: But we only have this opportunity once every 10 years so we might as well try and get it right.

Q229 Lord Holme of Cheltenham: Lord Burns, how far would your preference for your own model as opposed to the one that the Green Paper has come up with be modified if you accepted that there was not the prospect of this public service broadcasting expenditure on other broadcasters? In other words, if you followed the government's line of thinking and said that this was not a good idea, so that the freestanding public sector broadcasting commission was only concerned with the BBC, would that modify your view at all?

Lord Burns: No. I would still have exactly the same arrangement. I accept and have accepted elsewhere that a regulatory system of one organisation regulating one organisation is not ideal.

Q230 Lord Holme of Cheltenham: One on one?

Lord Burns: Yes. That is to my mind the primary disadvantage of the model we have proposed. I have experience of this because I was Chairman of the Lottery Commission for 12 months, which was a single regulator regulating Camelot, and it is not the best model in the world. However, there are some things which are very distinctive about the BBC which we have already discussed. In that case I would still have gone for the model which would have had a unitary board running the BBC and to have had an oversight body which was more separate from the Trust. Even taking the Trust model, which has been set out in the Green Paper, I would still change the nature of the management board that is being proposed because I think there are a number of problems, not least the fact that it has got an executive chairman and the fact that that person is appointed by the Trust. I live in this world now and management boards by and large meet once a week. They have got a certain type of agenda which is to do with the running of the business. The board of the company has a different role. It tends to meet once a month or a bit less. It has a different type of agenda. It is looking at the longer term issues. It is looking at things in a different way. I am just not comfortable with combining these two things.

Q231 Lord King of Bridgwater: The other part of your recommendation is the Public Sector Broadcasting Commission and then you are stuck

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with Ofcom and so I found, reading it, that I had to keep checking who was responsible for what.

Lord Burns: Yes.

Q232 Lord King of Bridgwater: Is there any argument at all that Ofcom could do the whole job of the supervisory body? I did not quite understand your last answer. You say you should not have a regulator that just has one customer, but is that not what the PSBC is?

Lord Burns: Yes.

Q233 Lord King of Bridgwater: Oh, it is a weakness?

Lord Burns: It is a weakness. We looked very hard at the question as to whether or not Ofcom could do the whole job. In the end we came to the view that the job that it had to do with regard to the BBC would be a quite different job from the one that they had to do with regard to the other broadcasters. In this case it is looking at all those issues like value for money, content, how the licence fee is being spent, whether or not it is being spent in a way and with a quality that meets the remit that it is being given by the government. This is not something that Ofcom do with regard to the other television companies. One of the worries in all of this and one of the things we have to keep in mind throughout is the relationship between the BBC and the commercial pressures that it may be under. At this stage we felt that having those tasks done by different people was the most sensible outcome. Where we might be in 10, 15, 20 years' time as this whole broadcasting environment develops, because it is moving at a very rapid rate, I do not know, but we felt that to move to Ofcom at this point was a huge step that was just too far given the different nature of the job that has to be done with regard to the BBC from the job that has to be done with regard to the commercial organisations.

Q234 Lord King of Bridgwater: On the business about national representation which exists for the national governance of the BBC at the moment did you make any recommendations about whether the PSBC should include national representation?

Lord Burns: We did not. My view—and it may not be terribly popular—is that it should not have national representation. I think people should be chosen on the basis of their skills, on the basis of getting an appropriate mix of skills and different backgrounds. If that meant that over a period you would look for the right kind of diversity in the people who were on there so that they were typical of the whole country that is fine. But when you start picking off people and saying they have to be representatives of particular areas my view is that you then make them representatives and they are no longer doing the job that they should be doing, which is supporting the organisation which they have joined. It is a

distinction between being a representative and being a member whose job it is to support the aims and objectives of that organisation.

Q235 Lord King of Bridgwater: I understand the logic of that. I think the politics of it could be difficult.

Lord Burns: I could not agree more.

Q236 Lord Maxton: One of the dangers of that is that it almost makes it impossible to appoint a Welshman, a Scotsman and someone from Northern Ireland to the board at all because if you appoint a Scot to that board, for whatever reason, he will in Scotland become Scotland's representative on that board and he will be expected to answer to Scotland for the decisions that board takes, whether you like it or not, so it makes it very difficult.

Lord Burns: I can see in the short term that would be the case but again I am a member of a number of boards where they have business interests in various parts of the UK and the world. You make some attempt to have people who are members of your board who have experience of the areas in which you are doing business. But what you do not say is, "We will have somebody who is going to represent this particular territory and somebody else who is going to represent that territory" because you immediately leave them with a dilemma about what their role is.

Q237 Lord Maxton: Is that not going to be true of anybody? Are the viewers going to be represented? Is there going to be some way in which somebody who represents the viewers' organisation is going to be on the board or somebody who represents the industry itself, the broadcasting industry, somebody who represents the commercial companies? I am still not quite sure how this board is going to be chosen.

Lord Burns: There are two organisations here. There is the board of the BBC and there is what we call the Broadcasting Commission or the oversight board. I do not think either of them should have people who are representatives. Certainly on company boards you cannot have people who are representatives because their duty is to the company. What you do is you try to have people who come from a variety of backgrounds and your hope is that they will be broadly representative of the skills that are needed in the territories in which you are working and that they will be able to take into account things that you have mentioned. But once you start picking people and saying that they are going to represent some region or whatever in a sense they are no longer independent. They could cease to play that role because they are going to be coming to meetings with a particular agenda.

Q238 Lord Maxton: So who is going to be chosen and how?

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Lord Burns: We describe in the paper how we would do it. We would have a set of objectives, which are that there should be an appropriate balance of skills and diversity, dependent upon which board we are discussing. There there should be an appointments process which would have an appropriate independent arm to it which would be subject to Nolan-type rules but where the minister in the end would have to agree certainly to the independent members. We appoint people even without some of those safeguards, I may say, to the Monetary Policy Committee of the Bank of England, as Lord Peston knows only too well, as I sat with huge enjoyment on a committee with him dealing with this. Membership of the Monetary Policy Committee is not determined by political appointments. It is based upon people's skills and appropriateness for the task.

Q239 Baroness Howe of Idlicote: One of the interesting things here is to what extent the independence of these organisations, which is one of the things which comes up again and again, is likely to be preserved if the government is very much involved in the appointment of people to these positions in the very detailed brief for your model that you have set up. If I may I would like to go back a little further. Your model is very much based on a commercial organisation. You have denied that but you have not yet really given us any examples of non-commercial organisations. There is an argument, you could say, that the BBC has been going all these years and yes, there are lots of changes, but so far it has not been seen as broke. Therefore, why bother to do anything about it at all? What I want to ask you with your huge background on the financial side of this is this. You have looked at the whole set-up. You have seen the huge attempts already by the BBC to cut back on their finances and what they are doing, which is perhaps a little alarming to some people. When you were looking at the previous regime what were your views there? Were some of your views based on the fact that maybe there was not good value for money in what had been achieved in the past?

Lord Burns: First of all, on appointments, if I could just make the point, under the present arrangements the governors are effectively appointed by the same method. In the end the government have the final say and so the fact that the government has had the final say and has appointed the chairman has not been something which has caused us to worry about the independence of the BBC because they have chosen people who have been of sufficient stature and who, once they have taken on that task, have done it independently.

Q240 Baroness Howe of Idlicote: Can I make a little input there because particularly recently it had the oversight of a much more independent public sector commission?

Lord Burns: Our proposals do envisage a continuing role for the Public Appointments Commission. You have raised the question of the structure of the board. My main point here is that the BBC is a large commercial organisation. It has a public purpose but it is spending an enormous amount of money, it employs a huge number of people, it is serving a vast range of customers and it seems to me that it has many of the tasks that I have on commercial boards. And indeed which I have with Welsh Water, of which I am Chairman of, but which is a not-for-profit company and which is not owned by shareholders but where we have a board exactly the way that I propose here. It has to be explained to me why that is something so different from the BBC. On the finances of the BBC, if I look down the strengths and weaknesses of the regime which has been in place for many years, as we say in our note, I think its great success is that it has been able to protect the independence of the BBC. It has created over a long period of time some very high quality programming which can be compared to anything else in the world in both of those respects. What I notice when it comes to financial management is that we go through periods of rapid expenditure growth and then we go through periods where there is then suddenly a great attempt to control expenditure. Over a period of time it probably averages out at a fairly steady rise but it seems to me that this is the area which the governors have found the most difficult of all; keeping the executives' feet to the fire as far as expenditure is concerned. It is a very large bureaucracy which, with the best will in the world, from time to time seems to engage in doing what it thinks it would like to do. It likes to experiment, it likes to innovate, and it constantly needs the right kind of oversight. The main point that we put forward in the papers was not so much that there are these great problems about the past and the issue about whether or not it is broke, but that we are coming into a period which is going to be very different from periods we have had in the past. The existence of multi-channel television, and the huge variety that there is going to be, is going to change the role of the BBC quite significantly. It will no longer be going head-to-head with one or two other channels. It is going to be in a world where there is a huge variety of channels. A number of viewers are going to be drifting away. It becomes quite clear what we think the role of the BBC is going to be over that period. We think that it has to be much more complementary as far as other broadcasters are concerned. There has got to be much more emphasis upon its distinctiveness and upon being quite clear about the role that it plays. This is a much greater challenge for the management of that organisation.

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Q241 Chairman: Can I take up Lord King's point when he asked you about Ofcom? That is the other obvious body that could do the regulatory functions. Is it not a bit odd to have Ofcom sitting there and you then propose another body which sits side by side with them?

Lord Burns: It is not ideal and it is an issue that we wrestled with. We spent some time on this. One or two members of the panel initially wanted to pursue this option quite rigorously and we did look at it. But in the end we came to a collective view that, for the reasons I mentioned, which indeed are set out in the first page, that was not the best thing to do at the moment. It was not an open and shut case. It was not a case where one was an obvious solution and the other one had no merits at all. I think it is an option which needs to be kept under examination. But we felt this was not the time for that, and the job that has to be done with regard to the BBC is sufficiently different from the job Ofcom does with regard to the commercial broadcasters that there is a very strong case for having a separate organisation.

Q242 Lord Peston: Can I take us on to whether you can guide us firstly as to how we would recognise this public service, which is hard enough, and, secondly, quite a lot of the terms used by you and others seem to lead to the view that though we might not be able to recognise it perhaps we will be able to measure its value. One of the things that most puzzles me about your *Emerging Themes* paper is in paragraph 4.3, which I first thought must be capable of more than one interpretation. When you have a look at it, it seems to have only one interpretation and it starts, "Other public service broadcasters are funded differently", and then you say ITV, Channel 4 and Five. For that to make any sense at all you must be referring, say, to Five as a public service broadcaster in some way, which I must admit I find astonishing, to put it in my usual subtle way, and then in the very next sentence you go on to refer to Sky, which seems to make it even more far-fetched. I am just wondering, when you answer my general question on what you mean by "public service broadcasting", what possible sense that paragraph makes, and it relates to paragraph 4.15, which starts off with a contingent sentence, "If competition in public service broadcasting is to remain a government objective . . .". Again, I am rather taken aback by competition in public service broadcasting since it seems to me that the public service broadcaster is not being referred to, namely, the BBC. Finally, I like your kind of model in regard to the earlier questions, but one of the things that struck me about the public service thing, and it goes back to Lord Reith and also to Lord Swann, is that the point of the BBC is that it has a public service ethos and that is a quite different phenomenon from the idea of, "This is a public service and that is not". Your model now is

that it is no different from any other organisation. It is at least arguable that if it either is or ought to be different then it has a public service ethos. I put those to you.

Lord Burns: The issue of the definition of "public service broadcasting" is not one that I want to get into a long debate about. We can spend a great deal of time on this. It is clear to me that it has different meanings to almost everybody that tries to describe it. We have a definition in the Communications Act. Ofcom themselves, in their work on public service broadcasting, have done some very useful work in terms of defining some of the characteristics of it. Some people still think that public service broadcasting means any kind of broadcasting which is broadcast free to everybody and which everybody can receive. There are some others who think that public service broadcasting by definition is that which the BBC does and does not encompass anything which others do. The Ofcom definition talks about certain types of programming which you might not find readily available in terms of commercial television, things to do with news, current affairs, things to do with culture, things to do with certain types of quality and distinctiveness and willingness to broadcast to smaller audiences than you might do if you were simply engaged in commercial broadcasting. It seems to me there would be a lot of ingredients that would go into this. That would mean that you would have to look at each of these services and ask yourself, "To what extent is the output of this simply things which are being done for commercial gain and things which have a wider public purpose?" Each of the major channels produces news programmes. They produce current affairs programmes which I would define as having a public service broadcasting element to them. Some of them produce arts programmes which I think they would not be doing if they were simply maximising their profits. Sky has a free news channel which I would certainly put into the category of public service broadcasting. Similarly, I would even venture to say that some of the things that I see on BBC I would not necessarily say fell into this definition of public service broadcasting because they are programmes that you could quite as readily imagine taking place on any commercial profit-maximising platform. The definition I seek for myself is to think of that type of broadcasting that you would not find in a simple market-determined, commercial broadcasting environment. It is where things have been done either to a better quality with greater distinctiveness or because they are targeting particular minority groups—where people are consciously taking decisions to produce certain types of programmes which would not necessarily maximise their income. We use this phrase and we use it so easily about public service broadcasting but once you get into it and try

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to define it, of course, it does become very difficult. That leads on to your second point about when the BBC is charged with doing certain types of programme working out how to measure the success or otherwise of it is not easy. The Trust is not going to find it any easier than the governors have found it (although there are some good ideas about public value or licences which would have certain types of characteristics). It is difficult to move away from simply maximising audience share and measuring success in terms of audience share but also looking at diversity of audience and whether you actually manage to have programmes which do attract people of different interests and different tastes. Things about quality, about distinctiveness, about those types of programming which are not available elsewhere on commercial platforms have got to be some of the measures that, if you were scrutinising this and you were giving it oversight, you would want taken into account. But it is by no means a straightforward business. I do not think you can do it without full recognition of what it is that is available on the commercial channels. That is why we make some remarks that simply mimicking the commercial channels and building audience that way does not seem to me to be the kind of remit that you would want the BBC to have. On the other hand, you do not want to have a BBC which is simply producing extreme minority programming which nobody wants to watch because it will quickly lose support. As I read histories of the BBC, I am very struck by how successive director-generals and editors of different channels have struggled with this whole issue about how you have distinctiveness, how you appeal to a wide group of people with different types of programming but how you still keep enough people watching so that there is sufficient support for the licence fee as a method of funding. People have travelled this difficult path throughout the history of the BBC.

Q243 Chairman: How you measure that is extremely complicated. As you have just said, I think you have rather understated how complicated it is.

Lord Burns: It is. The Green Paper recognises this. It does require more work. The Green Paper begins by setting out that there is now wide agreement about some of the areas and some of the headings that the BBC should be concentrating upon. But how you make sure it is doing it well, how you make sure it is dealing with each of those elements and is not simply going head-to-head with commercial channels in order to keep its numbers up are all enormously important parts of the oversight of this. That is why it needs a body which is prepared to do this and to do it with a certain amount of energy and effort. It is not simply a job for Ofcom. You would end up setting up a different part of Ofcom if Ofcom were to do this.

Q244 Baroness Bonham-Carter of Yarnbury: You do not seem to agree with the Green Paper argument that the licence fee is essential for safeguarding the BBC and suggest various other options. I wondered what your reaction was to the government's reaction to your suggestions, but also one of the things you suggest is top-slicing. I do not know if you are still happy with that suggestion. Does top-slicing not actually allow the government to interfere more in that it can institute a kind of reward and punishment with the BBC and how much money it is going to have?

Lord Burns: That is a very good question on interesting issues and gives me the opportunity to respond on one or two things that I have been wanting to respond to. I do not think that what the Green Paper says is that far removed from what we said in our advice. Indeed one of the proposals in the Green Paper is that one of the things that should be looked at part of the way through the next Charter period is whether or not all the licensing money should go to the BBC or whether some should go to some other broadcaster. That issue has not been closed down. We are very supportive of the notion that the licence fee is, for the foreseeable future, the best way of funding the BBC and we go into some detail on that. But we recognise at the same time that it is far from perfect. It has some very big disadvantages and furthermore I think the disadvantages of the licence fee are going to get greater as we move through the next Charter period. The emergence of multi-channel television means that this is already quite a regressive measure and it turns out, of course, that a lot of the people who are at the moment at the lower income end of the spectrum are the people who are watching more non-BBC programming. Furthermore there is also some evidence that the programming from the BBC that they watch is at the cheaper end. So that if you look at where the resources of the BBC are going in relation to people's incomes that is probably also not a good correlation. It is not ideal and then there are all the problems of enforcement with this and how you deal with that. As you move forward there will be more competition for viewers. As fewer people are watching BBC, which I think is inevitable, and as conditional access becomes available, some way in the future, it is going to be much more difficult to defend the licence fee as the method of funding the BBC. We suggest that there will have to be other options. Subscription is the most obvious one. I personally do not resile from the notion that there should be some limited form of advertising on BBC. I already observe that there is quite a lot of advertising on BBC, although it is largely for other BBC programmes, so it is not as if it was a no-go area. There are some problems with it because what you do not want is the programming channelled towards

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maximising audiences in order to maximise your advertising revenue. We have to think more broadly about this but a lot of it is some way off. We have recommended that there should be a review of alternative methods of funding part way through the next Charter period and that is included in the Green Paper. With regard to the top-slicing issue, I have not referred to it as top-slicing. I do not think our papers refer to it as top-slicing. I do not like the idea of top-slicing. Top-slicing means that you make some pre-determined judgement to take away a certain amount of the licence fee and give it to someone else. What we talk about is contestability. It is in the context where we anticipate that there will need to be some public funding of non-BBC channels if we are to have a plurality of public service broadcasting because a lot of the commercial pressures that are now coming to bear upon the commercial channels mean that they are going to find it more and more difficult to be able to afford to produce what I defined earlier as public service broadcasting in this new environment. That is also a conclusion of Ofcom's.

Chairman: We are seeing Channel 4 next. I think that is part of their case.

Q245 Lord Maxton: Can you define what you mean by "commercial channels"?

Lord Burns: I think all of them are going to be under pressure to do less of the public service broadcasting which I talked about earlier. However, I am not saying necessarily that the licence fee should go to all the commercial channels. Certainly ITV and Channel 4, who are the two commercial channels which at the moment do the most public service broadcasting, under this definition, are going to come under commercial pressure from the subscription channels to do less of that. This is the argument of Ofcom and I am persuaded by that argument. I am also persuaded by the argument, however, that we need a plurality of public service broadcasting. The BBC should not be the only place you can see it. Ofcom have suggested a public service publisher and that there should be some public money possibly that would have to go into supporting some programmes on some other channels. Our suggestion is that if you are going to do that it would be sensible that both allocations should be funnelled through this Public Service Broadcasting Commission rather than having them come out of two separate pots. This also has the advantage that at the margin you can have some contestability about certain types of programming. If there are some sorts of programming that the BBC does not wish to do but which the Broadcasting Commission would like to see put on, then it would be capable of commissioning Channel 4 or ITV to do them, supported by some of these public funds, at times when people want to watch them. It would create a

certain amount of what I describe as competitive tension. In most markets that I see, in most places that I work in, a little bit of competition with somebody else by and large leads to an improvement in people's performance and I do not see at all why some element of the licence fee, if the BBC was seen to be not providing the sort of services that the Broadcasting Commission wanted to see, should not be capable of being switched to somebody who would produce the services that the Broadcasting Commission wanted to see.

Q246 Baroness Bonham-Carter of Yarnbury: So you are talking specifically about the licence fee?

Lord Burns: It could be the licence fee. Maybe it would be an enhanced licence fee in the new world because we may have to have a higher licence fee in order to have the same amount of public service broadcasting that we have today because some of this free public service broadcasting which is being done on commercial channels may disappear. Ofcom talk about this £400 million deficit that may emerge. It could be part of the licence fee, it could be an enhanced licence fee, it could be some other form of public funding, but I would like to see it channelled through the same organisation and I would like to see at some point in this process some contestability. Contestability I do emphasise is a very different notion from the notion of top-slicing because top-slicing simply says, "We take this amount of money. We will take off 10 per cent and give it to somebody else". What I had envisaged was that there would probably be a larger pot. Some of it in any case would have to go to finance this publisher or whatever model Ofcom finally come up with, but at the margin there should be some tension, some contestability, so that there is a bit of competition in a world where it is quite difficult to get it.

Chairman: I think that is clear.

Q247 Lord Maxton: Do you think the neutrality between the BBC and other public service providers will be secure as Switchco develops where the BBC plays a major role in switching people over? Is there not a danger that they have a dominant role in that?

Lord Burns: I spent very little time on the issue of digital switchover. It was not a significant part of the work that we did. Obviously, we had to take into account the effect of digital switchover and the issue of the timing of it, and where it was likely to lead to in terms of multi-channels. But I spent very little time on the details or the technology of this switchover and I would rather not be pressed on that.

Q248 Lord Maxton: Can I then switch you to what I think is a more important issue, and that is that in my view and the view of some others digital switchover is an irrelevance with the increasing and

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very rapid development of broadband, both in terms of the size of broadband and in terms of the cost of it, not at the present time, but that by the time we reach 2012 when the switchover takes place that will probably be the more important platform for delivery of television on demand rather television by channel?

Lord Burns: It may be.

Q249 Lord Maxton: That does not influence the future of the BBC very considerably.

Lord Burns: We are already up to 60 per cent, I think, of homes which are multi-channel and receiving digital either through satellite or through Freeview. As you say, we are seeing rapid changes in technology through broadband, although at the moment the pictures are pretty unwatchable, as far as television is concerned, unless it is the news and you vaguely know what is happening. You can get stuff if you download it but it will all change very dramatically. You have only got to think of the last six or eight years and the changes that we have seen. The only thing I am not prepared to do is to guess what those changes in direction might be because the one thing that is clear to me is that predictions about the impact of technological change are virtually impossible. I think what we can guess is that there will be substantial changes; there will be new products; there will be new sources of delivery; there will be new ways in which people will be watching television. I may say that increases the problems of funding the BBC through the licence fee.

Q250 Lord Maxton: There is a fundamental difference between the BBC, as I see the future and I believe it should be, financed by investment from the public through the licence fee to produce high quality programmes rather than being a broadcaster of channels. There is a major difference there between those two roles.

Lord Burns: I agree. By the time we get to the end of the next Charter period I think everyone is agreed that the world will have changed enormously. I think the only area of debate that we really had during the seminars that I was running was whether it would happen sufficiently quickly during the next Charter period so that the particular model that was introduced at the beginning of the Charter period would not be capable of being sustained throughout. We have suggested that there should be some reviews during the course of the Charter and I think we have to be ready to expect that by the time we get to the end of this next Charter period there could have been some very, very big changes.

Chairman: Lord Holme, would you like to continue?

Q251 Lord Holme of Cheltenham: Building a bit on what Baroness Bonham-Carter was asking you, I am very struck by what a gloomy assumption lies behind our definition of public service broadcasting. I very much agree with you that we do need to keep ITV and Channel 4 with an element of public service broadcasting in the mix, but in the past I guess that has been done by a mixture of stick and carrot. The stick has been the spectrum scarcity, and we have all identified that is going to go, so naturally people start thinking of carrots, which is what subsidy could be given for doing the right thing. I just wonder whether the technology does not make for a rather gloomy assumption because both at the micro level of the sorts of delivery that will be possible on broadband and digital, and also at the macro level of an exploding world market for media product, I wonder whether there is not a market for decent television anyhow. Do we have to have a built-in assumption that there is a race for the bottom? Is that a right assumption? Are there not niche markets which are perfectly commercially satisfactory for producing decent television?

Lord Burns: Yes. We already receive some of those channels. We see specialist channels which have emerged which deal with various cultural activities that do things which I would regard as public service television. I think we have also seen in the United States on some subscription channels some very high quality programming that would compete very well with the best of our programming. There is an alternative question which was asked by quite a lot of people during the reviews that I was engaged in which was, "Does the multi-channel world not mean that a lot of the things that we thought we had to rely on the BBC for are going to be available via other broadcasters?" My feeling is that we will get some variety and we will get some extremely good programming from around the world from some of these subscription channels, but that is unlikely to make up for the amount that we have been able to get in the past through the commercial channels as a result of this carrot and stick approach whereby basically people received a licence to broadcast at less than its commercial value in return for doing certain types of programming. At the moment I am of the view that we are not going to get as much of that back again, but I may be wrong. If you are right, and if there is a great spontaneous growth of high quality, what we have described as public service type of broadcasting that does become available commercially through subscription, or even that is free-to-air, maybe one has to revise some of these assumptions about what is needed. The world is full of surprises and I am very hesitant to predict. I have spent a lot of my life trying to predict other things, equally unsuccessfully at times, and I do not want to start trying to pretend that I can predict what is going

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to happen in the broadcasting space. Ofcom have taken the view, and I think they have put forward some very strong analyses as to why, that the amount of public service broadcasting that is available will be less.

Q252 Lord Holme of Cheltenham: Let me just press you on one question more, which is if you were to think of public service broadcasting as less of an obligation and more of an opportunity then the role of subsidy within a pluralistic public service broadcasting would encourage people to be brave, it would be more what was set out in Channel 4's original remit to encourage innovation. It would not be to compensate them for doing the right thing, it would be to encourage them to be a bit braver, would it not?

Lord Burns: It would. Each time you do some of this programming it is commercially risky, and you probably give up a certain amount of income. You may have some successes but you may have failures also. By no means do I see this as compensation payment to move down this line. It is what I regard as an incentive payment to do certain types of programming that you think will be good and which will be well received by viewers.

Q253 Baroness O'Neill of Bengarve: Lord Burns, you have suggested that there could be a parallel to Ofcom separate from PSBC. I take it Ofcom would still have the competitive responsibilities?

Lord Burns: I think we have proposed that they should have possibly an even greater role.

Q254 Baroness O'Neill of Bengarve: Or possibly even greater. Would you say a bit about why you think they might not have quite enough responsibilities in that area at present? Is there some deficiency in the powers that Ofcom presently has with respect to the commercial activities of the BBC?

Lord Burns: It is a very complex area. Let me tell you, I have difficulty remembering the arrangements from one week to the next and if it has been more than a week since I last looked at them I cannot recall them. It is a very complex matrix of who it is that does what when it comes to the BBC. There are a number of areas where there are decisions about whether or not a potential service of the BBC is fair competition with regard to the commercial broadcasters. I think first the decision goes to the BBC Governors and there is an appeals process which I think you can go through. What we suggest in the paper is that we need to get to a position where Ofcom has got a more general responsibility in this area so that it is capable of treating all of the broadcasters in a similar way when it comes to competition issues. This includes both competition amongst their primary type of output, ,

but particularly it applies to ancillary services and areas to do with publishing, radio and other activities.

Q255 Baroness O'Neill of Bengarve: Would that be possible if the BBC remains, as we assume that it will for the time being, an organisation of a different order of magnitude from some of the others and has opportunities that maybe others lack?

Lord Burns: We had quite a lot of discussion about some of these issues. Indeed, one of the persistent themes that came up during the course of our discussions was that people who were engaged in the wider commercial world felt that from time to time they did have periods of unfair competition from the BBC. They would start a channel or they would start a product, a publishing product, say, and the BBC was capable of just moving into that space without any second thought supported by quite a large balance sheet and they then found life extremely difficult. One of the persistent calls was to have a framework which meant that there was a fair method of assessing those pressures. It came both from the publishing world but also from commercial radio stations as well. They wanted to see some process whereby the BBC had to make a much stronger case as to why it was that they should be able to do some of these activities than is presently the case. The BBC has some very good answers in many of these cases, as you would expect, although they have just been going through a process to unbundle some of these commercial services where they have been coming into competition. You will find a lot of the commercial broadcasters will give you specific examples of cases where they have felt they have been run over by the BBC bus when they were trying to establish a presence in some niche market. One of the challenges that came up time and time again was that Radio 2 had moved into the space that had previously been very much the primary space that was occupied by the commercial radio stations and instead of going for an audience of 40–50 year olds—I cannot remember the details—they suddenly moved to going for an audience of 30–40 year olds. They had been able to make that decision without any consultation with anyone and without having any regulatory approval for it, whereas if you were a commercial broadcaster you would have had to have gone through a process of having your licence changed in order to change the particular type of programme that you were doing. They wanted some of this to be done on an even-handed basis. In some cases the panel's view was that there was just reason why this should be done in a more open and transparent and even-handed way. I found time and time again, going through the process that I went through, that the BBC is a very large organisation by comparison with other people who are working in this area.

Chairman: Last questions from the Bishop of Manchester.

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Lord Burns

Q256 Bishop of Manchester: Lord Burns, in your report you talk about the importance of an objective system for making judgments about performance and in dealing with that issue you go on to emphasise the need to have a system which is able to both define and assess programmes that have been commissioned. If I can just look for a moment at that commissioning aspect. Your report also emphasises the value from a creative point of view for the BBC in working with independents and commercial producers, although elsewhere you go on to make the point that there is value from an efficiency point of view for the BBC when internal resources are used. As you are aware, the BBC has proposed a Window of Creative Competition as one way of opening up potential production opportunities for the independent sector. I just wonder if you can reflect, from your point of view, on your own assessment of that BBC proposal.

Lord Burns: I think it is an interesting idea. I would like to see more detail about it because I am not sure I have quite got to the bottom of it. There was a general feeling that there should be a greater opportunity for people in the independent sector to be able to bid and get into the process of making programmes, either for television or for radio. There have been various quotas established and there have been some cases of not meeting those quotas. What you find is the thing that is complained of most of all by people—and this is rather the same as the case with some of the other commercial competitors—is that they have a feeling they are dealing with a very large organisation, they are not quite sure how it is going to respond, it is a substantial bureaucracy, it is difficult to pin down where the decision making is taking place. It takes some time to get an answer to anything and if you get an answer you are not quite sure why you have got a particular answer, and it lacks transparency, openness and methods of assessment and a feedback system which makes people feel that they are getting fair treatment. We have all worked in organisations which have had some of these characteristics. I worked for a long time in the Treasury which shared a lot of these characteristics and very often the easiest way of making a decision was to keep everybody in the dark and give them the decision at the last moment.

Q257 Chairman: We all remember that.

Lord Burns: Of course, it is all different now, it has all been changed and modernised. I felt that as I listened to some of the people complaining about what it was like to be the supplicant at the door of the BBC that it sounded awfully like so many of the complaints I had from departments and various spending bodies about their treatment at the hands of the Treasury, so inevitably I had some sympathy for them. One has

got to recognise the different scale there tends to be between the BBC and others and, therefore, anything the BBC can do to set up systems and processes which give people a greater degree of certainty about the process that is going to be followed, that gives them feedback about why decisions have been reached, which makes them feel that they have had an even-handed go at it, is to be welcomed. This applies to some of these competition issues, it applies to some of the outsourcing issues, and it certainly applies to complaints systems where when you get the feedback from the people who have been making the complaints by and large they have a frustrated response to how they feel that they have been dealt with. I think that is one of the challenges the BBC has and I think they are aware of this and are making progress but they have got to get some systems and processes in place and they need more confidence in dealing with the outside world that they can do it in an even-handed way. If this Creative Window means this is all going to be handled through a window rather than in a brick room then I think probably a lot of people will be very happy.

Q258 Chairman: I hear that point. You mentioned quotas and I think I just detected a slightly disparaging feel about that and, indeed, in your report I think you say that you really do not like the idea of mandatory quotas in this area. Am I right in understanding you correctly on that?

Lord Burns: They are very much a second or third best outcome. A well run system in a well run business all the time would be looking for the best way of being able to deliver particular programmes that it wanted to do and would be making a balance between how much of this it sourced from outside, how much it sourced from inside. It would be doing it from the point of view of wanting to keep a number of suppliers in business who were giving them some good programming and it would also want to take into account the relevant costs of these things. In most businesses you do not have a quota about how much it is you are going to buy from the world outside. You have processes in place which try to reach what is the optimal level for you over the long run in terms of who it is that you are dealing with. By and large, quotas are what you get when people feel that the internal methods and processes are not working very effectively so usually they are second or third best outcomes. I cannot imagine that Lord Kalms had quotas in terms of where he was sourcing his product.

Chairman: We have taken rather more of your time and your patience than we had expected. Thank you very much indeed for your evidence, we are very grateful and we will take very careful note of it. Thank you very much.

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Memorandum by Channel 4

EXECUTIVE SUMMARY

General Channel 4 View on the BBC and the Green Paper

- Channel 4 is a strong supporter of the BBC as the cornerstone of public service broadcasting. We support the Green Paper's objective of a strong and independent BBC.

Governance and regulation of the BBC

- As a key competitor to the BBC, its model of governance and regulation is important to Channel 4. The BBC is clearly a major market intervention and one that, on the whole, we support. But its size and scale means that if its activities are not properly regulated it has the potential to have a detrimental impact on the rest of the sector. The BBC's old system of governance was increasingly failing to inspire confidence that its activities were being properly scrutinised and regulated in the public interest. Channel 4 has broadly supported, therefore, Michael Grade's governance reforms. The Government's proposals for a Trust and Executive Board appear to build on these reforms, although, as yet, it is unclear whether or not this structural reform will be sufficient to eradicate the confusion that has dogged the relationship between the BBC's Board of Governors and management in recent times.

The BBC's impact on competition

- Channel 4 believes it is right that the BBC should pursue appropriate commercial activities that can support its core public service activity. However, there needs to be clear transparency and separation between its core public service activities and its commercial activities.
- We endorse the proposal that Ofcom should approve the BBC's internal fair trading rules.
- We also support the proposal for each BBC channel to be given its own service licence, overseen and regulated by the Trust. An early test for the new system of BBC governance and regulation will be any decisions that the Trust is asked to take about the future of BBC3's service licence following the Barwise Review. This recommended a relaxation of BBC3's public service remit. Any significant relaxation would have a negative impact on the competitive position of other channels including Channel 4 and E4 and is something that we would, therefore, oppose. If the BBC management brings forward proposals to relax the remit, the BBC Governors/Trust must make a transparently objective assessment of the potential market impact, with input from both Ofcom and the DCMS, before reaching any decision.

The future of public service broadcasting

- The environment within which public service broadcasting operates is changing dramatically. More than at any time in the past 50 years decisions taken during the BBC Charter Review will have an impact not just on the BBC but on the rest of the broadcasting sector. As the Government makes clear in paragraph 10.7 of the Green Paper "the future development of the wider PSB system is relevant to BBC Charter Review."
- Channel 4 endorses the Government's support in the Green Paper of the benefits of plurality of public service supply. We believe that Channel 4 will become an even more important PSB competitor to the BBC as we approach digital switchover.
- The economic model that has sustained public service competition to the BBC in the past, ie access on preferential terms to scarce analogue spectrum, will come under increasing pressure in the next few years. As we move towards digital switchover the implicit subsidy that Channel 4 receives in the form of free access to the analogue spectrum gradually disappears. We believe, therefore, that it is right to consider as part of the current Charter Review what policy decisions might be necessary if we are to sustain public service competition to the BBC in the run up to switchover and beyond.

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- Channel 4 will face specific funding challenges as we approach digital switchover. Unlike ITV we do not wish to reduce our public service output nor are we in a position to benefit from reductions in licence fees¹. In its recent Public Service Television Review Ofcom proposed to explore a range of indirect measures to offer support to Channel 4. One such proposal was for the Government to explore the possibility of the BBC funding Channel 4's transitional costs of achieving digital switchover—something that the BBC has itself agreed that it would be willing to do as part of its new Charter. We welcome the Government's agreement to this proposal in paragraph 10.6 of the Green Paper.
- Channel 4's strong preference is to find new indirect forms of support that can replace the implicit subsidy of our current access to analogue spectrum. However, in the longer term the possibility that direct public funding may be necessary to fund competition in the supply of public service television cannot be ruled out, as the Government observes in paragraph 10.7 of the Green Paper. We, therefore, support the Government's proposal to review this matter, and the potential role of the licence fee, towards the end of the digital switchover process as well as its encouragement to Ofcom to do more detailed work on its proposal for a Public Service Publisher in advance of this review.

Commissioning of programming

- Channel 4 is a strong supporter of the independent production sector. Unlike the BBC and ITV, Channel 4 does not have any in-house production resources and is dependent on independent producers for its programming output. In 2004 we worked with 312 different independent producers to make our programmes. Whilst we believe that the BBC should retain sufficient in-house capacity to maintain a critical mass, we also believe that it should operate more of a commissioning meritocracy than has been the case in the past.
- However, we also believe that any moves by the BBC to increase the volumes of programming it commissions from the independent sector should be designed to deliver the maximum benefit in public policy terms by ensuring not simply the development of a stronger independent sector overall but also support for smaller, regionally based indies, rather than just the big, most financially secure, London-based indies.

INTRODUCTION

This response is made on behalf of the Channel 4 Television Corporation (The Corporation). The Corporation is a publicly owned not for profit broadcaster. Channel 4 is a free-to-air public service channel, which is entirely funded by advertising revenue. It also operates a number of other services including the television channels E4 and FilmFour, which are dual-funded by advertising and subscription.

CHANNEL 4'S PUBLIC SERVICE ROLE

The core Channel has a particular public service remit under the 2003 Communications Act to:

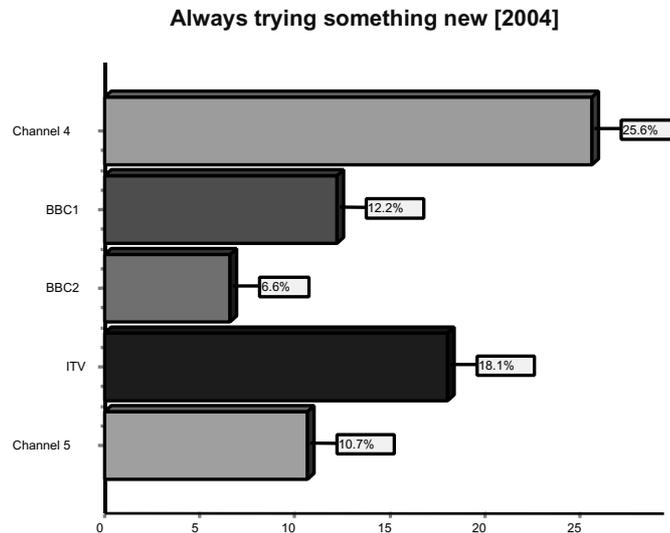
- Broadcast a wide range of high quality television programmes with a specific emphasis on innovation and experimentation in both form and content.
- Broadcast programmes that appeal to the tastes of a culturally diverse society.
- Commission and broadcast programmes that make a significant contribution to the provision of educational programming and programmes of an educative nature.

At its inception one of the Channel's core roles was to support the establishment of a strong independent production sector. Channel 4 is a commissioner-broadcaster and as such has no in-house production. We are proud of our role in establishing the independent sector and continue to strive to find ways of supporting it. In 2004 Channel 4 worked with over 300 independent producers, more than ITV and Five combined. 60 of those companies were new to Channel 4. Over 30 per cent of our programming is commissioned from outside London. We run a large number of training and placement schemes supporting independent producers around the UK.

¹ As a not-for-profit public service broadcaster Channel 4 currently pays nothing for its analogue spectrum. This assists it in funding its wide-ranging public service output.

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Channel 4 has an exceptionally strong track record on programme innovation, in both form and content. This continues to be a defining characteristic of the Channel for viewers today, particularly in key genres such as documentary (JAMIE'S SCHOOL DINNERS), drama (SHAMELESS), comedy (GREEN WING) and science (ANATOMY FOR BEGINNERS). The Channel operates a number of tracking studies to try to establish which channels viewers think are most innovative and risk taking. Channel 4 consistently scores higher than its terrestrial rivals on a range of measures including the one below:



At Channel 4 our ambition is not simply to maintain or protect what we have contributed to public service broadcasting in the past. As we enter a more complex digital world, we have developed an exciting vision for how we can evolve our role alongside the BBC as a major contributor to public service television on a range of platforms and through a range of outlets.

There are three legs to our strategy. The first, relates to the main Channel where our commitment is to strengthen our current contribution to public service output. In news and current affairs, for example, in 2005 we are increasing the number of editions of DISPATCHES in peak from 12 to 28 and we have recently made permanent the provision of a weekday CHANNEL 4 NEWS AT NOON, a programme that was originally introduced on a temporary basis at the time of the Iraq War.

The second key leg is the development of a stronger presence in multichannel. In particular we wish to develop, as has the BBC, a portfolio of free-to-air channels, as endorsed by Ofcom. Later this year we will launch More4. The channel will have a programme budget of £30 million per annum, a significant proportion of which will be allocated to original programming, with a particular focus on documentary and factual output—including some news and current affairs. This channel will, we hope, prove to be a positive addition to the public service landscape and a significant driver of the growth of digital television.

The third and final leg is a commitment to much greater investment in the development of new media activities. Later this year, for example, we will launch FourDocs, a broadband documentary channel that will provide ongoing access to a wonderful archive of some of Channel 4's best documentaries from the past. More importantly it will provide new and upcoming documentary filmmakers with the opportunity to get their work commissioned and viewed. It will also give valuable insight and training opportunities in areas like rights clearance for new producers.

Channel 4 believes that it is only by delivering our services across a much broader range of platforms that we can maintain the level of public impact that is necessary to justify ongoing public support for broadcasting.

GENERAL CHANNEL 4 VIEW ON THE BBC AND THE GREEN PAPER

Channel 4 is a strong supporter of the BBC. The BBC is rightly described as the cornerstone of public service broadcasting. Its size and scale ensures that public service broadcasting in the UK makes a central contribution to our cultural life rather than a peripheral one.

Channel 4 supports the Government's overarching objective in the Green Paper of sustaining a strong, impactful BBC that is independent of government. Our overall assessment is that the proposals contained in the Green Paper are likely to deliver on this objective. We welcome the Government's support for the Licence

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Fee as the “least worst” funding mechanism for the BBC and its commitment to a 10 year Charter and licence fee settlement. This will give the BBC the certainty it needs to play the lead role in switchover envisaged by the Government.

ISSUES IN THE GREEN PAPER OF DIRECT RELEVANCE TO CHANNEL 4

1. *Governance and regulation of the BBC*

1.1 As a key competitor to the BBC, its model of governance and regulation is important to Channel 4. The BBC is clearly a major market intervention and one that, on the whole, we support. But its size and scale means that if its activities are not properly policed it has the potential to have a detrimental impact on the rest of the sector. If it decides, for instance, to relax the public service remit on its main channels, spend significantly more on US acquisitions or launch new services it can undermine the competitive position of rivals that, unlike the BBC, are dependent on commercial income to fund their activities.

1.2 In the past the closeness of the BBC Governors to the BBC Management has not always convinced the public or competitors that the BBC is either (a) being effectively regulated by the Governors in the public interest or (b) taking sufficient account of the potential market impact of its decisions. Achieving a greater degree of separation and transparency between the BBC’s Governors and its management is an important first step in addressing this credibility gap.

1.3 Channel 4, has, therefore broadly supported the changes that have been made by Michael Grade since his arrival as Chairman. He is right to have implemented a restructure that, for the first time, sees the Governors physically separated from the main body of the BBC and able to rely on their own support staff to consider and analyse proposals and activities rather than those in the employ of BBC management.

1.4 The Government’s proposals for a separate Trust and Executive Board appear to build on the principle of these changes and as such are welcome. Although these proposals seek to create a structure within which there is a clear separation of functions between the Trust (broadly responsible for strategic oversight and regulation) and the Executive Board (broadly responsible for implementation) it is not yet clear that they will avoid the possibility of “confusion or capture” referred to on page 6 of the Green Paper.

1.5 In the end under this model the BBC’s regulator (the Trust) remains part of the same organisation as the BBC management, whose strategies it will have to endorse or reject and whose actions it will have to regulate. This does not provide the clarity that Channel 4 enjoys with its system of governance under which the Channel 4 Board is clearly responsible for the strategic oversight of the Corporation but regulation of its content and services is conducted by an independent third party—Ofcom.

2. *The BBC’s impact on competition*

- Are the Green Paper’s proposals to regulate the BBC’s impact on competition adequate? Should Ofcom be responsible for approving the BBC’s internal rules governing their commercial businesses?

2.1 Channel 4 believes it is right that the BBC should pursue appropriate commercial activities that can support its core public service activity. These should be aligned as far as possible to the BBC’s main public service operations, eg magazines should be spin-offs of successful programming not random, unrelated products. However, there needs to be clear transparency and separation between the BBC’s core public service activities and its commercial activities so that competitors can be confident there is no cross subsidy. We welcome the Green Paper’s emphasis on this point.

2.2 As the Government observes in the Green Paper the BBC’s application of its internal fair trading rules has sometimes been controversial. As the BBC’s commercial activities are already regulated by Ofcom and the OFT under general competition law we endorse the Green Paper proposal that Ofcom be required to grant its approval to the terms of any internal rules the BBC continues to apply “as a form of ex-ante regulation”.

2.3 Insofar as the competitive impact of the BBC’s public service activities is concerned, we specifically welcome the proposal that the new Trust should be required to consult with Ofcom on market impact issues as and when the BBC proposes new or altered services. This will be particularly important if the rest of the market is to have confidence that in considering proposals the BBC is taking into account the wider ecology and not just its institutional self interest.

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2.4 More generally we welcome the proposal that for the first time each individual BBC channel will have a clear service licence and that one of the core responsibilities of the Trust will be the setting and regulation of these licences. This will bring the BBC into line with the other Public Service Broadcasters—in the sense that each BBC Channel will have clear requirements—and, if applied properly, should prevent the problems of the past where the BBC has on occasion decided to largely remove, for example, arts programmes from peaktime BBC1.

2.5 An early test for the new system of governance will be any decisions that the Trust is asked to take about the future service licence for BBC3 following the Barwise Review. In this Government-commissioned report Professor Barwise appeared to suggest that the way to improve audiences for BBC3 in particular, and thereby its value for money, was to allow the Channel to relax its public service remit. Such a move would have a direct adverse impact on competitor channels including Channel 4 and E4. This potential impact must be independently and objectively assessed, with input from the DCMS and Ofcom, before the Governors/Trust make any decisions regarding the service licences of these channels.

2.6 Approval for the launch of BBC3 was only granted after extensive public consultation. The remit it is currently operating with was agreed to ensure it makes a distinctive public service contribution and does not adversely affect other new digital channels aimed at a similar audience. Channel 4 would not, therefore, support relaxation of BBC3's remit. One way in which the BBC could deliver better value for money on BBC3 is to significantly reduce its current £100 million per annum budget. This is much larger than that of competitor channels such as ITV2 and E4 and more than twice as large as the budget for BBC4.

2.7 It will also be vital for the credibility of the new system of governance and regulation that the BBC Trust regulates the BBC's management effectively to ensure that commitments made in Building Public Value are delivered. For instance in Building Public Value the BBC states that: "Audiences want and expect greater innovation from the BBC. We will avoid ideas and formats that are derivative or copied, and eliminate programmes that are tired and lacking in originality." The Trust will need to be vigilant and proactive to ensure this commitment to move away from copycat programming is met and that the maximum amount of licence fee is invested in original UK content not in acquired films and programmes that would anyway be made available to the audience by other free-to-air broadcasters.

3. *The Future of Public Service Broadcasting*

— How can the plurality of Public Service Broadcasting be safeguarded in the digital age?

3.1 The environment within which public service broadcasting operates is changing dramatically. More than at any time in the past 50 years decisions taken during the BBC Charter Review will have an impact not just on the BBC but on the rest of the broadcasting sector. As the Government makes clear in paragraph 10.7 of the Green Paper "the future development of the wider PSB system is relevant to BBC Charter Review."

3.2 Channel 4 welcomes the Government's endorsement in the Green Paper, in particular in Chapter 10, of the need for competition to the BBC in public service provision. This brings benefits to both the BBC and the wider public. Channel 4 and the other UK public service broadcasters keep the BBC on its toes and force it to raise its game. Channel 4 provides competition to the BBC in the provision of public service programming across a wide range of areas including: news and current affairs; education; religion; arts; drama; comedy and entertainment; and film.

3.3 Plurality of supply is particularly important in the key public service genre of news and current affairs. Surveys consistently demonstrate that television news is the public's most trusted source of information². We believe that it would not be in the public interest for a situation to develop in which the BBC were allowed to build a monopoly in terrestrial news provision. CHANNEL 4 NEWS offers UK viewers an important alternative perspective on the day's events. The quality of CHANNEL 4 NEWS was recognised in 2004 with the award of a second consecutive international Emmy³, this time for its coverage of the Madrid bombings.

3.4 Whilst the BBC, rightly, seeks to deliver a comprehensive public service, a single monopolistic supplier of public service television would, in Channel 4's view, be unlikely to deliver the full array of benefits that surveys recently conducted by Ofcom suggest that the public wants to see. At its creation, for example, Channel 4 was tasked with offering a platform for alternative voices and ideas that were not well served by the mainstream channels. Whilst the nature of Channel 4's public service role has evolved as the BBC and other media

² ITC Report: The Public's View, 2002—72 per cent of respondents cited TV as their most important source of news about the UK, compared to 13 per cent for newspapers and 11 per cent for radio.

³ No other broadcaster in the world has ever won this award in two consecutive years.

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organisations have diversified, we nonetheless continue to believe that an organisation on the scale and size of the BBC is not best placed to fulfil every aspect of the public service mission of television as a whole.

3.5 For example, in the area of education, Channel 4 will be investing £92 million in programming in 2005, providing an important complementary service to the BBC's educational offer. Whilst the BBC provides an excellent range of materials and programmes to support the core curriculum, Channel 4 is able to exploit its unique relationship with 14–19 year olds to focus programming and resources on the needs of young people who are in transition between the world of learning and work. JAMIE'S KITCHEN, for example, in which the chef Jamie Oliver took a group of young unemployed people and trained them to the point where they were capable of being employed in his new restaurant Fifteen, had a significant impact on the 14–19 year old audience in terms of its awareness of training opportunities and the potential benefits of training.

3.6 However, as the Government's Green Paper and Ofcom's Public Service Television Review both identify, the current economic model that sustains the plurality of supply in public service broadcasting is coming under threat as we approach digital switchover. The advertiser funded public service broadcasters—Channel 4, ITV and Five—have historically benefited from their privileged position as universal free-to-air analogue broadcasters. The economic surplus that they have been able to generate has been invested in programming that does not necessarily seek to maximise profit but instead seeks to add to the potential public service benefits of television.

3.7 At digital switchover there will be a minimum of 20–25 channels that are available on a free-to-air basis to every single home in the UK. Many of these new channels will not carry any public service requirements and the current PSBs will no longer benefit from the implicit subsidy they currently receive in the form of access to the analogue spectrum.

3.8 ITV is already responding to these increased economic pressures by seeking to reduce its public service obligations and there is a real prospect that at digital switchover it will cease to be a public service broadcaster at all. However, Channel 4 is different. Whilst we are commercially funded, we are also a not-for-profit public corporation. Generating commercial revenue is simply the means to pay for the public service programming that is our reason for being here. We do not want to abandon our contribution to public service broadcasting, which we believe will be even more valuable in an environment that is increasingly dominated by purely commercial channels. In fact, we want to maintain and strengthen it.

3.9 However, our current analysis suggests that by the time of digital switchover, with the disappearance of our analogue subsidy, Channel 4 could be facing a funding gap in the region of £100 million per annum if we seek to maintain current levels of public service provision. We have, therefore, been lobbying Ofcom in its Public Service Television Review to start examining now whether there are alternative forms of indirect support that Channel 4 might be offered as we approach digital switchover in order to compensate for the loss of our analogue spectrum subsidy.

3.10 Whilst most of the measures⁴ that could help to address Channel 4's potential funding shortfall come within Ofcom's area of responsibility, there are one or two key areas where the Government has direct responsibility:

- (1) the possibility of some direct financial assistance to Channel 4 with meeting the transitional costs of the move to switchover,
- (2) the possibility of some longer term direct public funding of Channel 4—and potentially other broadcasters—to maintain plurality of provision beyond switchover.

3.11 With regard to (1) Ofcom identified in Phase 3 of its Public Service Review that one way in which Channel 4 might be assisted through the transition to digital is for the BBC to fund the transitional digital costs, ie the one-off costs of the capital investment needed to convert the current 1,000+ analogue masts to digital. This cost to the public service broadcasters is a direct consequence of government policy but whereas the BBC can be compensated through an increase in the level of the licence fee and ITV and Five can be compensated through reductions in their licence payments, there is no mechanism for compensating Channel 4⁵.

3.12 In its Building Public Value document and in subsequent discussions the BBC has offered to pay this cost on behalf of Channel 4 as long as this requirement is reflected in its licence fee settlement and questions relating to State Aid have been addressed. We, therefore, very much welcome the Government's commitment in paragraph 10.6 to exploring this possibility. Successful implementation of this proposal is one way in which plurality of public service broadcasting can be safeguarded in the digital age.

⁴ For example: allocation of additional DTT capacity; granting of Public Service Broadcaster status to More4; continuation of the regime under which C4 is not charged for its terrestrial spectrum.

⁵ Unlike ITV and Five Channel 4 does not pay any licence fee for its analogue spectrum.

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3.13 With regard to (2) the Government rightly, in our view, recognises that in the longer term it may be necessary to provide direct public funding to broadcasters other than the BBC if plurality in PSB is to be sustained. The licence fee is currently the central source of direct public funding for broadcasting and it would be impossible to properly explore this option without considering where the licence fee might fit into this debate. We support, therefore, the Government's proposal in paragraph 10.8 to review the possible need for direct funding towards the end of switchover. Consideration of Ofcom's proposal for a Public Service Publisher would also sensibly fall within the ambit of this review.

3.14 Our current forecasts suggest that, subject to Channel 4 receiving a range of new indirect forms of support in the coming period, this review does not need to be carried out any sooner than this time. However, it is exceptionally difficult at this moment in time to predict how the dramatic changes taking place in the broadcasting market—eg universal access to multichannel TV, the spread of Personal Video Recorders (PVRs) with their ability to ad-skip and the development of new platforms (eg broadband and mobile) for receiving audio-visual content—will impact and at what speed on the commercially funded PSBs. We agree, therefore, with the Government's proposal in paragraph 10.9 for the Secretary of State to retain the power to order an earlier review of the options for maintaining plurality.

4. *Commissioning of Programming*

- What is the best way to ensure the BBC gives independent and external television and radio producers a fair chance to get their ideas commissioned? Should there be mandatory quotas for external commissioning?

4.1 Channel 4 agrees that the BBC needs to maintain a base level of in-house production for a variety of reasons including sustaining its lead role in training in the industry. We support a mixed economy of production with strong in-house arms at ITV and the BBC and a strong, diverse and growing independent sector. However, we also believe, along with the Secretary of State, that the licence fee should be viewed as “venture capital for the creative economy” and that, as far as possible, the BBC should operate a genuine meritocracy in commissioning. For too long the BBC viewed the 25 per cent independent quota as a ceiling, not a floor, although this is something that appears to have changed under the current Chairman and Director General.

4.2 The BBC's Window of Creative Competition (WOCC) proposes one way of opening up more potential production opportunities for the independent sector. We believe that the BBC should be given the opportunity to make this work before any formal increases in the independent quota—either in volume or value—are considered. We also believe that it would be sensible to await the conclusions of Ofcom's proposed Review of the Programme Supply Market which is due to be completed in early 2006, before making any changes to the independent production quota.

4.3 There is a danger that if the BBC were suddenly required to meet an increase in its quota, the easiest way for it to do this would be to simply commission more programmes from the big London-based indies. If the BBC were to exploit its size and market power, for example by securing exclusive deals with key indie suppliers to Channel 4, this would have a negative effect on our competitive position and our ability to sustain our public service role. It would also mean that the potential benefits to the regional production sector of more commissions being awarded by the BBC are foregone.

4.4 If the licence fee is to act genuinely as “venture capital for the creative economy” then increases in spending on independent production—whether via the WOCC or increases in the quota—should be skewed towards support for the smaller, regionally based indies, ie when these companies most need support. This will be particularly important as ITV continues its withdrawal from production in a wide range of regional centres. Policy measures aimed at strengthening the independent sector in the regions would be aligned with two of the key BBC public purposes set out in the Green Paper—stimulating creativity and cultural excellence across the UK and representing the UK, its nations, regions and communities.

4.5 To this end Channel 4 believes that in the White Paper the Government should require the BBC to adopt a range of accompanying measures alongside the WOCC, such as:

- Separate quotas for regional independent production for the BBC (equivalent to Channel 4's 30 per cent regional quota).
- Measures to ensure a range and diversity of companies are commissioned from the independent sector by the BBC, including companies of different sizes, to make programmes across the widest possible range of genres.

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- Measures to encourage the BBC to offer regional support for independent production companies, including commissioning and training (to match Channel 4's commitments).

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Examination of Witnesses

Witnesses: MR LUKE JOHNSON, Chairman, MR ANDY DUNCAN, Chief Executive, and MR DAVID SCOTT, Deputy Chief Executive, Channel 4 Television, examined.

Q259 Chairman: Welcome. Thank you very much for coming. As you know, we have been set up as a Select Committee of the House of Lords to consider the review of the BBC Charter and in particular the Government's Green Paper. The Election is now going to intervene in our deliberations but what we hope to do is to have the report ready by the end of October. We are grateful for the paper that you have sent to us, which is very valuable. Mr Johnson, I wonder whether you would be good enough to first introduce your two colleagues.

Mr Johnson: My name is Luke Johnson, I am the Chairman of Channel 4. On my right is Andy Duncan, who is the Chief Executive. On my left is David Scott, who is the Managing Director.

Q260 Chairman: How long have you all been there? I will pre-empt Lord King who always wants to know this question.

Mr Johnson: I have served since February of last year. Andy joined in July of last year and David has been there forever.

Mr Scott: Since 1981, just before the launch of Channel 4.

Q261 Chairman: That brings me very neatly on to my first question, just before we start properly. Remind us of the original remit of Channel 4 and how it was set up.

Mr Johnson: I am sure David will interrupt. I think it was stimulated by the fact that at that time there were only three terrestrial stations and there was a strong feeling, particularly amongst the independent production community such as it was, that all the TV broadcasts were essentially made by the main channels, that was regional ITV companies and the BBC, who made BBC1 and BBC2 programmes, and there was little opportunity for all those programme makers to see their ideas translated on to the screen. There was a strong feeling that there was a shortage of programmes that were experimental in nature, diverse in their appeal and catered to what might be considered minority audiences. I think it was that stimulus that really led to the ultimate creation of Channel 4. Also, I think there was a strong feeling within the advertising community that there was a need for some degree of competition to ITV itself, which in a way Channel 4 has provided because

obviously it sells advertising and provides at least some degree of competition to ITV.

Mr Scott: I think that is right. There was a long debate before channel 4 was set up about how it should be funded. The debate was whether it should be funded directly by Government or should be funded by advertising. The advertising community wanted more advertising opportunity. For the first 10 years we had an arrangement where ITV sold Channel 4's advertisements as well as their own and that separation of sale, and the competition that came with it, only came in 1993, so that was a phased change.

Q262 Chairman: The summary of where Channel 4 is at the moment is that Channel 4 is a sort of publicly owned not-for-profit broadcaster basically, very much a public service broadcaster, and you very much want to stay that way as a public service broadcaster.

Mr Johnson: We do. I think that it is at the very core of what Channel 4 is about. Channel 4 is a public corporation designed around public service broadcasting. It takes its output entirely from commissioning programmes from over 300 independent producers and I think that gives it a very different feel in content and output from ITV and the BBC in particular. It is very different from the more commercial broadcasters like ITV, Five, Sky and so forth, who essentially try and maximise profit whereas at the heart of what we do we are about diversity and commissioning unusual programmes that would not necessarily be made elsewhere and making programmes that are almost certain on an economic basis to lose money but have the sort of distinctive appeal that Lord Burns was talking about before.

Q263 Chairman: You are partly able to do this, as you say in your paper, because of the access on preferential terms to scarce analogue spectrum. Obviously that is going to come under increasing pressure over the next few years.

Mr Johnson: Definitely.

Mr Duncan: Just to build on what Luke mentioned, and even some of the debate that we heard about earlier on, Channel 4 is not a commercial broadcaster in that sense; Channel 4 is a public service

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broadcaster first and foremost, that is its ultimate purpose. That is very different from ITV and Five who are there to maximise profit and for them I think public service broadcasting is a box to be ticked to earn the right to get the spectrum to make money. The two key things that have allowed Channel 4 to fulfil that remit to date have been, firstly, there is no dividend to be paid to a shareholder, so any surplus that is made is reinvested back into programming services and so on and so forth and, secondly, the indirect benefit of free spectrum. Going forward, unquestionably our ambition is to do even more things that are true to that original core remit and I think both the analysis that Ofcom have done and the analysis behind the Green Paper came to the same conclusion, that the role of Channel 4 grows in importance relative to ITV and Five going forward rather than diminishes if you believe you want competition and plurality with the BBC. I think our fear is that if the value of that free spectrum goes down, yes, we might not have to pay a surplus to shareholders but as the value of that free spectrum goes down it ends up being worth nothing effectively and if other forms of indirect help are not put into place it is really putting enormous pressure on our ability to do those classic public service programmes. Just to quantify that slightly, at their peak ITV were paying several hundred million a year for their spectrum and that has now come down significantly and post-switchover it will be virtually nothing. We think the value of our indirect spectrum was something like between 100 and 200 million and over time that will be worth nothing. There are other forms of indirect help that we see that could be put in place. The Ofcom report has put a very good roadmap on that: capacity, EPG rights and other various areas where we can be helped indirectly that allow Channel 4 to continue to do things even this year like the Torture Season, the Immigration Season, *Jamie's School Dinners*, the Sex Traffic Project we did last autumn, those sorts of things that certainly no-one else is going to do if you are chasing a profit, but equally the BBC will not do either.

Q264 Chairman: I was going to ask that question. Tell us what figures we are talking about? What programmes are you supporting, or subsidising if you like?

Mr Johnson: It is pretty brutally clear that news, for example, is guaranteed to lose a lot of money.

Q265 Chairman: Tell us how much? This is *Channel 4 News*, is it?

Mr Johnson: All forms of news will lose money but *Channel 4 News* certainly loses money.

Q266 Chairman: How much does that lose?

Mr Scott: *Channel 4 News* costs about £20 million a year and has very little advertising revenue attached to it.

Q267 Chairman: Does that mean that it loses £20 million a year?

Mr Scott: Getting on for that, yes. Certainly if we did not have that news programme in that slot we could put a programme in it which would probably cost substantially less and generate an audience several times the size.

Q268 Chairman: I suppose that is the other part of the question. It loses £20 million, how many people actually watch it? What is the audience?

Mr Scott: Getting on for a million.

Q269 Chairman: So one million people watch each night?

Mr Scott: Yes.

Q270 Lord Peston: My Lord Chairman, can I just come in on that. The obvious question is why do you do it? There is no national shortage of news programmes or, indeed, good news programmes. It happens I watch yours at seven o'clock because that is the time I feel one is duty bound to watch the news and six o'clock is the wrong time, but that is just a neurosis on my part. The fact that I watch it and I am one of your million viewers is irrelevant, the fact is there is just no shortage of news programmes. You must interpret your public service concept by definition as saying, "We have got to have a news programme".

Mr Duncan: There are two issues, to be honest. We do have quotas for certain hours regarding minimum delivery that we have to do. If you take something like *Channel 4 News* I think it is absolutely the jewel in the crown of what we do. That length of news programme and the analysis that we go into on *Channel 4 News* is unique. It is a different take on the news and covers it in different sorts of ways from either ITV or BBC. Current affairs would be another good example of that. In many ways, we voluntarily go above the minimum quotas. If you take something like *Dispatches*, which is our flagship current affairs programme, we had 12 in peak last year and we have 28 in peak this year because that is what we are there to do. Coming back to the earlier question, theoretically if we were there to maximise profit we could be making tens of millions of pounds more, probably in excess of £100 million more than we are today, if we were simply trying for profit but it is the other way round, what we are trying to do is to maximise, whether it is news, whether it is current affairs, whether it is other forms of programming, so

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you are constantly looking to put more into a richer, more diverse, more risky schedule in a way.

Q271 Chairman: So your case is that at the moment you are being supported indirectly to the tune of £100 million to £200 million and if that is taken away, and it looks as though it will inevitably go, if you want the kind of programmes that you are making at the moment you are going to have to find some other way, the Government is going to have to find some other way to support that.

Mr Duncan: A big part of this is the context going forward. Clearly if we were in a context where we were only one of four channels or, in the last decade or so, one of five channels, it would be a very different context from the one we are talking about. As one looks forward, we are moving to a world that is fully multi-channel. Just to bring that to light slightly: Channel 4 has a 13 per cent share in the terrestrial home, about a 10 per cent share in the Freeview home and about a 6 per cent share in the pay home, simply through dint of competition. At the moment, by some distance, the vast majority of our income comes via advertising, so one can see how as switchover happens and more and more homes move to multi-channel our share will go down and at some level that will affect our advertising. Technology change, PVRs and so on, will affect the amount of advertising that people watch. We have got two pressures. One is the reduction of the indirect subsidy that we have had historically and the other is this world is becoming much more competitive and, in truth, apart from the BBC, it is hard to see anyone else who will voluntarily be doing really interesting, exciting public service programming over and above what they are required to do.

Q272 Chairman: Would you be able to give us a list of the programmes that fall into the supported categories?

Mr Johnson: Yes. The unfortunate thing is it is the majority of categories, such as original drama, original comedy, current affairs and news that lose money. We tend to make money on a minority of programmes: acquisitions, soap operas, reality TV. It is a few genres that make most of the money. The balance is uncomfortable. Documentaries lose money. An awful lot of the sort of programming that I would suggest the sort of people in this room watch is guaranteed to lose money.

Q273 Chairman: You heard part of Lord Burns' evidence—I am not sure if you were here for the relevant part—would you be in favour of the kind of proposition that he was setting out that some public money might come your way?

Mr Johnson: Certainly we would like the possibility of that because I think that Channel 4 has ultimately two roles. Firstly, it has the crucial role in terms of its own output and I do not think this can be underestimated. For example, the programme that we mentioned earlier, *Jamie's School Dinners*, is probably one of the finest examples of public service broadcasting in terms of impact for many, many years, and it was not made by the three billion a year BBC, it was made by us who cost the taxpayer nothing directly. The other role that we have is to keep them up to the mark. We help make the BBC a much better organisation and if you talk to the BBC I think they would tend to agree with that. They would say mostly that we are the people they are impressed by and who give them a run for their money. It is those two roles that Channel 4 fulfils that are crucially important.

Q274 Baroness Bonham-Carter of Yarnbury: Picking up on your response to Lord Burns' suggestion, would you not be worried if you got licence fee money of any kind that the relationship between Channel 4 and the Government would mean that you could not make the programmes that you now make? I am not talking about *Jamie's School Dinners*, I am talking about the anatomy programme, for example.

Mr Duncan: *Anatomy for Beginners*. There are two points. Firstly, we have very a clear preference ordering, which was laid out in our response and is also very clearly reflected in the Ofcom report, which is absolutely indirect forms of help are top of the list because that is the mechanism by which Channel 4 historically has been subsidised and one can see a number of areas where that could be put in place over the next few years for the long-term. Secondly, there is a very specific issue which is both in the Ofcom report and in the Green Paper to do with the transitional build-out costs of distribution. This is something the BBC themselves first suggested and were very happy to fund. Everyone recognises it is a one-off transitional capital cost to do with mast build-out.

Q275 Baroness Bonham-Carter of Yarnbury: This is the switchover?

Mr Duncan: This is around £20 million a year over that five year period. I do not think at any level any of us would worry that would influence Channel 4 programme output. Beyond that, if the possibility of further public funding is directed against the right sorts of costs—distribution would be a good example—one can see how you can ring-fence that away from influencing the critical editorial decisions. The independence of Channel 4 is absolutely critical. One can see areas of spend where that could be avoided.

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Q276 Baroness Bonham-Carter of Yarnbury: That was not really what Lord Burns was suggesting.

Mr Duncan: I think it was. Whether his contestable funding is about what an organisation is delivering, that does not necessarily mean you divvy out money on this particular programme idea. If you carried that analogy through, you would be making the case that says, for example, Channel 4 spent £90 million on education and you would be making a case to say there is a Channel 4 education contribution through our schools programmes, for example, but we simply cannot afford to do any more so unless some other forms of funding could be found, that would have to go. That is the sort of case you would be making.

Q277 Baroness Howe of Idlicote: I would just like to follow that particular point up for a second. My memory is very much that previously you were not in favour before some of these suggestions came out of having any money directly given to you for specific purposes and I just wonder what made you change your mind.

Mr Johnson: I think in an ideal world we would not be accepting subsidies in a direct way because there is a danger that it corrupts the market facing attitude that has made Channel 4 so successful. I think one of the key reasons Channel 4 has worked is because we receive our programming mostly from entrepreneurial smaller or mixed groups of production companies and we earn our own living through selling advertising. That has created what Channel 4 is and once you introduce subsidy there is a risk. However, if in five years' time our audience share has shrunk materially and programme costs have risen materially then we will be up against it. Ultimately, I think that the priority has to be to protect and preserve Channel 4 and not endanger it. I would prefer to see some form of direct grant or contestable funding than allowing Channel 4 to gradually decline and become much less relevant because of a vicious spiral of falling revenues, falling audiences and, therefore, falling budgets for programmes and so on.

Mr Duncan: Also, I think there was some misrepresentation in the press of the Channel 4 position. For example, the Channel 4 submission that went to Ofcom both in phase one and phase two actually pretty much reflected what we have just said. Both in terms of the Ofcom report and the subsequent BBC debate there was a difference between the perception that we are looking for money now and that we might need it later. We have never argued there is a need for anything in the next two or three years, in fact quite the opposite, we are trying to strengthen the schedule, do more things in multi-channel and do more things in new media. This was about further into the future.

Q278 Baroness Howe of Idlicote: Coming on to the difficult area of measuring public value, I think it is totally accepted from what you have said that you have fulfilled your original remit in public service broadcasting and are being not just innovative but very challenging and challenging in areas where the BBC could not go or would not want to go because of what was expected at that time. I would be interested to know if Jamie Oliver, which was a brilliant series of programmes, is going to make you any money. I would have thought it might well do.

Mr Johnson: Funnily enough, it was one of those magical programmes that ticked both boxes: it got big audiences and was obviously hugely important in a public service dimension.

Q279 Lord King of Bridgwater: And is exportable.

Mr Johnson: Unfortunately, he and his independent producers will make the vast majority of that money, not us, after the rule changes last year.

Q280 Baroness Howe of Idlicote: Some of the other areas where you were very early in the field were things like interactivity with young people, so I think you have fulfilled your role pretty well. However, we are now in this situation where we have got the core purposes set out in the Green Paper, do you think that the definitions in the Green Paper provide a clear enough set of objective measures which could be applicable to the whole of the broadcasting area, the whole industry? Within that context, what division, if any, would you see between what should be expected by you and by the BBC?

Mr Duncan: I think this whole area of measuring public service broadcasting objectives is a very complex, difficult area that came up in the last discussion. I was actually at the BBC when some of the origins of these purposes were crafted. In reality, I think that both what is in the Green Paper and the Ofcom four core purposes are a really helpful contribution to the debate and help clarify things and rather than box ticking and quotas are more a sense of what is the purpose of programmes and programme characteristics and are very, very helpful. If you look at what Channel 4 can do differently and how you might measure that, the original remit of Channel 4 is still extremely good. It is about innovation, it is about education, it is about minority interests and absolutely explicit in there is about doing things that people either cannot or would not. That is a very good measure already of that sort of thing. On things like innovation and risk, Channel 4 score significantly better on those sorts of dimensions than other broadcasters and the BBC. Going forward, one of the things that we piloted when I was at the BBC that I think was an interesting measure and a contribution to this whole debate was the impact of programmes and memorability of

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programmes, so rather than just ratings it was a survey that was done at the end of a week of the most memorable programmes that people had seen and had made their mark on them. What was very interesting in that survey was that Channel 4 typically was getting 25 per cent of the most memorable programmes in any one week relative to its share of about 10 per cent. It may have been around 20 per cent actually. Certainly it was punching above its weight. I think this debate about how you measure public service broadcasting that is in the Green Paper is a good contribution to it and I am sure that debate will carry on. The BBC element is very appropriate but there are other measures for Channel 4 which would emphasise things like innovation, risk, minority interests, that we would want to carry on measuring in the way that we do at the moment.

Q281 Baroness Howe of Idlicote: As set out here, does value for money, which has become a pretty good measure, take into account sufficiently the qualitative side of what is done as well as value for money in pure pounds?

Mr Duncan: I think it is better than it was. It is a very difficult area, to be honest with you,—to take a Channel 4 example—if you take something like *Unreported World* and some of the things that we have put out that are not watched by large audiences but are almost unique in the contribution it makes in some of the programmes and areas it has covered. How do you compare that with *Jamie's School Dinners* in terms of value for money? If you go too far down the analytical route of how many people have watched it, how much you have spent on the programme, it is very, very difficult, but, having said that, you do not want to ignore that dimension completely. Going back to the BBC, I think there is a considerable way to go to really make sure that the value for money equation is properly taken account of.

Q282 Lord Maxton: To clarify: did you say in answer to an earlier question that you thought the original free gift of the share of the spectrum was worth 100 million to 200 million and is now falling to zero?

Mr Duncan: At its peak.

Q283 Lord Peston: You could argue, could you not, that the Government's intention was to give you something worth 100 million to 200 million, therefore, if that measured in terms of spectrum is not worth that now, is not the solution to the problem for the Government to give you 100 million to 200 million a year not dedicated to any specific programmes or set programmes along Lord Burns' contestable point, simply your basic underpinning for being a public service broadcaster? That would

solve the problem of giving you that tranche of money that you could argue you were given in the first place. Secondly, that does not then involve any question of your independence being threatened because there is no way that their giving you that money as your basic right could then give them any rights to get involved, just as presumably they do not say "We gave you the spectrum, now we are going to poke our noses into what you do". That is a logical position that you could adopt, is it not?

Mr Johnson: Yes. Inevitably it will come with strings attached and also I think it would be very difficult to achieve.

Q284 Lord Peston: Giving you the spectrum was not with strings attached, but giving it—

Mr Johnson: The fact is, it is a hidden asset that people do not necessarily feel they own and know they possess and, therefore, it does not give the impression of costing them very much, although once you start writing out cheques it is a rather different thing.

Q285 Lord Maxton: I am tempted to take on *Jamie's School Dinners* despite my own Leader jumping on the bandwagon because I am not as convinced as you are. I notice you are going into a Freeview channel with More4. Can Freeview take that? There is a limit to how many channels you can put out on Freeview.

Mr Duncan: Without getting too technical, we have capacity for three channels that is gifted on DTT and as we go forward one of our key issues is how we broaden into a multi-channel portfolio. The BBC have already done that with BBC3, BBC4, CBBC, CBeebies, etcetera, and ITV have now got ITV2, ITV3 and so on for a profit motive. We have had E4 and Film4 for some years now as pay channels but we felt this was the right moment to launch a free-to-air channel, More4, which will be on Freeview but also on satellite and cable and will go on to one of the unallocated slots that we have already got.

Q286 Lord Maxton: Are you involved in any of the other Sky channels like UK Gold, Style, Discovery?

Mr Duncan: No, that is a joint venture between the BBC and Telewest.

Q287 Lord Maxton: Were you never asked to be involved?

Mr Johnson: We have had a number of discussions with them.

Q288 Lord Maxton: Would you like to be involved?

Mr Johnson: On the right terms.

Mr Duncan: We see More4 as an absolute core channel as part of the crown jewels of what Channel 4 does in the same way as Channel 4 would not be there to maximise profit, we would be voluntarily doing news, current affairs, original programming, it

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is there to enhance and broaden out that public contribution. As a straightforward commercial proposition we are interested in possible involvement in UK TV with the performance evaluation, as we have mentioned.

Q289 Lord Maxton: It is also an opportunity for the public to see your programmes which they missed the first time round. It is not just a matter of a commercial opportunity, is it?

Mr Duncan: That happens anyway, to be honest. If there is a market for them, any programmes that go out on Channel 4 will either go on to E4 or be shown on other channels anyway. Some of our programmes are bought already. For example, on Discovery Home and Leisure about a third of their schedule is Channel 4 programmes, so that already happens via a secondary market.

Q290 Baroness Bonham-Carter of Yarnbury: Finally, can I just ask you what your attitude is to the Ofcom suggestion of a Public Service Publisher?

Mr Johnson: Simply put, our attitude is interesting but let us solve Channel 4's challenges first because Channel 4 is there, it is a great British institution and to allow it to wither would be a tragedy. I think one can underplay the fact that as a channel if you are bringing people to your organisation, viewers and producers and so forth, there is a momentum that develops and, therefore, you get a throughput of viewers that helps bring interesting programmes to people who would not necessarily otherwise watch them. The danger, amongst other things, with a PSP is it becomes a worthy ghetto which is ignored and has miniscule audiences.

Q291 Lord Maxton: I am continuing to some extent on the financing. My view is that as English becomes the international language, increasingly around the world there will be an enormous audience for high quality television, if you like, being slightly elitist, among the wealthy middle class English speaking, whether it be Chinese, Indian, Australian or whatever. Are you into that market and how hard are you trying to market programmes abroad?

Mr Duncan: We are into that market. The rights decisions that were taken over the last couple of years have left us in a position where we earn very little money from that. Basically, the situation before the Programme Supply Review was that of any programmes that were on Channel 4, all of whom come from independents, none of our own production, we kept 50 per cent of the income, the independent kept 50 per cent of the income and we controlled that. Following the Programme Supply Review we get 15 per cent, the independent has 85 per cent and they control it. That is one of the contributory factors to the number of floats of

independents coming on to the market at the moment. In truth, probably there will be a growth market internationally but we will get very little income from that.

Q292 Lord Maxton: Would you like to change that?
Mr Johnson: Yes.

Q293 Baroness O'Neill of Bengarve: In your written evidence you say, and people have disagreed, that it is right that the BBC should pursue "appropriate commercial activities" that can support its core public service activity and then you suggest that there may not be enough transparency. Could you elaborate a little bit more on what are "appropriate commercial activities" and what would be the forms of transparency that you think would make competition fairer in this area?

Mr Duncan: I have to say I think the work that the BBC have done on this issue and the debate that took place leading up to the Green Paper has largely resolved a lot of the issues that were there historically. They have been through quite a rigorous process of appropriate commercial activities, for example things that derive from the programming side, and if it is a magazine activity it is to do with a programme, it is not simply to do with the fact that they fancy launching another magazine. In the media area there were a lot of websites that were questionable as to why the BBC were doing them and focusing more on the ones that are more obviously connected to programmes and the core purposes of the BBC makes sense. Also, I think that the fair trading type of activity that goes on there is pretty rigorous but, unfortunately, the rest of the world does not know about it, so we should be making that more transparent so that people are aware of what is going on. I think it is something to be guarded against, to be honest, because I think the BBC has anticipated this issue and has gone out of its way to make it look like they are really addressing the issue. They have largely got it back to a sensible place now but I think there need to be appropriate mechanisms put in place that do not mean as soon as the Charter is agreed they suddenly go back into expansionist mode over the next 10 years. I think if they stay where they are and where they intend to go that is fine, but we need to be aware that a few years down the line they do not suddenly go back to the way things were a few years ago, which was almost a licence to do anything. The point that was made earlier was that a commercial company might start doing something and suddenly the BBC could come along and put a tank on that lawn.

Q294 Baroness O'Neill of Bengarve: Do you think Ofcom should have responsibility for agreeing standards of transparency in this area?

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Mr Duncan: Yes, definitely.

Q295 Lord King of Bridgwater: What are the worst examples that you would cite where you think inappropriate competition has existed?

Mr Duncan: Going back to the new media example, some of the websites that were to do with where to go out in the evening, local website activities that were in direct competition to some of the local papers who also tried to establish activities on the web. I mentioned magazines and I think there were some examples of either acquisitions or new magazines set up by the BBC and people said, "What on earth are the BBC doing that sort of title for?" Those are the sorts of areas.

Mr Scott: On BBC3, the original proposal which the BBC came up with for BBC3 had an annual programme budget of nearly £100 million a year and was absolutely on the territory of other channels. I think through the process which they went through before it was approved by the Secretary of State there were two iterations on the proposal and they got to a much more balanced position by that intervention.

Q296 Lord King of Bridgwater: Mr Johnson, are you part-time or full-time?

Mr Johnson: Part-time.

Q297 Lord King of Bridgwater: What is your board?

Mr Johnson: We have 13 directors, although there is one vacancy, of which five are executive and eight are non-executive. They are chosen by Ofcom with our co-operation. They are a mix of people from both a broadcasting media background but also people from a commercial background and civil life. I happen to think that it functions very well.

Chairman: Shall we come back to this question of governance because it is later down the agenda.

Q298 Lord Kalms: Before I come to programming, in your executive summary—it was a very good paper, I understood exactly where you were coming from—you were very critical of the BBC but were they points that you were just making? One's first thought is why are you criticising the management of the BBC and why are you arguing for structural reform to eradicate the confusion of the relationship between the BBC Board of Governors and management. You could say that is not your business, but obviously it is or you would not have put it in here. How has that been played in your operation? Were they just points you were making that it is running a little bit loose, otherwise you should not be commenting on someone else's management?

Mr Duncan: Except we were asked to comment on the BBC Green Paper and in many senses probably the biggest single issue in the whole Green Paper is the issue of governance of the BBC.

Q299 Lord Kalms: You have to put some meat on that. You cannot just say you want to eradicate the confusion without explaining what the confusion is between the management and the Board.

Mr Duncan: I guess it is a debate that has been well aired and there are probably two particular issues. One is transparency. From an outside point of view, certainly from the point of view of being in Channel 4 or another broadcaster, historically there has been a lack of transparency as to how the system has worked between the Board of Governors and the board of management and what decisions are taken where. I think the more substantial issue is, is it possible for one group, ie the Governors or even the BBC Trust, to take on the roles of regulation, accountability, governance and can you objectively do the regulating and assess how well the organisation is doing while ultimately signing the strategy agreed on the overall direction as well, and that is obviously a debate. It does affect us in the sense that it can influence the decisions the BBC takes, so to take a commercial activity, whether it is BBC3 or the BBC doing copycat programming, those sorts of issues matter a lot to Channel 4 and, therefore, how those decisions are going to get taken forward is of great importance to us.

Q300 Lord Kalms: Do you think your suggestion might eliminate this unhappiness you have with the way the BBC operates? That is the reason why you are making these recommendations.

Mr Scott: We have written in our paper that we broadly support the direction that Michael Grade has been taking as Chairman of the BBC. There needs to be more detail to understand quite what the Trust proposal would mean which has been put forward by Government but that is directionally correct.

Q301 Lord Kalms: The next point is about programming. You are making certain strong recommendations about the independent production sector. Again, you are criticising the BBC without quite giving a satisfactory explanation. You ask them to operate more of a commissioning meritocracy. This would help you presumably, although you do not quite explain why because you have got a very big business in using indies and somehow that should satisfy you, but you are kicking back on the BBC again.

Mr Duncan: It is not being particularly critical of the BBC, it is the opposite point. If we wear a broad hat we can see why it makes sense in terms of the broad

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ecology of how the whole market works that the BBC should be looking to support the independent sector more. Therefore, the broad direction they are taking, whether it be the Window of Creative Opportunity or some sort of increased quota, which is their option in the Green Paper were it to be applied, which says that over time the BBC do more via the independents and less in-house production is a good point. It is directly competitive to us actually, so in some ways how it happens is all important. The point we are trying to make here is that if it became simply that the BBC were forced to put more into the indies and they suddenly started writing cheques out to big London-based indies and competing with us for best ideas, and that is our source of programming, that would be a major problem. If it is done in a more strategic way, for example to help nurture the development of smaller indies, to help nurture the development of regional independents, that would be good for the wider ecology but also would help us because we tend to find that we are required to get 30 per cent of our programmes from regions and we find that there is not a good enough quality of independent company and if the BBC were doing more in the regions as well that would help us.

Chairman: We are in slight danger of going over the whole waterfront. I think we would like to keep it in sections if we could. Lord King was raising issues of governance, which perhaps we might go to.

Q302 Lord King of Bridgwater: Perhaps you would give us a paper or something on what your board is, how often you meet, how often the non-executives meet and how they are involved, and looking at one of the structures of Lord Burns' recommendations of a board like this for the BBC.

Mr Johnson: I have never worked for the BBC and it is vastly bigger than Channel 4. I think they have at least 25 times as many staff as us. If you want to think about value, that is the ratio. We have a board that used to meet less frequently, it now meets almost every month. The board meetings last for roughly the afternoon. I encourage the participation of the non-executives as much as possible. I encourage them to be challenging and, frankly, to be difficult if necessary because I think those are the sorts of non-executives who add value. When I have been involved in appointing non-executives I have looked for these sorts of characteristics, if you like, so directors who speak up and ask awkward questions and do not take—I have served on plenty of boards where you have a particular chief executive and/or finance director who will schmooze the entire organisation in a very unhealthy way and this is not how proper corporate governance should take place, particularly when one is in a public corporation.

Q303 Lord King of Bridgwater: You have a majority of non-executives?

Mr Johnson: Absolutely. Obviously there is a fine line to be drawn. On a monthly basis we do not necessarily get into detailed discussions about creative output because there simply is not time and I do not think that is necessarily the role of the board, but on all the key strategic issues, on budgets, on how the funding is allocated towards the genres, these are the sorts of matters that concern the board, obviously senior appointments and so forth. As I say, I think the vast spread of activities that the BBC is involved with must make management a nightmare.

Q304 Chairman: Frankly, what you are describing is a standard plc board, is it not?

Mr Johnson: I guess it is, yes.

Q305 Chairman: Does it invalidate the proposition that some would make that the BBC could actually follow that particular pattern as far as the management of the BBC is concerned, leaving aside the regulation?

Mr Johnson: I think it could. Frankly, Channel 4 manages to behave in a way that I do not think the BBC could both in terms of its output and the sorts of people that we are able, in conjunction with Ofcom, to appoint to the board. For lots of reasons, which I am sure you will be aware of, the BBC suffers from much more scrutiny such that it has to be unimpeachable in terms of the types of individuals—

Q306 Chairman: What kinds of individuals do you have who would not get on to the BBC Board?

Mr Johnson: I like to think I have people on the board who are the most fit for the job. I do not know whether those are the sorts of criteria that are used in choosing the BBC Governors. I do not know, but one wonders.

Q307 Chairman: Just to follow up on what Lord King was saying, in your paper I was not totally clear where you came down, I have to say. You have looked at this idea of the BBC Trust being a regulatory part of the structure, if you like, but what do you think of that as a solution?

Mr Johnson: As David said earlier, I think the direction in both Michael Grade's initial activities and then the subsequent contribution in the Green Paper are moving in the right direction. I think the unanswered question, and that is what we are trying to say here, is that until there is more detail we cannot be absolutely convinced this is going to address some of the issues there have been historically. The only difference to Channel 4 is in our case all regulation is handled by Ofcom whereas in the BBC's case there is mixed regulation, some with Governors or Trust and some with Ofcom. In our case we do not have issues

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of public accountability in the way the BBC does because of the licence fee. There are quite different issues which means that it is not the case that the model that works for Channel 4 is the right model for the BBC. One would need to see more detail of how it would actually work in reality at the BBC to be reassured that it will stop some of the things that have happened historically.

Q308 Chairman: As far as it goes, does the Ofcom regulation bit work?

Mr Duncan: For us, yes.

Mr Johnson: I think it does. They take a great deal of well-informed interest and are pretty thorough and, frankly, since this week they announced they are cutting our charges by 26 per cent, they are doing well.

Q309 Chairman: Even before that you thought they were not doing too badly?

Mr Johnson: Overall they are not perfect but, broadly, I think they do a good job.

Lord Peston: Are we going to go back to the commissioning of programmes?

Chairman: We are.

Q310 Lord King of Bridgwater: Lord Burns does recommend for his board a majority of non-executive directors but also he recommends a non-executive chairman. I would have thought that is not real. You are part-time, are you not?

Mr Johnson: Yes, very part-time.

Q311 Lord King of Bridgwater: To be honest, if you are the chairman of the BBC, at the very least you are going to be part-time. You are not going to be really non-executive.

Mr Johnson: I guess that is right. It would probably overwhelm the chairman.

Q312 Lord Maxton: You do not broadcast regionally as such, you do not have Channel 4 Scotland, Channel 4 Wales?

Mr Johnson: No.

Q313 Lord Maxton: So there is no need for you to look for representation from the regions?

Mr Johnson: We do not have those sorts of issues.

Q314 Baroness O'Neill of Bengarve: There is one aspect that is perhaps more accountability than strictly governance that the BBC has to face that perhaps you do not, whatever one means under the label of accountability to the licence payer. Have you any thoughts about how that could be achieved?

Mr Duncan: For the BBC?

Q315 Baroness O'Neill of Bengarve: Yes. You are not getting licence money at present so there is a follow-on question coming up, as you can see.

Mr Duncan: Some of the measures the BBC have taken and some of the ideas in the Green Paper are in the right direction. Again, some are about transparency, there are quite robust processes in place that people are not aware of, so being more open in communication. I think some of it goes back to the value for money debate we had earlier on. On some of the ideas around public value tests and value for money measures, no matter however difficult it is you have still got to try very hard to do that. I think it is very important going forward as well. The sort of direction that the BBC is going in on that front seems sensible.

Q316 Baroness O'Neill of Bengarve: So if you were to get 100 million or 200 million annually as starter money, so to speak, do you think you should be subjected to exactly the same sorts of tests about accountability to the public?

Mr Johnson: Clearly the scrutiny would increase. Perhaps it would do us good, but no doubt there would be squeals and it is part of the price you pay for a subsidy. That is why to an extent it is a last resort for Channel 4.

Q317 Bishop of Manchester: I would like to go back to the Window of Creative Competition that we touched on a little earlier. In reading your report it is clear that there is much of that which you do welcome, although you then go on to add various other measures once the BBC has been given the opportunity to see if the Window of Creative Competition works. I wonder if you could just go into a little bit more detail, first of all, about how you view that proposal in terms of its most positive points as you see them and then go on to explain the need for the further measures which you have described in the paper.

Mr Duncan: At its most positive it will divert more licence money into the independent sector which in itself must build and strengthen the independent sector. Also, I think it makes life more competitive for the in-house BBC production departments. I think it will have a direct improvement effect, if you like, on some in-house production departments to say that they are not guaranteed a certain amount of production going forward now, rather like when the regional independent production came to the BBC first of all a few decades ago. It will have an internal competitive benefit within the BBC and will add an external boost to the independent sector. Going back to what I was saying earlier on, if it is done in a clumsy way or in a way where it is not managed very

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carefully it could help the independent sector or some aspects of the independent sector basically to feed the big fat indies that are there already, the ones that are really quite healthy. Obviously they should get some of it, of course they should, but for the people who really need the help, the small indies and some of the regional indies, you need to make sure that sufficient goes there as well. That is where I think you will get into this virtuous circle, that it will also help other broadcasters who are looking to source ideas from those smaller regional indies as well. One is looking for a balance there.

Q318 Bishop of Manchester: Are you confident that as currently structured the BBC will be able to do that? It seems to me that what is coming through from the report is, “Let us see if they manage to do that”.

Mr Duncan: I think there is a major danger because the truth is at the moment we have to put 30 per cent of our total production to the regions and purely on meritocracy and quality you would probably choose to have only 15–20 per cent, so we are talking about putting—I am estimating a figure—approximately 10 per cent of what we are doing not with the best indie for that job, we are doing it to hit a regional quota. I think if the BBC had something similar put in place that would be very healthy, but if they do not the danger is they will end up going to the ones that are already very, very strong and it will not help develop and nourish those that need to be given that opportunity.

Q319 Chairman: What does that mean, that you will go to the regions? Does that mean where the independent companies are based? If I base my company in Birmingham or Manchester, for example, do I then count as a regional company?

Mr Johnson: There is a bit of that brass plate indieness going on. You have to watch for it because we like to feel that we genuinely meet the quota by making sure that the programmes, as far as conceivably possible, are made outside the South East.

Mr Scott: In the way they are quantifying this now Ofcom have tightened the definitions very sensibly in the last year or so to get away from the brass plate aspect.

Q320 Lord Kalms: What you are saying is that you want the BBC to follow a path of supporting indies that suits your particular programmes, in other words you want the BBC in a way, using the word “subsidy”, to go to small indies rather than big indies. You are trying to project your policy on to them. That is what you have said twice. There is nothing wrong with that, it is perfectly legitimate from your

point of view, but it may not be legitimate from the BBC’s point of view.

Mr Duncan: Just to be clear. We are not arguing that it should only go to the small regions, we have said it should be done in a balanced way.

Q321 Lord Kalms: You want them to subsidise a range of small indies because from small indies will grow big indies.

Mr Duncan: The reason for that is not to suit us. The reason for that is they get £3 billion of licence fee payers’ money from all over the country and if you believe that more money from the BBC going into the independent sector is a good thing for the national economy and it is a good thing to develop a well re-sourced network of independents throughout the UK, then there is a logic that says there should be some mechanism that makes sure—

Q322 Lord Kalms: That makes them altruistic.

Mr Duncan: I think it is appropriate for the BBC to do that.

Mr Scott: It follows in the BBC’s own words in that they see themselves as the venture capital for the creative economy.

Q323 Lord Kalms: You are saying they should do it?

Mr Scott: Do a bit.

Q324 Lord Peston: Can I clarify how it works. Do you reach out to these independent producers or do they come to you?

Mr Johnson: No, we reach out very actively.

Q325 Lord Peston: Essentially you say, “There is a programme of this sort we have rather got in mind to make” and then you reach out and say, “There is the person who we think is best for that”. Is that how it works?

Mr Johnson: Yes, quite often.

Q326 Lord Peston: They do not come to you?

Mr Johnson: It is a huge mixture. It varies entirely. It may start with them coming to us and then the whole idea changes and ends up as something else. There is not a single format that says, “This is how a programme is made”.

Mr Scott: Also, we have a large number of support mechanisms in place where we try to train and develop people in various companies, so we pay to put researchers into companies so they develop ideas to submit to broadcasters, not just to us. We are looking at developing companies as well as receiving ideas from them.

Q327 Lord Peston: It should not surprise you, you having promoted a particular independent producer or group to make them good, that they will go

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somewhere else. You may have met that cost but they are in the business of also earning a living.

Mr Johnson: Of course, and they will probably be the better for it.

Q328 Lord Peston: Exactly. In a sense the competition leads to a good outcome for the rest of us, as it were, but not necessarily all the time for you.

Mr Johnson: It is simply that the BBC is so giant. We are a very—

Q329 Lord Peston: I am not disagreeing with your points on the BBC, I am just trying to get a view of the way the world is working. You can do a lot of good things and you do not get the benefits from them.

Mr Scott: Throughout Channel 4's history we have found new talent which quite often after a year or two, or three, moves on to another broadcaster, but that is the way it works.

Q330 Lord Kalms: I am looking at the *Daily Telegraph's* weekly television and radio guide and it occurs to me, to be provocative, do you think the man on the Clapham omnibus if he looks at today's programmes of five channels would recognise the distinctiveness of Channel 4? If you look down here there is a substantial number of fairly bog standard repeat programmes, *Friends*, *The Simpsons*, not to be derogatory about them, they may be what people want. Looking at the five channels on the page, do you think that man would recognise your mission statement that you gave us at the beginning?

Mr Duncan: I think the short answer to that is yes, on average. If you take the typical television guides, disproportionately we have picks of the day. Typically three or four programmes are featured and I think there are more Channel 4 programmes featured on picks of the day across a year than any other channel by some considerable distance. Secondly, the image that Channel 4 has, taken from the public as a whole, and we put one of those bits of data in our paper although there is a lot more, is that Channel 4 has a very distinctive profile for coming up with more original programming, more innovative programming and takes risks that other broadcasters would not. That is the truth. We do more original programming than anybody and work with a wider variety of suppliers than anybody, so there is this diversity of programming at Channel 4 that exceeds any other channel.

Q331 Lord Kalms: You have got 24 hours a day now, how many hours a day do you think have a creative, imaginative, uniqueness about them? Two or three hours?

Mr Duncan: I do not think we can answer it quite like that. Different audiences like different programmes at different times of day. Again, if you measure objectively how much original programming we do, how much award winning programming we do— Just as an example, at the recent RTS awards we got nine awards, the BBC as a whole had 11 and ITV had five. We got four international Emmies last year out of seven awarded globally, just for Channel 4. I think time and time again, whether it is public surveys, awards or picks of the day, Channel 4 punches well above its weight on distinctive programming, depending on what you like and what your preferences are when you want to watch things.

Q332 Lord Kalms: You do this without sport?

Mr Duncan: We have racing and we have cricket.

Mr Johnson: Which we have just lost.

Q333 Lord Peston: You used to have football.

Mr Scott: Italian football.

Mr Duncan: We used to have snooker.

Q334 Lord Kalms: Are you competitive when you buy? You were talking about test cricket, is that not one that has to be compulsory?

Mr Johnson: Yes, and we were substantially outbid by Sky. This is the market we are facing.

Q335 Lord Kalms: You cannot be competitive on sport, can you?

Mr Johnson: On that particular occasion we were not, no, because the money was just too much for us.

Mr Duncan: In some ways it is the most difficult genre because Sky, who do sport very well, can afford to put a lot of money into it because it suits their business model so well and the BBC have now come back into sport in quite a big way and spend a huge amount of licence fee money on sport. The real spend on sport from the BBC has gone up substantially over the last three or four years. In truth, it is very hard for us to compete.

Mr Johnson: The fact is we won huge plaudits from anyone who was interested in cricket over our coverage of cricket as against the BBC and anyone who was keen on the game felt that we had improved the coverage substantially, but that is competition for you.

Chairman: Lord King, you were nodding at that.

Q336 Lord King of Bridgwater: Talking about your programming, you have perhaps the only genuinely satirical television programme in *Bremner and Fortune*. Michael Grade sat there and said he had had no representations at all from the Government, have you had any? Have you had savage criticisms regarding caricatures?

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Mr Johnson: You mean complaints?

Q337 Lord King of Bridgwater: Yes.

Mr Johnson: I think that is one of the bits of magic of Channel 4, that we can get away with things that the BBC cannot. Frankly, it would have been interesting if we had broadcast *The Jerry Springer Show*. Actually we turned it down, not because we were offended so much as we thought it would not work as telly, and I do not think it did. I think we probably could have broadcast it and got away with it but the BBC has faced a lot of flak.

Q338 Lord King of Bridgwater: Is your independence sufficiently secure?

Mr Johnson: Yes.

Q339 Lord King of Bridgwater: You have had no representations from politicians about that programme?

Mr Johnson: Not that I am aware of.

Mr Scott: No.

Q340 Lord Maxton: Moving on from there, in a sense you do push the boundaries on some of the content that you put out, particularly later on at night, shall we say. Do the Ofcom Content Board come to you on that? Do you get complaints on that sort of programming?

Mr Duncan: We are regulated by Ofcom. Our remit is about pushing boundaries so—

Q341 Lord Maxton: Does that include that Ofcom content?

Mr Duncan: Indeed. If complaints come through they are handled by Ofcom but in the vast majority of cases we do comply exactly with the remit.

Mr Scott: Clearly we try to operate to the best of our ability within the programme codes. From time to time there are judgment calls on which we make a judgment and on which Ofcom make a different judgment.

Q342 Chairman: We are veering a bit into an examination of your charter, not that you have one, when we are actually looking at the BBC. Can I ask you one thing which is very relevant to the BBC. You get your money from advertising, does the fact that you get advertising have an impact upon the independence of the programmes that you produce?

Mr Johnson: No. I will give you a very good example indeed, which is that no consultation whatsoever was had with the advertising department who receive a number of ads from the sorts of food manufacturers and sellers that Jamie Oliver was criticising when we broadcast that devastating indictment of certain food products in *Jamie's School Dinners*. In a sense, it was a sort of two fingers up to some of our advertisers,

and I think that is exactly what Channel 4 should be doing and if they cancel our advertising we will survive.

Mr Duncan: One of our biggest advertisers is McDonald's and we recently ran the *Supersize Me* documentary every day for a month, which is pretty scathing about the impact of McDonald's. When it ran in the States it had quite a big impact on McDonald's sales and, again, that is a very similar point. The editorial decisions come first. We try and optimise advertising income but we never put the advertising interests ahead of the editorial interests.

Q343 Baroness Bonham-Carter of Yarnbury: Is it not a bit of a problem that you are putting out programmes which are saying "Don't eat McDonald's" and then you get a lot of revenue from the McDonald's adverts?

Mr Duncan: I think the programme was very interesting.

Q344 Baroness Bonham-Carter of Yarnbury: I am just saying, putting that question the other way round, do you find a problem there?

Mr Duncan: I think we are neutral on whether McDonald's is a good or bad thing. It was a legitimate programme to put out that had a legitimate take on the impact of McDonald's, but as an organisation we are neutral about that.

Q345 Chairman: You are not controlled by a charter, you are under statute. Are there any particular problems or issues, any lessons as far as we are concerned?

Mr Johnson: No, the only problem—

Q346 Chairman: You do not have this enormous review process that takes place every 10 years.

Mr Scott: To a certain extent one does because Communications Bills and Broadcasting Acts seem to come along at fairly regular intervals and on every occasion the constitution of Channel 4 has been adjusted a bit.

Q347 Chairman: Every time it has been adjusted somewhere, has it?

Mr Scott: Every Act since we were established with the 1981 Act has tinkered with the format in the way in which our constitution is set out. Not in the shape of our board but probably adding more regulation in the way it has been done.

Q348 Chairman: Putting it the other way round, may that be an argument for having a charter for the BBC rather than every time the Bill is passed on broadcasting having a few sections put in on Channel 4 or the BBC?

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Mr Scott: That could be an argument. I am certain it is an argument that the BBC might wish to employ.

Q349 Chairman: Let me put it directly: if you had the choice, would you prefer to have a charter or a statute?

Mr Johnson: It must be very nice being the BBC having 10 years of certainty about your income but we live in the real world where the second half of this year, I believe, will show a much tougher advertising market. It is an exceedingly volatile industry. In the period post-9/11 10 per cent of our projected income disappeared in a few weeks and we have to pay our way. I find it interesting that the BBC insists on having 10 years of certainty when the rest of us have to make do with rather more market oriented conditions.

Q350 Baroness Howe of Idlicote: May I just follow that up about advertising. As you were saying, there are quite a lot of changes going on but how do you see this in the future because there are many views that advertising, albeit different, will be just as effective?

Mr Johnson: It is only going to get tougher. There is no doubt that mass advertising is gradually breaking down. There may come a time when advertisers are

no longer willing to pay substantial sums to reach the large audiences that organisations like us and ITV deliver. Obviously we have talked already about the threats to our audience share but there are also these devices, like Sky Plus digital video records, which allow people to record programmes and very simply fast forward through the ads, which are a threat. If you want to look at it that way, we have plenty of threats to our existence in the medium and long-term. I am not talking about 10 years, I am talking about half that time. We are determined that Channel 4 should reinvent itself in due course and I am confident that we will.

Q351 Chairman: You are in the reinvention business, are you?

Mr Johnson: We are going to have to be.

Q352 Lord Maxton: You do not regionalise your programmes but you do regionalise your advertising, do you not?

Mr Johnson: We do, that is correct.

Chairman: Any other questions? We are immensely grateful, thank you very much, it has been extremely illuminating. I am sorry that we kept you waiting. Thank you.

WEDNESDAY 6 APRIL 2005

Present	Armstrong of Ilminster, L Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Holme of Cheltenham, L Howe of Idlicote, B	King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Examination of Witnesses

Witnesses: MR GAVYN DAVIES, former BBC Chairman and MR GREG DYKE, former BBC Director General, examined.

Q353 Chairman: Welcome to you both and thank you very much for coming. As you know, we have been set up as a Select Committee of the House of Lords to consider the review of the BBC Charter and, in particular, the Government's Green Paper. Although, obviously, there are going to be a few interruptions in our consideration, not least the election campaign, we expect and hope to finish our report by the end of October and, therefore, to have some influence as far as the White Paper is concerned. As far as this morning is concerned, we really would like very much the benefit of your experience as the Chairman and Director General of the BBC, obviously at a very fraught time at one stage, but we would like to go much further than just that. Can we just start with that period and see if there are any lessons we can learn from it. The Government's Green Paper is called *A Strong BBC: Independent of Government*. I sometimes think that all governments talk about the independence of the BBC up until the point that their interests are adversely affected by the reports of the BBC. I do not know if that is your own experience, Mr Davies?

Mr Davies: It sounds all too familiar, my Lord, yes.

Q354 Chairman: Tell us how much pressure (perhaps this is really for Greg Dyke) was put on you, or did you feel was put on you, in your coverage of the Iraq War?

Mr Dyke: Enormous. Read the history books: the BBC has always come under pressure at times of conflict, there is no doubt about that, but I think during the Iraq War there was an enormous amount of pressure, in both the run-up to the war and during the war, and obviously in the period afterwards, leading in the end to our departure.

Q355 Chairman: What kind of pressure?

Mr Dyke: Private letters from the Prime Minister suggesting that, actually, we were not doing our job properly. I do not think you can get much greater pressure than that.

Q356 Chairman: And at every level?

Mr Dyke: Actually, mainly at the level of Head of News. Occasionally at our level but mainly at the Head of News, and that was consistent; that was right the way through.

Q357 Chairman: What about the Chairman? Did he come under pressure? Or was this something that the Director General handled?

Mr Davies: It happened to the Chairman as well, my Lord. May I put this in context? The Chairman and, I think, the Director General on the whole, in normal periods, would not get incoming 'phone calls from politicians complaining about individual news items; they would tend to go to the Director of News or the editor of the programme concerned. In normal times pressure insofar as it existed was with regular meetings with MPs or with government ministers. It never bothered me in the slightest; I took that as part of the process of gathering informed opinion about the impartiality of the BBC's output. In 2003 and especially before the war, I think, it started to get a great deal more intense. Greg and I held a seminar before the war started where we called in people who had been around in the Falklands experience and in some of the 1990s conflicts to learn from their experience. They all said: "Look, this is going to turn extraordinarily unpleasant, you have just got to be ready for it. It always happens". The problem is that the Government at the time of war and the onset of war believes that the BBC should reflect the Government's view on its broadcasts in the national interest. That is what the Government believes. On the other hand, the opposition and other sides of the debate emphatically do not believe that. We thought about it, discussed it between us and we also discussed it with the Board of Governors and took the strong view that unless the Government was willing to legislate or make a public request that the BBC should change its normal behaviour then we should maintain our normal behaviour, which is to ensure impartial coverage of all sides of the debate, which is what we did in the run-up to the war. As you remember, it became not only extremely contentious within the Houses of Parliament but, also, outside with massive public demonstrations. Our coverage of

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those demonstrations and the debates in the Chamber incensed the press office in Number 10. They believed that our coverage was biased against them and this culminated, just before the conflict started, I think, Greg, with two letters that the Prime Minister sent to both the Chairman and the Director General simultaneously, saying in effect that he believed that our coverage was not unbiased and that we were giving too much weight to the opposition opinion and we were giving too much weight to Iraqi news, which was being, obviously, monitored carefully by the Saddam regime. We both sent letters back to the Prime Minister. I sent a letter back saying: "Thank you for your opinion but I can assure you the Governors are on top on this. We are more than aware of the problems and we are going to ensure that if there is conflict it will be covered entirely impartially by the BBC." Greg sent, in his normal manner, a slightly more robust letter, essentially saying to the Prime Minister that he was not best placed to judge the independence of the BBC news on this matter.

Mr Dyke: To be exact: how could he be the judge of impartiality?

Q358 Chairman: Because he was a major player?

Mr Dyke: He was a major player and there were two million people on the streets protesting against what he was doing. You cannot be the judge of impartiality in those circumstances.

Mr Davies: We then did not hear directly from the Prime Minister again until after the Gilligan news broadcast, but we heard frequently from Alastair Campbell at different levels of the BBC, and it became almost an incessant drum beat of complaint. We emphatically felt that we were put—not just the two of us but the BBC as an organisation—under pressure to cover the conflict in a way that we did not think was fair.

Q359 Chairman: You were under general attack (I think that was the phrase you used, actually, Mr Dyke, in the Hutton Report). Did that actually mean that when a case like Andrew Gilligan came along one was inclined to be defensive on that? In other words, if there was a genuine complaint, because there had been a background of general attack, that that was kind of put to one side?

Mr Dyke: Of course that came much later, after the war was over. There must be some degree of truth in that; that if you are a news department and Alastair Campbell writes in (except on one occasion he wrote to me but most of the time he wrote to the news department) two or three letters a week for month after month—I can remember the Head of News saying to me at one stage: "I have had another rant from Alastair" (and they were rants, at times; you

could not always work out what the complaint was)—it inevitably conditions how you respond.

Mr Davies: The other thing I would add, Mr Chairman, was that the complaint that Alastair Campbell mounted, essentially, in his evidence to the Select Committee shortly after the Gilligan broadcast was partly about the Gilligan broadcast and was partly a generic attack on the BBC's coverage of the war. He accused the BBC of generalised anti-government bias. To be very honest with you, I took that attack more seriously than perhaps his remarks about the Gilligan broadcast. We asked him on two separate occasions to bring his complaint about the Gilligan broadcast to the BBC complaints process. He ignored both those requests. In my opinion, his refusal to bring his complaint about the Gilligan broadcast to the complaints procedure is explicable in the sense that it would have uncovered a mountain of evidence about his behaviour which he did not want in the public domain. Therefore, he was unable to bring that complaint.

Q360 Chairman: We asked the Government when the Minister was here about lessons that they drew. I do not know if there are lessons that you two, from your experience—not least, I suppose, if there had been an independent complaints process do you think that would have helped the matter as far as this was concerned?

Mr Davies: I think it would have been difficult, my Lord Chairman, because we actually told Alastair in a letter that he had available to him the Broadcasting Standards Commission's (BSC) complaints process and therefore he could have gone to an external body if he had not trusted the BBC to consider his complaint. My own view is that the only way that any complaints authority, either inside or outside the BBC, could have adjudicated on his complaint would have been to have asked him to bring evidence about the publication and preparation of the dossier, which would have shown whether the Gilligan claims were true or untrue. We now know, because Lord Butler has published the successive drafts of the dossier, that the dossier changed in material respects through the period. Alastair, in his complaint to us, said that Mr Gilligan's broadcast was 100 per cent wrong, and he could easily have shown that simply by publishing the drafts of the dossier if he had been able to do so. In fact, if he had done that it would have shown that he was completely misleading the public in that statement. So I think it would not have mattered whether the complaints procedure had been internal or external. Either was available to him, he did not seriously consider using them because he was using this episode for public reasons and not as a serious complaint.

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Mr Dyke: Of course, the Government refused to make that information available to the Foreign Affairs Committee, let alone the BBC complaints process. It was only when one read the Butler Report—first of all, Hutton and then the Butler Report—that one found the true story.

Q361 Chairman: My last question on this: the Hutton Report you, obviously, found pretty disappointing, I assume?

Mr Davies: Can I say one more thing? We have both said, and we said to Lord Hutton in evidence, that we could have handled the matter better ourselves; we are not claiming to have been saints in this matter. I feel that myself in particular and the Board of Governors as well, in investigating Mr Campbell's complaint—I spent weeks with Greg on this subject, weeks, immersed in it and the Board of Governors came to their conclusion on 6 July 03. So it is unfair to say that we did not investigate his complaint—it is completely wrong. We were guided in our decision by a good deal of private information that was coming to us directly or indirectly, some of it from the security services, which we knew validated large parts of what Andrew Gilligan had broadcast. We did not at any stage know that there was any part of Andrew Gilligan's broadcast which was questionable or wrong. If we had known that we would have told the public that immediately. So I do not feel that the accusation that we failed to investigate is true, but where I think we could have done better is I think we could have made that investigation more public. I think if we had done that we would have protected ourselves and, also, the BBC Board of Governors from a lot of subsequent criticism. On Lord Hutton, my Lord, I would rather say nothing because I may become (unintelligible (?)).

Mr Dyke: I would be quite happy to say something! I think Lord Hutton fundamentally got it wrong, and I think all the evidence now shows that he got it wrong. He did not read the evidence properly. When Butler was published, at that moment Lord Hutton must have read Butler and sat there thinking: "Don't I look stupid today". When Gavyn and I worked for the BBC, our view was that in broadcasting that item we had actually broadcast effectively the words of a whistleblower inside government, Dr Kelly. That is a perfectly legitimate journalistic process. There was a whole mass of evidence that supported what he said, even on the day it was broadcast, and which the editors of the *Today* programme knew. It was all out in his evidence which was never given or called for by Lord Hutton. A year later I think our justification is different; not only were we broadcasting a whistleblower but we were broadcasting a whistleblower who was telling the truth. The evidence to support that is overwhelming.

Q362 Baroness Howe of Idlicote: May I draw the thing slightly more widely, because this was a very major and very concerning issue. Just taking the point about generalised anti-government bias, from your experience or, maybe, from what you have seen in the archives, is it normal procedure for every government to feel this and to make these kinds of complaints to the BBC? If so, is that acceptable without having those complaints made public?

Mr Davies: Lady Howe, I took the view throughout this that actually if Number 10 really wanted to mount a complaint against the BBC they should do it in public. One of the things that was good about Alastair Campbell was he certainly did it in public, he was not hiding at the time. I think, in general, that makes a lot of sense. On the other hand, the Chairman of the BBC has to have open relationships with party leaders, and with senior backbenchers, to gauge current opinion about impartiality. So I think there should be routine contact in private, but if they had really wanted to make a point the public should know they are making it; it should not be done behind closed doors.

Mr Dyke: There is a wonderful piece by John Simpson, who I think sums it up when he said: "At the time of almost every conflict over the last 30 years the government of the day, whichever government it was, tried to pressurise the BBC." That is perfectly legitimate.

Q363 Lord King of Bridgwater: If not true.

Mr Dyke: It is legitimate that the government of the day tries to get across on the BBC its view of the world. The problem comes, as John Simpson says, if the BBC folds to that pressure, and it is the BBC's job not to fold to that pressure.

Q364 Lord King of Bridgwater: Having had some experience of one of those events I do not think that is quite true. If you look at the Falklands, there was perhaps control of the media correspondents that you had there—Brian Hanrahan and others who were there. Then when we came to the Gulf War number one, it was a very different issue to Gulf War two, because it was the liberation of Kuwait and there was overwhelming public support and international support for what was going on. The BBC did not have nearly such a difficult job in that respect as it undoubtedly did in respect of Gulf War two, which was the invasion of Iraq. Obviously, public opinion was hugely divided and you had a duty to reflect public opinion in that respect. I have seen a quote (I cannot remember from where it came) that people in America had been watching the BBC for reports on Iraq with more confidence in what the BBC was reporting than what, perhaps, they were getting from Fox or whatever other channels they were watching, which I think is an interesting

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commentary that it is not just in the UK where balance and independence is needed. I sat in when John Simpson chaired a conference at the Imperial War Museum before Gulf War Two with a number of war horses (?) (I do not know if you remember that) and politicians to discuss what the problems were of reporting war. What struck me before that is I was very shocked (and I put this in parenthesis)—I do not know whether it is particularly the *Today* programme which seems to be the real focus of attention or whether somehow television news does not attract the same sort of concerns (I would be interested in what you say about that)—to discover what I believe to be a huge increase in the amount of direct complaints with the sort of instant rebuttal technique that has moved into the broadcasting world. When we are talking about the independence of the BBC, are we talking about the Governors, being you and the chief executive, being protected or are we talking also about editors and others being protected? Did you get a regular report? Were you able to assess the degree of telephone calls coming in and e-mails and all that, and get a sort of measure of what was going on, from not necessarily just the Government but from the political parties as a whole?

Mr Dyke: It was interesting, at the time of the last election, there had been so much pressure at the previous election of people inside the political parties ringing editors or deputy editors on the 10 o'clock news and trying to influence, arguing about, where their stories should be in the running that I set up a different group, a complaints group on the election, and any complaints went to them and then we got regular reports back on those, as opposed to going straight to the editors of the programme, because I was concerned they were under some pressure. We got regular assessments of complaints. The problem with the complaints system in the BBC was, I think, there were complaints made at so many different levels that it was almost impossible to collate them all; you could not. Somebody would 'phone a reporter to complain to the individual reporter. Now, if they did not take it any further it ended there, by and large, or they might complain to whoever was putting out the programme that night or they might complain to the editor or they might complain to the Head of News. We had a systematic process on ones that have gone to the Head of News but I do not think we had a systematic enough process for the others.

Q365 *Chairman:* So literally the reporter himself could be actually rung up and told: "You have got that wrong"?

Mr Dyke: Yes, and hopefully if the reporter thought that he had got it wrong he would then come back and we would do something about it.

Q366 *Lord King of Bridgwater:* We are looking at very grand structures here. Whether we have a Public Service Broadcasting Commission or whether we have a Trust or whatever it is, at the end of the day how do you actually protect the chaps on the ground? As we know, if it is applied aggressively enough the reporters can be denied access to briefings, can be denied the opportunities of interviews, and all that sort of stuff, and, in fact, virtually made unemployable and lose, really, the tools of their trade. How do you protect them in that situation.

Mr Dyke: Andrew Gilligan is a good example because there was a long history between Alastair Campbell and Andrew Gilligan. Alastair Campbell used to call Andrew Gilligan "Gullible Gilligan" years before this happened, largely because he did not like—and nor did the Ministry of Defence—the sort of reports he was putting out.

Q367 *Lord King of Bridgwater:* I am turning it on its head.

Mr Dyke: Yes, you are saying "How do we protect them?"

Q368 *Lord King of Bridgwater:* How do you have a body that will not be "got at"?

Mr Davies: I think it is to do with the culture of the organisation. You have to have, from the top, a culture of independence, non-bias and impartiality. The people in the trenches need to know that when they get into trouble from the Government and its press officers their Directors of News, the Director General and Chairman will support them as long as they are broadly in the right and will give them cover for their actions. I also think they need to be trained and advised on how to respond in such circumstances. The *Today* programme, the Governors said at the time, did not respond completely correctly to a complaint from Number 10. Number 10 should have been pre-warned about the broadcast—it was not—and their denials of the story should have been given greater prominence immediately following the story's broadcast. Probably that was not done properly. So certainly mistakes were made. The Governors at the time made that clear in their statement of 6 July; it was not a whitewash of the behaviour of the organisation. However, in general, the reporters and the editors on the programmes have to know that they have the support of him, the Director General, and the Chairman.

Q369 *Bishop of Manchester:* I think these issues of the independence of the BBC are absolutely fundamental to what we are about in terms of the Charter review. I would like to return to the distinction which I think Mr Dyke made earlier on between general attack on the BBC and particular

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pressure on the BBC from government sources, and in particular Downing Street. You mentioned that in history the BBC is frequently under attack from governments on particular issues, and one recognises that. The point that I want to press a little further is to ask you, in your knowledge of the BBC in the past, how usual is it for the Prime Minister of the day to make a personal action of pressure upon the BBC? It may be that it is quite normal. If it is not then I think it does raise some rather important issues about the independence of the BBC, not least in relation to this particular Government.

Mr Dyke: If you go back and read some of the history, I think Harold Wilson used to ring the Director General personally to complain. It only happened to me in the four years I was there on the one occasion, which was a letter from the Prime Minister that I have no doubt was written for him by Alastair Campbell, which actually (and this is in the public arena already) we believe he later admitted sending. The reply clearly offended Alastair Campbell. What you have to add into the whole equation is the power that was given to Alastair Campbell. On being elected in 1997 the Privy Council changed the basis by which a political appointee became a civil servant and could run the whole of the information system of government. I think that changed the relationship between broadcasters, the media and government.

Mr Davies: Could I add as well, my Lord Chairman, I had several conversations (somewhere between several and many) with the Prime Minister throughout this episode. I do not personally believe that the Prime Minister himself behaved inappropriately during this episode. I do believe, however, that his staff did. I think, in my mind, that is a distinction which I am not sure Greg agrees with but it is clearly my point of view and I want to state it.

Q370 Lord Holme of Cheltenham: Of course, it is an interesting question whether his staff would have behaved in that way without at least tacit encouragement from their leader, but let us leave that. The question I want to ask is when we had Lord McIntosh here we found ourselves discussing undue pressure. Let us just assume that pressure is your state of life at the BBC and that you have to learn to deal with it in the ways you have been describing but that for some periods there is undue pressure. Clearly, this was a period of extraordinary pressure, in the run-up and during, as you have described. The question I would like to ask, given the relationship between the BBC and the Government, which is one where the BBC in several important respects is dependent upon the decisions and goodwill of the Government on the renewal of the licence and on the approval of new services, did you at any time in this episode, by nod or by wink or by nudge, have any implication that it

would affect the BBC's future adversely if it did not respond to pressure?

Mr Davies: In the most extreme part of the debate that happened, actually, just after David Kelly committed suicide, there were substantial press reports which we believed were correctly reported saying that the Government would change the governance of the BBC, change the Director General himself (though how they thought they could do that beats me) and change the funding of the BBC as a result of what happened that summer. I then wrote an extremely—by my standards—robust article in *The Sunday Telegraph* essentially saying “Get your tanks off my lawn” and it stopped. That was, I think, pretty much the only episode—

Mr Dyke: There was no doubt that one Cabinet Minister (I know who it was but I have never said publicly who it was because it could cause problems where I got the information from) briefed journalists saying, at the height of the affair but before Dr Kelly killed himself, “The problem with the BBC is that it has got too much money and it has got Greg Dyke.” So I think you could think that is pretty intense pressure.

Q371 Chairman: That was intended to be reported and come back to you directly?

Mr Davies: It is hard to believe not.

Mr Dyke: Obviously, yes, and was reported, but not exactly in those terms. It was reported to me in those terms. As a result, I wrote to the Prime Minister and said: “This is not acceptable.”

Mr Davies: Chairman, I do need to add this: part of the reason I resigned as Chairman of the BBC was that I thought the relationship between ourselves and the Government was not a tenable relationship. We took, even after Lord Hutton's verdict, a completely different point of view on the truth of the Gilligan story, from the point of view the Government was taking. It may have been an honest difference of view but it was very wide. I did not think it would be feasible for me to sit as Chairman of the BBC and negotiate the Charter. I just thought the relationships were too damaged, and that essentially that could not happen. Following our departure, I do not believe the Government has reacted to that episode by damaging the BBC in any way. I do not think that the Green Paper has been impacted by that episode; I do not think the decision on the Trust versus the Governors has been impacted by that episode. What would have happened if we had still been there I am not sure, but in our absence I do not believe there has been any consequence for the BBC.

Mr Dyke: Can I add I do not feel the same way? I do not feel it has influenced the Green Paper—in fact, quite the opposite. I think the public reaction to what happened to the BBC showed the Government quite clearly that if you want a bust-up with the BBC the

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public do not support you they support, by and large, the BBC. However, I do think the Governors of the BBC in deciding—because I did not resign—to get rid of me did so, as they said to me: “We are worried that you will be a lame duck Director General.” In other words: “Your relationship with the Government will be such that we will not be able to get a decent Charter.” My view was that that is possibly the case but that is not what this is about; this is about independence, and the independence of the BBC is far more important than the next Charter.

Q372 Lord Maxton: I am tempted to say that, in fact, of course, you could see it the other way round and say that the very robust attitude and what the BBC did ensured that the Government could do nothing about the BBC and the future of the BBC. In other words, it was impossible. Can I just say, as someone who, as Greg said, has been a loyal supporter of the BBC throughout all my period on the Select Committee at the other end of the corridor, I must say I sat through the war outside Parliament altogether and I felt that the BBC’s coverage was not impartial on the war. As someone who had doubts about the war I say that, both in terms of the pre-war, during the war and since the war; even now, the only news about Iraq that the BBC ever covers is bad news; it never covers good news; it never covers the stories about the water supply going on or electricity going on or anything like that. So even now I think there is a partiality. My concern is not that because I cannot see all the news coverage and no one does. You say you investigated. How did you investigate? In other words, did you go to some research department or researcher somewhere and say: “Look at it and tell us about it”? Was it published?

Mr Davies: Yes, it was published by Cardiff University.

Q373 Lord Maxton: How much did they watch of it?

Mr Davies: I think they took a sample of news broadcasts through the run-up to the conflict and during the conflict. Interestingly, what they found was surprising to many people, including perhaps myself. They found that the BBC broadcast, compared to ITV, Sky and Channel 4, was indeed biased in one respect; it was biased in the respect that it gave too much time and credence to British Government reports. They found that in the spectrum of bias of the news broadcasts that they studied over that period of time the BBC was significantly the most pro-Government of the broadcasters and the others were significantly less pro-Government—pro-Alliance, if you like. That surprised me, I have to say. What we did as a Board of Governors was we sampled the news—I did almost nothing but watch the news and watch the output of the BBC and other broadcasters—and after the war

we took reports from the Director General and the Director of News, we looked at external evidence, we listened to a lot of different points of view—pro-war points of view and anti-war points of view—and practically everyone thought we were biased against them. That is the truth of the matter.

Q374 Lord Maxton: That is always a problem.

Mr Davies: Having done that, we put out a statement twice, during and after the war, saying that we were satisfied with the broad impartiality of the coverage. I have to say at a time of such tension and such public division, it is almost inevitable that a large number of people will think that you are biased in one direction or another, and that is what I think happened that time too.

Mr Dyke: There is a wonderful quote from a former Director of Television that says when the nation is divided the BBC gets it in the neck. What I did as the Chief Executive and what I did with my senior people is we met every morning, we looked and we discussed. For instance, in the run-up to the war we were very concerned that ‘phone-ins were in danger of being dominated by people who were anti-war, so we actually opened up more lines to try to get more people (because pro-war people were not ringing) to get a balance, because the polls showed there was a 50/50 balance roughly and, remember, we have to try and reflect that. One of the complaints from Downing Street all the time was that we had left our reporters in Baghdad. They said these reporters cannot be reporting fairly because they are reporting from Baghdad and they have got minders. In truth, the stories about the minders are very funny. Ragi Omar’s minder asked Ragi Omar could he have the day off one day because it was his child’s birthday. These were not effective minders. However, there were certain limitations on where we could go and that is what we said on screen all the time, but we took the decision and we discussed it on at least five occasions whether we should stay or whether we should pull out, and we took the decision we should leave our reporters there. As you probably know, the American networks, by and large, pulled everybody out but whether that was for editorial reasons or for danger reasons I do not know. We took the decision to stay there, as did some other broadcasters. What we did daily was sit down and discuss: do we think we are being fair? There are inevitably mistakes at times like that. In the world of 24 hour news there are more mistakes. To my knowledge, we announced that the British had taken Basra on at least two occasions when they had not. Sky even announced at one time that the Iraqis had retaken the airport, and this was the day before the whole thing finished. That inevitably happens in 24-hour news when you are grabbing stuff very fast. What you have got to do is make sure you clarify it as fast as you can.

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Q375 Lord Peston: My Lord Chairman, this is absolutely fascinating but could I take us back to the subject I thought we were talking about, which is the independence of the BBC rather than a rehash of the coverage of the Iraq War. Lord King has introduced the essential point that the world believes the BBC and its reputation for accuracy and being believed has no equal anywhere else. However, that, as you yourself have pointed out, places an extraordinary burden and responsibility on the BBC and it has to have scrupulous regard for the truth. I am not very clear—you talked about, essentially, the ethos and saying this is what people have to do to be members of the BBC; the truth is what matters—about what happens internally to get you in that direction, bearing in mind—to take our field, which is the economy—the truth is indescribably boring compared with the headline stuff. If I am listening to the *Today* programme I do not write letters I just shout at the radio set, or the television set—and it works somehow through the waves. Very frequently, on the economy, it seems to me the BBC has not gone through the boring task of portraying the truth, which mostly means it is non-newsworthy because the true position is we do not know—for example, whether Gordon Brown is going to meet the Golden Rule or not. My main point is what should happen in terms of what we recommend to maintain this culture of telling the truth even when it is not terribly newsworthy?

Mr Davies: I think the word “truth” is a difficult word. It puts an enormous burden on the broadcaster. I think there are things where you can expect the broadcaster to broadcast the truth where they are factually oriented. So it is not good if the BBC broadcasts that Basra has fallen when Basra has not fallen. That is either true or untrue. For the most part, though, news is not either true or untrue; it is a matter of informed opinion and informed debate. I do not believe that the BBC should be seeking to determine what the truth is; I think it should be seeking to reflect the legitimate sides of the debate fairly and fully so that the audience can make their own mind up. What has happened since both of us left, actually, is that Mark Thompson has instigated a training programme for BBC news broadcasters, which I think we should have done, Greg, to be honest. I think it is a good idea and I think it will remind them of many of these things. They may laugh at it in the sense of saying: “I have been a broadcaster for 32 years, why do I need to know this?”, but actually speaking as someone who is just about to do an exam in financial regulation I can tell you it is a good thing occasionally to re-tell (?) yourself. I think Mark has done the right thing.

Mr Dyke: I think, particularly given the expansion of news over recent years, it is possible that the quality of people you had coming in were not as high or as

trained as previously. First of all, regional newspaper training is not as good as it used to be, there is no doubt about that. I think there is a need, therefore, to put a bigger training effort in. I think they were dead right to do that. We possibly should have done it or we should have recognised that the coming of 24-hour news and the coming of online meant an enormous expansion in the number of journalists the BBC employed.

Mr Davies: Your point about trivialisation is 100 per cent correct as well. If we are in a news market place which is becoming more trivial generally, you can expect that to impact the way the BBC presents news. It is something that broadcasters and journalists need to be very aware of.

Mr Dyke: What you have to recognise about the BBC is that the editorial power is a long way down the organisation—which is right. The moment it is not you are in real trouble because, given the size and scale of the organisation, the editorial power does have to be a long way down. So the editor of a programme is very powerful, and ought to be, but you have to have a system to make sure that if you make a mistake you should say so and if you think you have got it wrong you should do something about it. That, I think, is what the pressure is and that is what you need to do.

Q376 Lord Armstrong of Ilminster: I know that the time when Mrs Thatcher was Prime Minister was before your time at the BBC but I have a direct experience from when I was close to her. Early one morning she was listening to the *Today* programme (probably to Brian Redhead) and she actually rang up at about 7 o'clock in the morning and the next thing we all knew there she was on the programme herself. Whether that was undue pressure or not, I do not know.

Mr Dyke: I think that is journalistic opportunity.

Q377 Lord Armstrong of Ilminster: As I read the Hutton Report it seemed to me that the issue, really, behind the Gilligan report was whether the Government had acted with deliberate intent to mislead or as a result of what you might call honest misjudgement, and that was clearly a relevant issue, but that Alastair Campbell took that very big because if it had been a deliberate attempt to mislead that would have been a serious attack on the Government. He may well have thought it was untrue, he may have thought that this was a stick with which to beat the BBC. It struck me, and this is what I would like you to comment on if you will, that it was the sheer obsessiveness of Alastair Campbell's pursuit of the issue with the BBC that perhaps took the minds of people off the rather limited issue about deliberate misleading or honest misjudgement, and quite understandably caused the Director General and the Governors to think: “This is a case where we

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must stand square for the editorial independence of our people” and, as it were, the tears flowed from that.

Mr Dyke: To this day, once you have read the Butler Report and what has come subsequently, one still has to say it is very difficult to understand why they decided to make this the issue they did. Butler shows quite clearly, as did some of the evidence to Hutton, although Lord Hutton chose not to take as much notice of it, that there were suggestions being made by people inside Downing Street to change the dossier to make it a better case for war. There is no doubt about that, it is quite clear in Butler; it is all laid out. Therefore, quite why Alastair Campbell decided to turn this into a *cause celebre* is quite difficult to fathom, other than we know that he was going to be in difficulty with the Foreign Affairs Committee over the other dossier. My theory is straightforward: this is a PR operation, these are PR people, and they did to weapons of mass destruction what they have done to many other issues. That is the job of the PR person; the job of the PR person is to present the best case possible for the Government. Whether you should be doing that in an intelligence dossier, claiming it has been signed off by the intelligence services, I have my doubts, but that is what they were doing.

Mr Davies: In terms of were we distracted by the way in which the complaint was mounted, I have to say the answer to that is yes. Were we understandably distracted? I do not know what the answer to that is, but we were certainly distracted. However, I have really racked my conscience over this. I do not believe that the Governors’ statement of 6 July 2003 was wrong in any material respect. We criticised the broadcast where we thought it was justified and we supported it where we thought it was justified, and I think those decisions, in the light of the Butler Report, have been largely vindicated. When I look at my own actions over that period the one thing that could easily have occurred that would have made me thoroughly ashamed now is if I had buckled under that pressure.

Mr Dyke: I would say to that, I certainly made mistakes. I told Lord Hutton, the day after Alastair Campbell’s attack I should have set up an inquiry and kicked it into the long grass for three months, but actually Alastair Campbell was on the rampage and demanding a reply the next day, and we fell for it. That was a terrible mistake.

Mr Davies: We certainly made tactical errors.

Q378 Baroness Bonham-Carter of Yarnbury: Bringing us back to Charter renewal, do you think that the suggestion in the Green Paper on the BBC Trust would protect the Corporation from the pressure that you were put under?

Mr Davies: We have a different point of view on this, and you are therefore now going to get a debate between us, which we are allowed to do now we are no longer in the BBC. My own view, Lady Bonham-Carter, on governance is that on balance it would have been better to have left the Board of Governors intact, as it always has been. I know that there were confusions involved, but the strength of the system was that we could stand together at a time like we saw in 2003 against Government pressure. I think the Board of Governors was good at standing against commercial pressure to change the BBC as well. Where the Board was not as effective in public terms was demonstrating control over the management. If that control existed it existed largely in the relationship between the Chairman and the Director General and happened in our offices. I believe it did exist but the public, meaning mainly the competition, actually, became increasingly unpersuaded that the management was under any kind of check and, as a result of that, the Government has decided to make a change. My view is that what they have done in establishing the Trust will protect the independence of the BBC. I do not believe that it stands to damage that role of the Governors. I think it is better than giving the regulation of the BBC to Ofcom, and I think it is better than setting up an external regulator in the Burns model. However, I think Greg disagrees with that.

Mr Dyke: In my later years I came increasingly to the view that although the system worked not badly it did not stand up to intellectual scrutiny; that actually when somebody said to you: “How can you be both responsible for the management and be the regulator?” it was quite a difficult charge to answer. Nobody noticed it for 60 years but, once they had noticed it, I thought it was very difficult to justify. Therefore, I came to the conclusion—and I did not say this because I was employed by the Board of Governors—

Mr Davies: That never stopped you, Greg.

Mr Dyke: I said it internally, I never said it externally. My view was that a separation was inevitable. My problem with the Green Paper—which overall I think is a rather good paper and is quite supportive of the BBC and in independence terms is fine—is that I think it is muddled on governance. That does give real difficulties. For instance, who does the Director General work for? I think that is a very real question. What happens when the non-executive members of the management board disagree with the Trust? Who appoints the Director General? The Trust. Is the Director General answerable to his board, with his non-executives, or is he answerable to the Chairman? I just think it is not thought through; I think it is a complete mess. I did not go all the way along with Burns because I think the money has to go to the BBC. So my view is I would have had a smaller, joint

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board that ran the BBC, that had an independent chairman and a chief executive. That relationship, I think we all know, is the crucial relationship. I would not want to be Director General under what they are suggesting because I do not understand the relationship. So my view was that there should be a small board that ran the BBC and there should be a small outside regulator—not Ofcom because I think once the BBC is regulated by the same regulator who is regulating the commercial sector the BBC will decline—it is inevitable—because the interesting and exciting things the BBC can do will be attacked the whole time by the commercial system when you have got one regulator. So I think you need an Of-BBC. I think that needs a chairman, it needs a small board and it needs a staff, and its job is to ensure that the BBC is following what was laid down by the Charter and what is consistently done during the period. The difficulty of a 10-year Charter is, if you go back to the last Charter, nowhere in the whole Charter or in any of the evidence given by the BBC does it mention the internet—nowhere. Yet what was the most successful thing the BBC has done in the last 10 years? It is the online services. Unless the BBC is free to do that, unless the BBC is nimble and agile and able to go that way then I think you damage the long-term prospects of the BBC. This looks to me like a fudge and I do not understand the reporting relationships within it. I think that makes running organisations very difficult. We have all done it in our lives: you have sat there and thought: “It will get sorted later”, and when the crunch comes four years later, or on a particular issue, actually it is not sorted. The chairman of the executive, according to the Green Paper, does not have to be the director general. So you have then got a chairman of the BBC Trust who also is responsible, as I understand it, not for the management, and a non-director general chairman of an executive committee. That is warfare.

Q379 Baroness O’Neill of Bengarve: Those are, clearly, the big structures of governance but what other structures would you think, with hindsight and, also, with experience, are needed to secure independence not just of the BBC but of a Head of News and individual reporters? You have spoken only about getting the backing of senior management and the Governors but, surely, there are more fundamental structures that are needed in there to secure a form of independence. To make that concrete, do you think that the journalism of attachment is acceptable in BBC reporters?

Mr Dyke: The independence of the BBC, although sustained by a governor system, in the end is in the culture of the organisation. If I phoned up the editor of *Panorama* and said, “I want you to do this programme because I have got some interest in it”, the only certain thing I can tell you is that that

programme would never hit the air, and that I think is right. Editorial independence belongs to the editor and therefore you have to have a structure that supports that. There are times when that makes that structure too defensive to complaint. I think that the complaints mechanism of the BBC needs a complete overhaul. I think you have to have a better and more effective complaints system and there is an argument for that to be independent of the BBC.

Mr Davies: I agree with that. I believe that the BBC’s culture is extremely firm and in good shape when it comes to a belief in impartiality and independence. I think that is in better shape now that the new training regime is in place. However, there was a tendency in the BBC to believe, “We are standing up for what is right and trying to do our best. Therefore we cannot have made a mistake in this particular case”. That does not follow, as Lord Armstrong just pointed out. It is possible that the organisation is doing its best but in this particular case has made an error. Greg was almost the first Director General to stand up and say, “Sorry; we made a mess on that one. We are doing something about it and we are going to move on and do better”. The BBC can even now do better at saying things like that.

Q380 Lord King of Bridgwater: The culture of the BBC is obviously very important but it depends also on the morale of the people in the BBC. The culture will not be any good if the morale is rotten. You have been through some pretty bad patches.

Mr Davies: I cannot speak for the morale of the BBC now. I just do not know what it is. The Board of Governors and the Director General both measured the morale of the organisation on a quarterly basis, or a half-yearly basis at least, and so we knew what the morale was like. It was rising considerably through the period that we were there. I agree with you: I think morale is very important. The other thing I want to say about culture though, and this is something the Conservative Party complains about, is that the culture cannot be centre left, at least as the stories hit the air. It was something that worried me quite a lot. We took steps to ensure that that was not the case and the new Chairman and Director General have gone further, but it was one part of the culture I did start to be concerned about.

Q381 Lord Armstrong of Ilminster: I have been brought up, like all of us, on the principle of editorial independence of the management of the BBC. Throughout the time when I have had any experience of it there has been this dichotomy, if that is the right word, between the non-executive Board of Governors, as it is now with responsibility for oversight of strategy and policy and accountability, and the executive management of the BBC, with great stress on the need for editorial independence.

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Often we read in the media (whether it is right or not) that the BBC governors were not aware of a particular problem as it came up and had to deal with it after the event, apologise or not apologise as the case might be. I just wonder whether that is really a sustainable system and whether, if a Director General or a Director of News sees something coming which is quite obviously going to cause problems, whether they are political or wider-ranging than that, and the Board of Governors or the non-executive body is accountable, you have to have the situation that the mistake is made and then you wash up afterwards. Does it really work like that or ought we to try to find a system whereby the Board of Governors (or whichever is the non-executive body) has some means of knowing when something like that is going to come up and some means of expressing a view, even if that view does not eventually prevail? In the kinds of bodies that I have dealt with since I retired from public service, where there are non-executive trusts or whatever, the relationship does not stop the chief executive from having a word with the chairman and saying, "I think we have got this problem coming up. What do you think we had better do about it?", or, "This is what I propose to do about it". I do not think that is a bad arrangement because I think it may take you off banana skins before you step on them.

Mr Dyke: We did that all the time, Gavin and I, and Christopher Bland before Gavin and I did that all the time.

Q382 Lord Armstrong of Ilminster: But does that put pressure on the editorial independence?

Mr Dyke: No. I will give you an example. There were some programmes coming up which had got some publicity suggesting that we were going to show them on a series about paedophilia that we filmed with the Paedophilia Squad at Scotland Yard for several months. There was real concern at the governor level that was taken to Gavin and Gavin said to me, "You had better go and look at this. There is concern about this". I said, "Of course, I will go and look", so I looked at the programmes. Actually, as it turned out they were brilliant pieces of television and everybody agreed afterwards. That is what you are talking about and that sort of thing happened quite regularly. Oddly, they are not the things that get you into difficulties at the BBC. The things that get you into difficulties if you are the Director General are things you have never heard of that come out. I left because of a broadcast at seven minutes past six on one May morning when I was in Ireland and had never heard of it. That is the difficulty. Who would have known? Who could have known? All you can have are editorial processes and make sure that the editors follow those processes to try to make sure that things are fair and proper, but actually in the end you are

dependent upon them. In Question Time in the week of September 11 we got it seriously wrong for the strangest of reasons. The BBC was concerned. The programme editor was concerned that the programme would be enormously anti-Muslim and the Muslim perspective would not be properly reported and disproportionately put too many Muslim people in who were aggressive and gave the panel, and particularly the former ambassador to the UK, a very hard time which I thought was completely inappropriate given that this was two days after September 11, so we just apologised. Gavin would quite regularly come in and say, "Look: I have heard about this", or, "Did you see that programme? You ought to look at it because I am concerned about it". That relationship went on all the time. I am talking about the relationship between the Chairman and the governors and the relationship between the Chairman and the Director General is absolutely crucial.

Q383 Chairman: You said one interesting thing, that you would like to change the complaints procedure. How would you change it?

Mr Dyke: We decided to change it by the time I left but I am not sure that was radical enough. There probably needs to be an ombudsman figure, somebody who is clearly independent who can come back to the management of the BBC and say, "Look; I am sorry, but this is wrong". The system was an appeals system to a governors' sub-committee and the rest of us. You needed a more professional complaints procedure. Secondly, you needed a better system for monitoring complaints to the organisation. We did not catch enough of them in the system that existed.

Q384 Lord Maxton: But you also need to be more responsive. I have to say that on a very minor matter about a fact on the website which I complained about. It was actually about a rugby result which was two and a half years out of date. That is not the point. The fact is, I complained. I never got a response.

Mr Dyke: That is unacceptable, if only to say, "I am sorry. You are right: we got that wrong". I agree with you. But you see, who did you complain to? Where did you go in the organisation? Who knew about it? That is what I am saying. The system is not sophisticated enough.

Chairman: Let us move on to BBC programming and measuring public value.

Q385 Baroness Howe of Idlicote: the Green Paper certainly refers to rather a lot of dumbing down having crept in over the years. My question to you would be very much what powers the new Trust, if it is to be that form of regulation and governing structure, will need and how it will measure public

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value. I would be interested to hear your views on measuring public value because to my mind they seem to have got rather closer to measuring value for money than the qualitative aspect of programming. It would be interesting if you could give us your views on that and, if I may put it in context, Michael Grade has set out a great many cuts, so some of the resources that you had at your disposal are obviously going. How important is it going to be to have enough money to deliver what is going to be increasingly expected of you and being measured the whole time in whatever way?

Mr Davies: Two or three things there need to be answered. The first is, does the Trust system enable the Trust to control broadly the output to prevent dumbing down and retain quality? I think it does. The Trust has many powers, including the power of finance, in its hands. It will also set service licences for the executive to fulfil and will then report against those service licences, so I believe the Trust has powers. That does not mean the relationship will be easy because when the Trust does not think BBC 1 is performing very well and makes that public I can tell you the relationship between the Director General and the Trust will dramatically deteriorate. It is not going to be an easy one to run but I do think the Trust has the relevant powers. How you measure public value I think has to come down to judgement at the end of the day. I think you can measure the adverse commercial impact on a commercial rival. How you set that against public value is a very difficult thing which depends on judgement. The internet is an absolutely crucial example of this. I have no doubt that the existence of BBC on-line has to some degree limited the scope for private on-line enterprises to grow. In fact, we did the analysis. It has not done it by much but it has done it to some degree. In that case I think we would all agree that the public value of BBC on-line is so immense compared to the loss of some private websites that in the scales it is very clearly in favour of the on-line services. When you come to BBC 3 you might think it is a bit harder to judge. I still think it is in favour of BBC 3 but some people might not. I think it has to be done judgementally.

Q386 Baroness Howe of Idlicote: There are those core public purposes that are set out there. It would seem really to be a matter of trying to bring a qualitative judgement into how you measure those things. You yourself are on record as having said about public service broadcasting, "You know it when you see it". Is it not perhaps increasingly an individual public perception of it?

Mr Davies: I remember when I said that everyone said how completely insane this comment was and how they could do better, so they went off and spent

three years trying to do better and failed, which has amused me anyway.

Mr Dyke: I remember meeting the Chief Archivist of the BBC and, if you ever get the opportunity, it is a great visit to the archives of the BBC because they are fantastic things. The Chief Archivist said to me, "You do understand that the BBC has been accused of dumbing down almost from the day that Lord Reith invented it", and each generation of course thinks that radio and television are dumbed down compared to what they did before because tastes change amongst the young. We did quite an interesting study at one time of taking the BBC 1 schedule, because the accusations are largely against BBC 1, for 1951, 1961, 1971, 1981, 1991 and 2001, and said, "What has changed?". The two biggest changes over that time in the BBC 1 peak-time schedule were that there was more news in peak time now than there had ever been and fewer American programmes in peak time than there had ever been. There is a wonderful myth about what it was like in the 1950s and 1960s. Go back and look at some of the schedules and some of the programmes. There were at least three American drama hours in peak time right the way through till the eighties when, of course, if you put them in today everyone would accuse you of dumbing down. There are difficulties. Michael Grade, Mark Thompson and the new Controller of BBC are all saying, "We are going to do more comedy". Everybody wants to do more comedy. We always wanted to do more comedy. That was not about money or intent. That was about talent and writers and increasingly talented writers do not want to write comedy that you can play before nine o'clock at night and that is a real issue. You have therefore got a chunk of the schedule where traditionally it was filled by situation comedy. It is not there any more. What has happened is that they went over to things that were lifestyle that, when they first came in, were innovative but, of course, five or six years on there are too many of them.

Q387 Baroness O'Neill of Bengarve: When you look at public value would you alter the criteria that the Green Paper has for the categories? Do you have a different view of what one should be looking for because these standards will after all be definitive for the way programming is done and the way contents are organised?

Mr Davies: The Green Paper has done a good job. The criteria came partly from the *Building Public Value* document that the BBC itself published. That had been thought about carefully for two or three years before it was published and in trying to define the indefinable I think they have done quite a good job. I would not suggest they make any changes. In this dumbing down debate we need to keep in mind one thing. If the BBC aimed its services at the people

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in this room it would not last very long, to be honest, because it would miss out and it should not do that. That is not what the Green Paper says it should do. It says that it needs to be a mass market broadcaster which is raising standards across the whole of our broadcasting industry, and I think that is absolutely what the BBC should do. It should have in mind these public value criteria which make it different from a private sector broadcaster.

Q388 Baroness O'Neill of Bengarve: Do you think it follows that the metropolitan emphasis that has been much discussed has to be brought down?

Mr Davies: I think there is a metropolitan emphasis in the BBC but I think there is also a capital city emphasis. One of the things that Greg was on the point of doing when we left was devolving services to Manchester in particular. That has continued. It is expensive but I think it is a very important part of reconnecting with some parts of the UK.

Mr Dyke: It was tried 10 years earlier and it did not work because what was devolved was production departments having to sell into the centre. You have to devolve the money; there is no other way. Coming back to your lectures of some years ago, I do think there is a danger of trying to measure what cannot be easily measured. Trust is perhaps a better way of looking at it, that we appoint people and trust them to get on with the job rather than trying to limit them by measuring everything. In all honesty I saw this happening when I was in ITV. I saw it happening after the 1990 Broadcasting Act when suddenly everything by the new regulator was measured to the extent that you argued about whether you had done 15 minutes extra news or 15 minutes this or that. No one discussed the quality. No-one discussed the cost. It was all about a simple measuring factor. Sometimes you have to say, "Look at the track record of the BBC over 70 or 80 years. You have to assume that it can continue to do those things over the next 70 or 80 years and we will trust them to do it. If the Board of Trustees think something is going seriously wrong they should tell the Director General pretty robustly and if the Director General does not change it they should get rid of the Director General. The idea that we can measure all this stuff easily is mistaken. I do not think we can.

Q389 Bishop of Manchester: Can we go back to the out of London production that you were mentioning earlier, and obviously I am very pleased about the BBC coming to Manchester?

Mr Dyke: If they do.

Q390 Bishop of Manchester: Would you like to expand on that?

Mr Dyke: The problem is that the move to Manchester has got muddled in the BBC with the cuts. They are two distinctly different things and should have been announced at different times and were not. My view of moving to Manchester was that I thought I could not see any other way of ending the enormous metropolitan bias in England. Scotland, Wales and Northern Ireland are different. They get much more resources than the Midlands and the North of England. It is England where the concentration of resource is in London and the south east. It is in London actually; it is not even in the south east. I came to the conclusion that the only way you could change this was to move to Manchester services and departments that had money and were self-commissioning, and that is why we chose children's, that is why we chose certain services, because the money went with them. I hope it goes through but there are those, I know, on the Board of Governors of the BBC who are not particularly in favour. It was not an easy sell even though it was the governors' suggestion, if you remember rightly, when we were in Manchester three years earlier in the first place. One of the things that John Birt warned me about when I became Director General was never to assume the governors remember what they decided three years ago because governors change.

Q391 Bishop of Manchester: What you saying concerns me, obviously, from the point of view of being Bishop of Manchester but let us just leave that bit aside for the moment. I suspect what you are also doing is putting into question the kinds of things which are there in the Green Paper about the other ways of devolving the broadcasting function by the BBC. The list talks about the commissioning of daytime in Birmingham, factual commissioning to be based in Bristol. Are all those in question as well?

Mr Dyke: No, I think they are fairly easy. You have to question whether they have actually happened effectively as opposed to somebody having an office and living on the train, which is not unknown. Many years ago they moved the Youth Department to Manchester under Janet Street-Porter and I do not think Janet ever moved. That is why I am saying the money has to go. It is about the money. We discussed whether we should just do a very big expansion in Manchester or whether we should spread it across the country. My view was that you needed one base in the north of England that was significant. What is interesting, if you look at what happened to the BBC, is that when devolution came a lot more money and power went to Scotland, Wales and Northern Ireland in the BBC, which is quite right. It is exactly what should have happened. That was what devolution meant. In network production what happened was that Scotland took most of the network production that up to then was made in Manchester. Very little

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moved out of London. With the decline of the ITV system my view was that going forward one of the big demands of the BBC should be that you have to be the regional system and that means money; it means putting more money into all sorts of regional stuff as well because the ITV system is not going to do that in the future.

Q392 Bishop of Manchester: So what you are saying would not necessarily endanger, as we develop digitally, ultra-local broadcasting? It would not necessarily harm the more imaginative use of opt-outs, which is one of the things the Green Paper is advising? Those would still be all right even if in geographical terms the BBC were not to major on Manchester?

Mr Dyke: No. We increased the number of opt-outs quite significantly. For instance, there used to be a London and South East regional news. It is now London news and the South East news. We split Yorkshire and built a new headquarters in Hull and did a regional system for that. What you discover is that the smaller you can get your regional news area the bigger the ratings.

Q393 Baroness Bonham-Carter of Yarnbury: With regard to the BBC's proposals for a Window of Creative Competition fair, do you think that the way in which they are setting it out it will work or, knowing the BBC as I know it and you know it, should there not be a separation of commissioning from production?

Mr Davies: You might get him over-excited now.

Mr Dyke: I have a problem with the commissioning system that has emerged throughout the British broadcasting system. I actually think the commissioners are probably now too powerful and the producers are not powerful enough. I think there is more talent in the production end than there is in the commissioning end and yet the commissioners have the money and call the tune, but this is an issue right across television production. I think if you take away from the BBC in-house production you kill the BBC.

Q394 Baroness Bonham-Carter of Yarnbury: That is not being suggested though, is it?

Mr Dyke: No, but that is the logic of what you are saying. When I was there we took a decision that we would try to rebuild the morale of the in-house production departments, which was not liked by the independent production sector a great deal. I was not liked by the independent production sector a great deal. I think the essence of the BBC is the producers in truth.

Q395 Baroness Bonham-Carter of Yarnbury: Is this not an argument about the use of the licence fee and that the licence fee should be reused?

Mr Dyke: The licence fee should be used to buy the best possible programmes and then you work out, "Where do I get the best possible programmes?", and I would say if you look at some of the wonderful pieces of television that have come from the BBC over the years they are disproportionately in-house. That is not to say that the independent production centre cannot provide some things but they disproportionately come from in-house. I rather regret the passing of the time when the head of the production area could automatically say, "Is that not a wonderful idea? Let us put it on television". They cannot do that any more. It has to go through a rather complicated commissioning system that I am not sure has been to the benefit of television. Clearly you have to be fair and open with the independent sector and I think that is what they are trying to do, but never underestimate that if the independent production sector gets 50 per cent it will want 75 per cent because that is the nature of markets.

Q396 Lord Holme of Cheltenham: I just wondered what both your reactions were to the Ofcom proposal for a public service publisher, which would have implications obviously for the share of the licence fee which ended up with the BBC and some part of it would be hypothecated to this new publisher, and I suppose the argument for that is if it provides competition. Is that sensible?

Mr Davies: In many ways it would be nice if it worked. You can certainly see that the private sector is going to move away from public service broadcasting through time and Ofcom has analysed that extremely well and in my opinion made a very valuable contribution to the debate by analysing the forces that there are in the private sector. Whether, however, you can really produce an alternative to the BBC that is visible in viewers' and listeners' minds with such a small sum of money broadcasting in such an opaque manner I would severely doubt. I think what you may find you produce as a result of this is expensive programming being shown to enormously small minorities which is not really noticed by the vast bulk of the audience. If you look at the public service broadcasting in the United States, that is exactly what happens in the public broadcasting corner of the markets. It is a half to one per cent share in most cities. It is a complete irrelevance for most citizens of the United States, but it is nice for a few people. I fear that that is what would happen under the Ofcom proposal.

Mr Dyke: There are two costs that have grown way out of line with everything else in broadcasting in recent years. One is the actual cost of getting the signal up there and down. In the old days you sent up

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one signal and down it came. Regions issued to the regional opt-out; easy. Now getting that signal up and down means it is going through so many different systems. The other one is marketing, that in the multi-channel world there is no point spending a million pounds on a programme and then not letting anybody know it is there. In the old days that was easy; in a two or three channel system it was easy. You just advertised it. That does not work any more. My problem with the Ofcom proposal, which I think is quite a brave and interesting proposal, is how is anybody going to find this? If it is not going to go through a traditional channel how are they going to know? We live in a world where everybody says, "All the power is now going to be with the producer. They will make something wonderful and they will sell it and they will sell it direct to the consumer". How is the consumer going to know? You have now got a situation with movies where you spend \$150 million on a movie and anything between \$75 and \$100 million on marketing it. We are moving into a world where you have to spend more on marketing. The trouble with that proposal is that it does not address how anybody is going to know about or find any of this stuff. If we are really going to spend that sort of money—and whether it comes from the licence fee or not is another debate—would it not be better to somehow give it to Channel 4 to do another channel so at least they can cross-promote it and market it and numerous other people will know it is there? That is going to be the hardest thing. How is anybody going to know this stuff is there?

Q397 Lord Holme of Cheltenham: I suppose you could impose a "must carry" obligation.

Mr Dyke: On marketing, yes.

Q398 Lord Holme of Cheltenham: But we can ask Ofcom that later this morning.

Mr Dyke: The other bit that I am concerned about is if it ends up as a fund that people start bidding for. I have seen that operating in Australia when I ran a business there. That is a nightmare. Without being rude, that gives groups like this the chance to sit and discuss whether or not you should fund this programme, not fund that programme, do this, do that. That is a nightmare. You have to look at the editorial independence in those circumstances. As I understand it the idea of a big fund is that it effectively replaces the amount of money that historically ITV would have spent on public service broadcasting and will not be able to afford to spend in the future. The idea is quite clever. I just think it

needs to be spelt out in much more detail about where it goes, who it goes to and how does anybody know about it? I always remember the Arts Council giving a lottery grant for movies. I do not know how many people remember that. The movies disappeared without trace. No-one ever heard of them. It was doled out and that was the end of it. I do not think it produced one critically or commercially successful movie. I think there is a real danger of having bodies that dish out money project by project. I think it is very scary.

Q399 Lord Maxton: You made a promise that the archive would be available on-line to anyone free.

Mr Dyke: Yes.

Q400 Lord Maxton: Do you know whether that is still being carried on?

Mr Dyke: Yes.

Q401 Lord Maxton: Secondly, that is fine for the British public who paid for it. Does the rest of the world get it free?

Mr Dyke: No. You can stop the rest of the world getting it free. First of all, it was only the archive where the BBC held rights because there is a lot of the archive where the BBC does not hold rights and therefore could not do it. Our idea was that it should be an educational tool. The idea, which I think was brilliant, was that for every kid, every educational institution, if you had to do a project on Brazil, you could go on line, find out what the BBC has got on Brazil, download it onto your computer and use that as part of your presentation.

Mr Davies: How bad is it if the rest of the world gets it free anyway? Kofi Annan said that the BBC World Service was Britain's greatest gift to the world in the 21st century. Let us do it with the internet.

Q402 Lord Maxton: I am not disagreeing. I am just saying there is a question mark; that is all.

Mr Dyke: It depends who owns it.

Chairman: That has been a fascinating morning's evidence. It occurred to me that when you have thought about the evidence that has been given and perhaps have seen the minutes you might want to write to us and put some further views or expand on the views that you have already put. We would be very happy to receive that evidence. It would obviously be written into the public record but there are a number of areas, like, for example, the governance of the BBC, which, although I know you do not have the same view on it, you might like to write individually on. Thank you very much indeed.

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Memorandum by Ofcom

INTRODUCTION

1. The Office of Communications (Ofcom) welcomes the opportunity to give oral evidence to the Select Committee. In advance, we hope it may be helpful to the Committee to have a summary of our existing duties in respect of the BBC, and of our published comments as part of our statutory review of Public Service Television Broadcasting. We do not propose to submit written evidence in advance concerning the detail of the Government Green Paper, but we may submit a supplementary memorandum to the Select Committee, should the information given in this submission require updating during the course of the inquiry.
2. The question of the governance of the BBC is at the heart of the Government's BBC Charter Review. As part of the quinquennial review of public service television broadcasting required of Ofcom by the Communications Act we have undertaken a uniquely wide-ranging consultation, backed by extensive and continuing research. Based on the evidence that has been provided, we published on 8 February 2003 a report on the third stage of our inquiry, entitled "Competition for Quality."¹ That publication is the basis for this written submission to the Select Committee.
3. Our submission is set out in two parts:
 - Part 1 sets out the regulatory functions that Ofcom carries out in relation to the BBC, and the functions that Ofcom has in relation to commercial broadcasters that do not apply to the BBC.
 - Part 2 provides a summary of recommendations that Ofcom has made in recent public documents which relate to the review of the BBC's Royal Charter.

PART 1: OFCOM'S REGULATORY ROLE IN RELATION TO THE BBC

This section includes

(a) *Areas in which Ofcom has a regulatory role in relation to the BBC*

4. Regulation of broadcasting content under the Communications Act 2003 can broadly be split into three tiers:
 - tier 1 regulations which apply to all broadcasters and relate to avoidance of harm and offence, impartiality, subliminal messages and fairness and privacy;
 - tier 2 regulations which apply to designated public service broadcasters and consist of quotas for certain programmes (eg news) and types of production (eg out of London production); and
 - tier 3 regulations which comprise the public service remit of designated public service broadcasters.
5. Section 198 of the Communications Act 2003 requires that Ofcom shall carry out such regulatory functions in relation to the BBC as are specified in the Act or in the BBC Charter and Agreement. The Agreement was amended in December 2003 for this purpose. In each case below, where a power stems directly from the Act, or where the Agreement has the effect of applying that section to the BBC, the relevant section is stated.
 - (i) Tier 1 ("negative" minimum content standards and complaints handling)
6. The following requirements apply to all BBC Public Broadcasting (ie licence fee funded) Services, including radio, in the same way as they apply to commercial broadcasters:
 - Observance of the Ofcom code dealing with fairness and privacy for those involved in programmes (Act S327)
 - Observance of the Ofcom code dealing with programme standards concerning:
 - Protection of those under the age of 18 (Act S319(2)(a))
 - Exclusion of material likely to encourage or incite crime or lead to disorder (S319(2)(b))
 - Exercise of a proper degree of responsibility with respect to religious content (S319(2)(e))
 - Application of generally accepted standards to provide adequate protection from offensive and harmful material (S319(2)(f))
 - Subliminal messages (319(2)(l))

¹ Ofcom review of public service television broadcasting—Phase 3—Competition for quality, published 8 February 2005.

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(ii) Tier 2 (quotas for television programmes)

7. The Under the current Agreement, the BBC must obtain Ofcom's agreement to quotas for:

- original productions (total and in peak);
- out of London production;
- the amount, range and expenditure of network programmes made outside the M25;
- the range of production centres outside the M25.

The BBC Governors are currently responsible for setting all other quotas. They are, however, obliged to consult Ofcom and have regard to its comments. They also have to obtain Ofcom's agreement before allowing the quotas to fall below 2002 levels. This applies to:

- news on BBC1 (total and in peak);
- current affairs on BBC1 and BBC2 (total and in peak);
- regional programmes on BBC1 and BBC2 (total only);
- regional news on BBC1 (total and in peak);
- non-news regional programmes (in peak and near peak) regional programmes made in the region.

(iii) Other

8. The BBC is also required to:

- Produce a code on programme commissioning in accordance with Ofcom guidance;
- Comply with international obligations notified to the BBC by Ofcom;
- Retain and produce recordings of television and radio programmes;
- Publicise Ofcom's functions in relation to handling complaints (Schedule 12 Part 1 of the Act);
- Observe Ofcom's code containing rules on coverage of major events (Part IV of the Broadcasting Act 1996 as amended by the Television Broadcasting Regulations 2000 and sections 299–302 of the Communications Act 2003)
- Co-operate with Ofcom and produce information to Ofcom in connection with
 - Annual factual and statistical report
 - Report on fulfilment of public service remit

(iv) Sanctions

9. Section 198 gives Ofcom the power to impose a fine of up to £250,000 on the BBC for a breach of any of its requirements (except listed events) if, after giving the BBC reasonable opportunity to make representations, it believes such a fine would be warranted. (In the case of listed events, Ofcom can only report the matter to the Secretary of State under Section 103 of the 1996 Broadcasting Act.) Ofcom can also direct the BBC to take remedial action, including broadcast of a correction or a statement of findings and/or a direction not to repeat a programme.

(v) Ofcom's functions under competition legislation

10. Part 5 of the Communications Act sets out Ofcom's functions under competition legislation, and in particular, the areas where Ofcom can concurrently apply general competition law alongside the OFT.

(b) *Areas in which Ofcom has no regulatory role in relation to the BBC*

11. The sections of the Communications Act listed below apply to commercial PSB channels, but have no application to BBC Public Broadcasting Services. For the BBC, these are the responsibility of the Board of Governors.

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(i) Tier 1 (“negative” minimum content standards and complaint handling)

Programme standards concerning:

- Due impartiality
- Due accuracy in news
- Commercial products within programmes

(ii) Tier 2 (quotas)

Party political, election and referendum broadcasts

(iii) Tier 3 (public service remit)

The BBC, for licence fee funded services, is only obliged to “consider. . . anything of relevance” in Ofcom guidance on annual reviews and statements of programme policy and Ofcom’s annual reports and PSB reviews, and it is itself responsible for assessing the quality and effectiveness of its services, not Ofcom. That is clearly different from the regime for the commercial PSB channels, where any “significant change” in programme policy must be approved by Ofcom, which also has backstop powers to impose detailed regulation in the case of serious failures. For the BBC, backstop powers rest, in effect, with government through the Charter, Agreement and government’s power to approve and set conditions for new digital services.

(iv) Other

Making arrangements for training and equal opportunities in employment.

Contributions to a National Television Archive.

(c) *Competition functions*

12. Under Section 316 of the Communications Act Ofcom may include in all broadcast licences any conditions that it considers appropriate to ensure fair and effective competition in the provision of licensed services or of connected services. Section 316 is only applicable to Ofcom’s licensees and can be used in either an ex post or ex ante way. This Section only applies to the BBC in relation to the digital terrestrial multiplex B operated by Freeview and any services broadcast on it. All broadcast licences currently include a provision stating that the licence holder must not:

(a) enter into or maintain any arrangements, or

(b) engage in any practice

that Ofcom considers, or would consider to be prejudicial to fair and effective competition. This allows Ofcom to impose ex ante conditions on broadcast licensees where Ofcom has concerns that the licensee is or is likely to harm competition, and provides an alternative route to the standard competition legislation, if ex post action is required.

13. Currently Ofcom has four Codes that set out detailed rules in specific areas on the types of behaviour that we would consider to be prejudicial to fair and effective competition. These cover the areas of:

- advertising sales arrangements;
- cross promotion;
- minimum carriage requirements (ie contracts between broadcasters and distribution platforms, which insist on minimum levels of carriage); and
- Electronic Programme Guides (excluding access and pricing arrangements which are covered under the Access Directives).

14. If a licensee were to breach the rules set out in these Codes, Ofcom would consider that the licensee was acting in a manner prejudicial to fair and effective competition and would be able to impose sanctions as set out in Schedule 13 of the Communications Act.

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PART 2: OFCOM'S PUBLISHED RECOMMENDATIONS CONCERNING THE BBC

15. In many areas of our statutory responsibilities, Ofcom must consider the BBC's activities, since the Corporation is such a large and important part of the UK broadcasting market. In two recent documents, "Driving Digital Switchover"² and "Is Television Special?"³, for example, the issues could not be discussed without reference to the role of the BBC. In both documents, Ofcom made recommendations and put forward propositions, which relate to the Government's review of its Royal Charter. To assist the Select Committee, we set out in this submission such of our recommendations and propositions, which bear upon the Government's Green Paper on the BBC Charter.

(a) *Digital Switchover*

16. In the context that it is important for all broadcasters to have clear and unambiguous incentives to drive digital switchover for it to happen, Ofcom made the following recommendations regarding the BBC:

"Ofcom recommends that as part of the BBC's Royal Charter review, the Government adds specific obligations to the BBC's current general obligations to promote digital TV. They should include obligations on rolling-out digital transmission nationwide, providing public information, continuing to provide its channels on the free-to-view satellite platform, and providing on-air marketing of digital TV on a platform-neutral basis."

17. In a discussion of which institutions should manage the process towards switchover, Ofcom recommended the establishment of a body, termed SwitchCo, which would have sufficient independence of broadcasters and the government. We recommended:

"Many interested parties—the Government, the broadcasters, Ofcom, manufacturers and retailers—will continue to have important roles to play in delivering switchover. They must agree to SwitchCo's role and remit, and would be part of its governance arrangements. However, neither the Government, nor the BBC, nor a consortium of broadcasters, nor Ofcom should run SwitchCo because their interests are diverse. Instead, SwitchCo should have sufficient independence so it can represent the national interest effectively, ensure platform neutrality and avoid conflicts of interest."

(b) *Securing Public Service Broadcasting in the digital age*

(i) The players in the new system

18. In publishing the results of our review of PSB,⁴ our aim has been to devise a new system which will deliver high quality PSB content for the future, using a range of funding sources, institutions, and approaches. The overall objective of the new system should be to deliver quality through effective competition between both commercial and publicly funded providers, with sufficient scope for the system to change and adapt as the market develops, and the needs of citizens and consumers change over time.

(ii) The BBC

19. We welcomed the BBC's response to our Phase 2 report. In particular, we note that there are many issues on which the BBC's response agrees with our analysis and recommendations—for instance, on the continued importance of PSB; on the need for plurality in the PSB system; a definition of PSB based on purposes and characteristics; and on the role of the BBC as the cornerstone of the PSB system.

20. Respondents to our Phase 2 consultation largely supported the recommendation that the BBC should, for the foreseeable future, remain at the heart of PSB in the UK, although as part of a wider system which encourages competition for quality. Indeed, some respondents noted that, given the increasing pressure on the analogue PSB model, the BBC's role may be even more important going forward. In addition, many respondents argued that the current structure of governance and regulation of the BBC is in need of review, and that this was directly relevant to the PSB system as a whole.

² Driving Digital Switchover—a report to the Secretary of State, published 5 April 2004.

³ Is Television Special—Ofcom's review of public service television broadcasting, published 21 April 2004.

⁴ Competition for Quality, Chapter 2 (*op cit*).

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21. In addition, most respondents agreed that the BBC should continue to be funded by a licence fee model, and the BBC noted that its own research on willingness to pay suggested public support for a higher level of PSB funding than that suggested by the Ofcom research. A small minority of respondents adopted a different view—suggesting, for instance, that Ofcom should explore the scope for a subscription-funded BBC. The BBC and some other respondents challenged this perspective, arguing that the use of a subscription model would bring about an undesirable shift in the BBC’s role, the content it could provide, and its ability to ensure universal access to its services.

22. Our key recommendation in respect of the BBC in *Competition for Quality* is broadly unchanged from those in our Phase 2 report:

- An effective, strong, and independent BBC—properly funded by a licence fee model—should remain the cornerstone of PSB.
- A 10-year Charter—with a substantive mid-point review⁵ to reflect the fact that the broadcasting market is changing rapidly, and to coincide with Ofcom’s next PSB Review.
- The BBC should strive to ensure all its programmes reflect to some degree the purposes and characteristics of PSB, for example by having regard to the extent to which Hollywood films and other expensive acquired programming meet its own definitions of public value.
- For the medium-term, we continue to believe that the BBC should be asked to review options for the use of subscription funding to supplement the licence fee, in advance of the proposed mid-point review of its Royal Charter.
- Since Phase 2, the BBC has announced details of its internal review of commercial activities, resulting in a limited sale of parts of BBC Worldwide. We remain of the view that the BBC’s (relatively limited) plans for the sale of its commercial activities should be subject to an independent assessment as part of Charter Review.

(c) *Reflecting and responding to life around the UK*⁶—an enhanced role for the BBC

23. Historically, ITV1 was the main provider of regional television in the UK, thanks to its origins as a federal system of regionally-based licensees. In recent years the BBC has increased its provision, particularly in the Nations, while ITV1’s has fallen back. Nonetheless, even in 2003, ITV1 broadcast more hours of regional programming than the BBC. In the future, our analysis suggests that this will no longer be the case. The BBC will need to take the lead.

24. Our starting point for a new regional settlement, therefore, is an enhanced role for the BBC. The Corporation recognises this in its *Building Public Value* document, and has set out some ambitious plans. Its key proposals are:

- strengthened core services in Scotland, Wales and Northern Ireland, including continued commitment to the UK’s indigenous languages and coverage of devolved institutions;
- “ultra-local” television news services for 50–60 cities and counties across the UK, initially delivered by broadband, and potentially later on digital television;
- creation of more opportunities for citizen participation and involvement in local communities.

25. The BBC has, however, so far stopped short of proposals to increase its non-news TV output for the English Regions. The BBC should not offer a direct replacement of programming no longer available on ITV1. Nonetheless, Ofcom considers that, following the completion of Charter Review, the BBC should be asked to develop new proposals of its own, which go beyond the use of local new media, and help provide more well-funded television programming for the English Regions in addition to its ongoing activity in the Nations.

26. For example, initiatives such as the ten-minute regional inserts in *British Isles: A Natural History* represent new ways of reflecting regional diversity without requiring the wholesale dedication of regular slots to regional programmes. Similarly, occasional event programmes responding to particular regional or local developments on an ad hoc basis can achieve impact without imposing excessive cost or disruption to the schedule.

⁵ By a “mid-point” Charter Review, we do not necessarily mean that the review should take place literally half way through the next Charter (ie at the start of 2012), but that it should take place at an interim stage close to the mid-point. It may, for instance, be more appropriate for the review to take place at a slightly earlier stage (eg in 2011), to ensure that planning for a post-switchover world can take place in good time.

⁶ *Competition for quality*, Chapter 3 (*op cit*).

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(d) *PSB regulation, accountability and governance*⁷

(i) Overall aims and challenges

27. As the final part of our proposals to maintain and strengthen the quality of PSB, we considered the framework for regulation, accountability and governance across the television broadcasting sector. We believe that a strong and transparent framework should:

- support high quality content across the PSB system;
- ensure that the substantial amount of public funding made available to UK broadcasting is well spent;
- underpin independence and impartiality in provision of news and current affairs;
- secure effective and fair competition in the broadcasting market;
- produce a common regulatory framework for all public service broadcasters; and
- recognise the unique position and responsibilities of the BBC.

28. Above all, an effective framework must work for the broadcasting sector as a whole. The broadcasting sector is made up of some complex interrelationships—the actions of one player almost certainly impact on others. The use of public funding has the potential to affect significantly the investments made by commercial operators. The approach taken to the use of independent producers in one part of the sector affects relationships elsewhere. Editorial judgements made by one broadcaster, set the climate for judgements made elsewhere.

29. As convergence gathers pace, the regulatory regime for broadcasting will increasingly interlock with that for telecommunications and broadband. While governance mechanisms may vary between players, depending upon their individual circumstances, it is less and less possible or desirable to think about the regulation of individual participants in the sector in isolation from the environment in which they operate.

30. In our Phase 2 report, we suggested that clarifying the separate roles of governance and regulation of the BBC should be a central objective of the Charter Review process. We pointed to the proliferation of reviews of the BBC's activities and services in recent years as evidence that the current system is not working well.

31. In the responses we received to the Phase 2 consultation, we identified three key themes:

- Significant support for our call for greater clarity in the roles of regulation, accountability and governance.
- Concern, especially from commercial broadcasters, that the BBC's impact on the wider market is insufficiently taken into account by the current system of BBC governance.
- Support for a common approach, as far as possible, to determining and enforcing editorial standards across all broadcast output, especially as regards news and information.

32. Not all agreed that these issues should be dealt with in the PSB Review, and certainly not all thought that Ofcom should be asked to take on a wider role which encompassed governance as well as regulation. But many did agree that there should be greater consistency in approach across the industry, and some argued strongly that these issues merit urgent consideration, now and as part of the Charter Review.

33. A separate but equally important issue is the need to secure effective and transparent oversight of public funding for PSB, and the extent to which it is delivering agreed PSB objectives. What ever the structures, we believe that any new approach to governance and regulation should be informed by three clear and internally consistent elements: internal governance, external regulation, and the accountability and oversight of the use of public funding. As a priority, we think that measures should be introduced to address inconsistencies in the current approach to cross-sector regulation—which would deliver a common framework for all broadcasters.

34. In parallel with our Review, the BBC has put forward and is introducing new proposals for addressing some of the problems associated with its current model of governance. The Burns panel, advising DCMS on the Charter Review, has also published its proposals for a new model of BBC governance, which involve the creation of a unitary BBC Board, a new Public Service Broadcasting Commission, and a cross-sector regulatory remit for Ofcom.⁸ In the Government's subsequent Green Paper, the Government has proposed a model which incorporates elements both of the BBC's internal reforms and of the Burns Panel's recommendations.

⁷ Competition for quality, Chapter 6 (*op cit*).

⁸ *Independent Panel's Final Advice to the Secretary of State*, available at: <http://www.bbccharterreview.org.uk>.

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(ii) Improving clarity of content regulation⁹

35. We have not and still do not believe that the answer is to ask Ofcom to take on governance or accountability responsibilities for the BBC. That would lead to a further confusion, rather than clarification, of the distinct functions. However, it is important that the model finally agreed addresses inconsistencies in the approach to cross-sector regulation, as it applies to competition issues and to Tier 1, Tier 2 and Tier 3 content requirements for broadcasters, as Figure 1 below illustrates.

36. Currently, there are broadly three types of content regulation in the broadcasting sector. As it relates to the regulation of the BBC, the picture is complicated and different regulators take the lead in different areas:

- Ofcom takes the lead—Ofcom is responsible for most Tier 1 and Tier 2 regulations for both the commercial sector, and for the BBC.
- BBC Governors take the lead—In some areas, such as due accuracy and due impartiality, the BBC Governors retain responsibility for BBC matters, while Ofcom deals with the rest of the sector.
- Unclear who takes the lead—For some Tier 2 quotas (eg for regional programming) Ofcom has more limited scope for action as far as the BBC is concerned, compared with its commercial licensees.

Figure 1

RESPONSIBILITY FOR CONTENT REGULATION (TIERS 1, 2, 3) AND COMPETITION REGULATION

	<i>Regulation by Ofcom</i>			
	<i>BBC</i>	<i>ITV</i>	<i>Channel 4</i>	<i>Five</i>
Tier 1—programme standards relating to harm, offence, privacy, accuracy, impartiality and fairness etc	(✓)* powers in some areas	✓	✓	✓
Tier 2—quotas and targets which must be met—eg independent production, original production, regional production	(✓)** powers, but limited in some areas	✓	✓	✓
Tier 3—relates to the PSB remits of the main terrestrial channels—eg quality and diversity, statements of programme policy	×	✓	✓	✓
Competition regulation—ex ante and ex post powers	(✓) ex-post powers only	✓	✓	✓

* Ofcom is responsible for ensuring compliance with standards, for example relating to harm and offence, and fairness and privacy, but the BBC Governors are responsible for ensuring that relevant BBC programmes meet standards of due accuracy and impartiality.

** Ofcom is responsible for monitoring compliance with Tier 2 regulation (eg ensuring the BBC meets its independent production quota), although in some areas, our powers are limited to ensuring the BBC does not fall below current levels of provision.

⁹ Competition for quality, Chapter 6 (*op cit*).

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(iii) Achieving consistent competition regulation¹⁰

37. On competition issues (as Figure 1 illustrates), regulation is not consistent across the sector. For example, Ofcom has extensive additional and ex ante competition powers for the commercial sector, but can only exercise ex post powers through the standard competition framework over the BBC. The responses to our consultation suggest that this lack of consistency and clarity gives rise to some important concerns.

38. A key issue is the BBC's relationship with the rest of the sector, and the impact of its activities on competition in the wider broadcasting market, and on the commercial viability of other channels, service providers, and producers. There is scope to remove anomalies and to ensure that regulation across all relevant areas is seen to be independent and enforced by a truly external body, able to draw on wide expertise of regulatory matters, case law and relevant comparative data. This is especially relevant where the BBC is buying and selling goods and services in the market like other broadcasters (eg ancillary services such as subtitling, the Resources business, or the purchase of programme rights). There are benefits, too, from a single regulator exercising its responsibility across the industry—applying a similar approach even if the detailed rules/codes vary from broadcaster to broadcaster.

39. We therefore have made three recommendations regarding competition issues which bear upon the BBC:

- the approach to competition issues should be the same across the sector—with the BBC subject to the same rules as are the commercial broadcasters. This would allow Ofcom to intervene promptly in the event of a possible threat to competition, and ensure a consistent approach across the market. The BBC would then become explicitly responsible for compliance, and Ofcom for regulation. The Green Paper has asked us for further analysis and evidence regarding this proposal—and has also suggested that Ofcom might have a role to play in approving the BBC's internal Fair trading guidelines (or a modified version thereof).
- where the BBC is proposing new services, the Impact Assessments (which examine the effect of those new services on the market as a whole) should be carried out by Ofcom, rather than by advisers appointed by the BBC's Governors. The results of such assessments would be published and then form part of the information and analysis available to those responsible for the accountability and oversight of the BBC in reaching a decision on the approval of a new service. This proposal has been accepted in the Government's Green Paper.
- all Tier 2 quotas which currently remain with the BBC Governors should in future be regulated by Ofcom: at present Ofcom's powers to impose higher quotas on the BBC are limited in some areas. This proposal has not been accepted by the Green Paper—instead it is suggested that the current arrangements be given time to bed down before any further change is considered.

(iv) The regulation of news and current affairs

40. A further area of concern is around the uneven application of editorial standards, which might result from the current split of responsibilities between Ofcom and the BBC Governors for the enforcement of standards in the areas of accuracy and impartiality. There is a risk that a different approach to regulation of editorial standards between the BBC and commercial broadcasters risks implying to the public that there are two standards for news: a BBC gold standard, and the rest.

41. Some consultees have argued to us that it is in the public's interest to have clarity and consistency in the approach that is taken to safeguarding editorial standards—in particular in reference to accuracy and impartiality; and a number of competing news services which all meet the high standards for impartial, accurate and high quality news that has been established in UK broadcasting. A common regulatory approach would provide clarity and would enable the application of a consistent gold standard across the whole sector.

42. However, we recognise that in terms of the depth, breadth and quantity of its provision, the BBC has a unique status in providing news and current affairs in the UK and beyond. In this area in particular, the BBC has a role as the cornerstone of PSB as the UK's primary provider of publicly-funded news and information. It is critical to the public interest that the highest standards of editorial integrity are maintained and are placed at the heart of the overall approach to accountability and regulation of the BBC's output in this area. There is, therefore, an argument that the BBC should be regulated differently from the commercial news providers, reflecting the subtle distinctions described above.

¹⁰ Competition for quality, Chapter 6 (*op cit*).

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(v) Assessment of PSB delivery

43. As part of a more consistent cross-sector approach, Ofcom is developing further its plans for annual statistical reviews of the broadcasting and communications sector.¹¹ We are also planning a new approach to assessing, each year, the effectiveness of PSBs in delivering the public purposes and characteristics set out earlier in this report. This assessment will include:

- an extensive audience tracking survey, to measure perceptions of overall delivery and the performance of each channel;
- detailed analysis of BARB and output data, as already presented in Phase 1 of this Review;
- expert review each year of selected genres or specific aspects of output, with wide public consultation; and
- value for money of the various services delivered across the sector.

44. We hope to share this information with broadcasters and the BBC Governors, to provide a common basis for understanding the performance of different channels in delivering PSB, and the value they are delivering from year to year. We hope that such information may also contribute valuably to Parliamentary debate and scrutiny. The Green paper recognises the importance of this work, and suggests that the BBC should work closely with Ofcom in developing performance measures and in sharing data.

¹¹ *The Communications Market*, published annually from 2004.

Examination of Witnesses

Witnesses: LORD CURRIE OF MARYLEBONE, a Member of the House, Chairman of Ofcom, MR RICHARD HOOPER, Deputy Chairman and Chairman of the Ofcom Content Board, and MR STEPHEN CARTER, Chief Executive, Ofcom, examined.

Q403 Chairman: Thank you very much for coming. You know what we are about. We have been set up as a select committee of the House of Lords to look at the whole review process of the Royal Charter. The election is now obviously going to intervene in our deliberations but we confidently hope we will be back—probably more confidently than most people. The committee will then be re-set up and we very much hope to have things ready and report by the end of October. Lord Currie, welcome, and your colleagues. Would you introduce them?

Lord Currie of Marylebone: Certainly. On my left is Richard Hooper, who is my Deputy Chairman and Chairman of the Content Board of Ofcom. On my right is Stephen Carter who is the Chief Executive of Ofcom.

Q404 Chairman: Ofcom has now been set up. In a few sentences, if that is possible, give us a very brief overview of your responsibilities.

Lord Currie of Marylebone: Our responsibilities are quite wide and they obviously cover broadcasting, commercial broadcasting in particular, television and radio, though we obviously also have some regulatory powers over the BBC. We also regulate telecoms and manage spectrum issues. Clearly it is the first set of issues which are of prime concern. As you will know, over the last year or 18 months we have conducted a major review, as required by the Communications Act, of public service broadcasting and that has inputted into the BBC's thinking and the Green Paper.

Q405 Chairman: Some of us who are survivors of the Communications Bill as it went through remember the debates. Let me go straight to the BBC. Is it fair to say that you see a division, a separateness, between running and managing the BBC and regulating the BBC? Those are two different areas.

Lord Currie of Marylebone: In fact we see three separate areas. There is the governance and management of the BBC itself as an organisation, there is the question of accountability, of the use of public funds in broadcasting as used by the BBC, and there is the question of regulation. We see ourselves very much in the third of those but those other two functions are two quite separate functions that can usefully be separated and we set out that thinking in the third stage of our public service broadcasting report.

Q406 Chairman: How do you run yourselves? How are you organised as an Ofcom organisation?

Lord Currie of Marylebone: We have a board, as specified in the Communications Act, of six non-executive members, including myself, and three executive members, including the Chief Executive and the other two senior partners in Ofcom. That is the decision-making body for Ofcom as a whole. We have the Content Board, as again required under the Communications Act, which considers content issues and advises the main board on where there are content issues which have a broader consideration and therefore have to be considered by the main board itself.

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Q407 Chairman: In broad terms it is based on what one would regard as a standard PLC board?

Lord Currie of Marylebone: Yes, it is very similar.

Q408 Chairman: In the regulation of the BBC would you think that should be done by an outside body?

Lord Currie of Marylebone: I think there are advantages in regulation in the sense that we do it in it being conducted by an outside body that is separate from the issues of governance and management. You could argue that some of the difficulties that arose in respect of the Gilligan incident arose from the fact that there was not such a clear separation and you might argue that it would have been advantageous had it been so.

Q409 Chairman: Because there would have been greater trust if there had been an outside independent body?

Lord Currie of Marylebone: Richard Hooper may wish to comment on this. An example at the moment is that we, of course, under our harm and offence regulation of content of the BBC, are going to consider the Jerry Springer programme. That is a case where the fact that it is being done by Ofcom possibly lowers the temperature on the issue because it allows more time for a considered appraisal.

Q410 Chairman: I thought it had just been considered by the BBC.

Lord Currie of Marylebone: There is a certain—

Q411 Chairman: Overlap?

Mr Hooper: It is actually a very good example of possible overlap at what we call tier one, which is negative content regulation, harm and offence, accuracy, impartiality and fairness and privacy. Jerry Springer is a harm and offence issue. The regulatory body is Ofcom and what we do as the regulator is ask the broadcaster for their comments on the complaints that have been received. Having received those comments we then adjudicate. In the case of the BBC we are faced with a slightly bizarre situation where the Director General publicly made comments and then a couple of weeks later the GPCC, which was the governors' complaints committee, made their comments, so we have two sets of comments from the BBC. We will be adjudicating in the next two or three weeks.

Q412 Chairman: On Jerry Springer which, of course, caused quite a lot of public controversy?

Mr Hooper: Yes.

Bishop of Manchester: Can I declare an interest as well because the matter is for me, so I have already said that to my colleagues.

Q413 Chairman: Therefore, as it is organised at the moment we have got two bodies?

Lord Currie of Marylebone: No, it is simply one. Ofcom has the responsibility.

Mr Hooper: I think it is a confusion for the public and certainly the licence payer would think exactly what you, Chairman, have said, which was that the BBC had already adjudicated it. When we come to do our adjudication people will say, "I thought that had already happened". It is an example of where there is a little bit of mistiness at tier one. There is a more substantial example, which is accuracy and impartiality. That is something the governors have regulatory powers over. They have powers over due accuracy in news and due accuracy in the handling of controversial subjects in factual programmes. We also, under the Communications Act, have powers to get rid of misleadingness in factual programmes which would lead to harm and offence, and there is clearly duplication there.

Q414 Chairman: If you had Ofcom being the regulatory body overall as far as the BBC was concerned would that be something which you would regard as desirable? It has also been slightly suggested that you are really not adequately established yet to do that.

Lord Currie of Marylebone: We are very clearly established. We have in our year and 15 or 16 months' operations established an authority in the work and the research that we do. I do not think that argument is a strong one.

Q415 Chairman: So you would be able to do it, in other words?

Lord Currie of Marylebone: Absolutely, yes.

Q416 Chairman: There is absolutely no question about that?

Lord Currie of Marylebone: There is no question we could do it. The question then is, would it be desirable in our final report for the Public Service Broadcast Review? We set up the arguments for and against. On balance if we were pressed we would say it would make sense for us to do the regulatory role. Be very clear that that is separate from holding the BBC to account for its use of public funds in the public interest. Those are two separate roles. I do not see that latter role as ours. Indeed, you could argue that there are some things which we are required to do in respect of commercial broadcasters that are not appropriate, that are more to do with governance. For example, we appoint the Board of Channel 4. In appointing the Board of Channel 4 that puts us in a slightly awkward position, we think, in holding them to account in a regulatory sense. You do not normally have regulatory powers over the people you appoint. That is a slightly odd situation. The Burns

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Committee, for example, suggested the Public Service Broadcast Commission, and if such a thing were to happen there are some functions that we currently do and would be very happy to pass over which would more appropriately sit with such a body.

Mr Hooper: For example, we have a duty to dispense £500,000 to community radio stations. As a regulator we do not like that task because clearly if you are giving money to a radio station your regulatory neutrality, which is at the heart of this, is going to be slightly, if you are not careful, inhibited. We would much prefer another body to dispense those funds to community radio stations.

Q417 Chairman: Surely Burns would actually also give much greater power to the Public Service Broadcast Commission over the BBC than you seem to envisage, or am I wrong in that?

Mr Carter: Is that question about powers in relation to regulation or accountability?

Q418 Chairman: To regulation.

Mr Carter: That is not my reading of it, but that is an interpretive position, not a factual one.

Q419 Chairman: Tell me where the accountability would go under your proposal. You say regulation would go to Ofcom. How would accountability be done?

Lord Currie of Marylebone: A clear model is to have the governors concerned with the governance and management of the BBC, to have the Public Service Broadcast Commission, which could evolve from the BBC Trust, as proposed in the Green Paper, having that accountability role and we would take the regulatory role.

Q420 Bishop of Manchester: Can I seek further clarification of the helpful points that came up over the Jerry Springer illustration without going into the details of that particular programme because it does seem to me that there is a little confusion around, not least among the BBC governors themselves about what their particular role is. I know that the Church of England was being advised that one should contact both Ofcom and the BBC governors. In your written submission to us there is a statement on page 11 and I would just like confirmation from you that this is how the situation is at this moment: "Ofcom is responsible for ensuring compliance with standards, for example relating to harm and offence and fairness and privacy, but the BBC governors are responsible for ensuring that relevant BBC programmes meet standards of due accuracy and impartiality." That is actually the known distinction, is it not?

Mr Hooper: That is a correct statement and that is the state now. There was a little bit of confusion about the accuracy and impartiality, but that is a correct statement. Jerry Springer is a harm and offence complaint. Ofcom regulates it. The governors do not have regulatory powers over that.

Q421 Baroness Howe of Idlicote: The accuracy and impartiality being the responsibility of the BBC. Do you run into problems when you are drawing up the code? What happens here?

Mr Hooper: We are right in the middle of that at the moment. We are actually drawing up the final Ofcom code for publication probably in May. We have conversations currently going on with the BBC, which I would say are very positive and constructive, about how making sure that the governors of the BBC and the board of Ofcom and the Content Board do not bump into each other in a way that is silly for the public at large and for people being regulated. We will come up with a solution to that overlap.

Q422 Baroness Howe of Idlicote: You are implying you have had some problems with that.

Mr Hooper: No. I am a great believer in looking at problems that might arise in the future. We have not had this as a problem, but because of the slight overlap here we would like to clear it up before it happens.

Q423 Lord Maxton: I am not quite clear. The Jerry Springer show has been on and now it is finished. Basically you are dealing with complaints about it.

Mr Hooper: Yes, correct.

Q424 Lord Maxton: Does the Content Board and Ofcom have any power of censorship both on BBC programmes and commercial programmes?

Mr Hooper: We have no pre-transmission powers. This is an absolutely critical difference to 20 years ago when there were pre-transmission powers. Our only powers begin after transmission. What was interesting about Jerry Springer is that there was a huge amount of complaint before the programme which in a sense is irrelevant to the adjudication because we are interested in people who have seen the programme and who have complained about it, that is the nub of the content regulation.

Q425 Lord Maxton: So you have no powers?

Mr Hooper: We have no powers.

Lord Maxton: In my own mind I was not at all clear as to whether or not you had that power.

Q426 Lord King of Bridgwater: Are you non-executive as Chairman?

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Lord Currie of Marylebone: Yes, I am.

Q427 Lord King of Bridgwater: How many days a week do you work?

Lord Currie of Marylebone: It was defined originally as up to four days a week. That was before we had an organisation in place and before we had an executive team. I probably spend about half of my time on Ofcom activities.

Q428 Lord King of Bridgwater: And the Deputy Chairman?

Mr Hooper: I am up to three days a week and it is currently well into three days a week.

Q429 Chairman: There has been great debate about whether you are non-executive or part-time. Part-time might be a better way of putting it.

Lord Currie of Marylebone: It is very clear that the Chief Executive and his executive team have the responsibility of running the organisation and delivering the policy advice and analysis to the Board. It is for the Board to take the regulatory decisions and it is my job to make sure that they are able to do that effectively.

Q430 Lord King of Bridgwater: I am trying to get clear. The Bishop took you through the footnote that there is here. It says that Ofcom is responsible for harm and offence and the BBC governors are responsible for due accuracy and impartiality. Reading that backwards implies that Ofcom has no responsibility for accuracy and impartiality because surely the BBC governors have obvious responsibility for harm and offence. They are the first port of call in these matters. It must be part of their job to try and ensure that that did not happen. They have not been absolved from responsibility for harm and offence, have they?

Mr Carter: The line of questioning illustrates both the general and specific point. The general point is that the creation of Ofcom and the creation of these three tiers of regulation, tier one, tier two and tier three, has created a series of overlaps which we are working with because it makes sense to make them work, but if you asked the question are they crystal clear, the answer is they are not. We have said in our report and in our debates with the Government prior to the publication of the Green Paper—and I am sure we will continue to say it—that one of the opportunities afforded by this Green Paper, having now had Ofcom around for a couple of years and so people can make their own value judgments about our competency and capability, is how do you clear up those areas of confusion generally and there are a number of them. One of them happens to be illustrated rather contemporaneously by the Jerry Springer situation where, entirely understandably,

the governors feel that they are not entirely absolved of responsibility and therefore they wish to go through their own process of internal review and judgment. The point is, in law the adjudication is not theirs to make; in law the adjudication is ours to make. On the impartiality and accuracy question, impartiality and accuracy is our responsibility for every other news broadcaster other than the BBC.

Q431 Lord King of Bridgwater: This point about “in law” may confuse us because in the first instance the Board of the BBC must be responsible for the total operation of the BBC and in every aspect of it surely that is right.

Mr Carter: I think that goes to the heart of the question as to what exactly is the nature of the Board of the BBC.

Q432 Lord King of Bridgwater: Taking up Lord Maxton’s point, the BBC has the power to pull the programme. We know there were cases where the governors saw programmes before they were transmitted and advised that they should not be transmitted. They are in the first instance in the front line. What I want to come on to is this governance point. As an outsider looking at this, you appear to be going along with the idea of a Trust and then at a later stage the Trust growing into becoming the Public Service Broadcasting Commission. Is that really necessary? Is it not a proper and effective operation with the right people having learnt some important lessons? This three tier system we are going to have seems to me enormously confusing for the public. Why are you advocating inserting another tier in there? Would it not be simpler to keep the present structure of the BBC as a standard board?

Lord Currie of Marylebone: To understand where our thinking comes from you have to step back a bit and look at the commercial side of public service broadcasting. In the past public service broadcasting essentially has been funded by the gifting of valuable analogue spectrum to broadcasters and that has been a valuable asset which they have been given at no charge and in return the regulator has been able to require delivery of public service broadcasting amendments. As we move into the digital age and as viewers switch increasingly to digital that ability of us to regulate public service broadcasting in that way is going to diminish and diminish quite quickly. Therefore, what we have said in our Public Service Broadcast Review is that we need additional funding to fund commercial public service broadcasting if we do not want the BBC to be the sole provider and we see disadvantages in the BBC being the sole provider. Therefore, we would suggest funding going in other directions. We do see the need for a Public Service Broadcast Commission having oversight of the use of that public funding and advising and possibly

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allocating that funding if we want to maintain plurality in public service broadcasting.

Q433 Lord King of Bridgwater: I thought the whole concept of a trust or a public service broadcasting corporation was to oversee the BBC and not to worry about the wider implications, although that may be part of the job. I am talking about the governance of the BBC and the problem about the management of the BBC.

Mr Carter: There is more than one question being asked in and around these questions. On the regulation question, we think we have a relatively clear view, there are areas of confusion and overlap and they would benefit from being clarified. We see no reason why there should not be a single unitary regulatory authority for the regulation responsibilities.

Q434 Chairman: And that is something you have the capacity to do, is it?

Mr Carter: We do it at the moment. We do it probably, if you were to do it on a quantitative basis, for 75 per cent of the regulation of the BBC. Why keep the other 25 per cent out? There is then the governance question “What is the right model for the governance of the BBC?” which is central to the BBC Charter question. There is then a broader question which we were asked to answer by the Communications Act, which is not just to do with the BBC but is to do with how you preserve public service broadcasting in the round. That is currently done by the BBC, by Channel 4, by ITV and Channel 5. The point that David was making is that as we march towards digital switchover the commercial imperative on public service commercially funded broadcasters to do that sort of broadcasting is going to disappear. The question you are then faced with is how you provide that. If you only have the BBC doing it, if you only have one provider, you are then in a situation where you have a monopoly provision of a commodity called public service broadcasting and our view is that is undesirable. If it is undesirable and you want to have more than one you then have to ask the question about how do you manage the accountability for that provision and that leads you on to the logic that says it might be sensible to consider having a commission that is responsible for dispensing the public money that is spent on public service broadcasting, of which, let us be honest, 90-95 per cent is likely to be done through the BBC, but there will be residual sums over time which will grow.

Q435 Lord King of Bridgwater: The Trust does not actually have any role there, which is the problem.

Mr Carter: The Trust, a working title as outlined in the Green Paper, as I would interpret it, clearly would not grow into that role. If you look at a meeting of the

ideas proposed by Lord Burns and how you could grow the Trust, you could see a way in which the two could be met.

Q436 Lord Peston: On the Jerry Springer point, it never occurred to me when we were passing the legislation that Ofcom would concern itself with a matter of this degree of triviality. I find this amazing. Are you going to do this for all the complaints that come in or just for the orchestrated ones?

Mr Hooper: I would not want to disagree with you. Trivial is probably not the word that comes to mind. There were a large number of complaints. We have a responsibility towards people who watch television, who listen to radio and feel that the codes of practice, which the broadcasters have signed up to, should not be breached and we do have quite a lot of complaints on those matters. Some are trivial and we do not entertain them, but there are serious complaints and we do look at them.

Q437 Lord Peston: So if I write in to you and say that Alan Hansen said Arsenal should not have got a penalty whereas I and the whole of my family think they should have done and I demand an inquiry into the bias against the Arsenal Football Club—

Mr Hooper: That would not even be a complaint, it would be a comment.

Q438 Lord Peston: I could formulate it as a complaint. It really upset my evening! My point is, and it takes us on to your role and the independence of the BBC, I thought of Ofcom as a more serious body when we were setting it up.

Lord Currie of Marylebone: The content regulation is an important part of what we do but it is not the concern of the main Board which does approve overall codes but does not consider individual complaints; that is handled by a very efficient and effective mechanism. The Board’s focus is very much on the strategic questions that we face in the communications sector as a whole. That bit of the Ofcom architecture I think works extremely well.

Q439 Lord Peston: Do you agree that at the centre of all of this is the independence of the BBC, which means that the regulator’s role is not to get in the way of that independence or to second-guess it but to create an environment in which the BBC itself, as an independent body, meets the standards that it needs to meet? Do you agree that within that it does it by having the right ethos itself to start with and appointing the right people so, therefore, your role ultimately ought to be quite minimal?

Lord Currie of Marylebone: I think I would agree with that and I would generalise it beyond the BBC. That is also what we are seeking to achieve with the other broadcasters. Our role is to set codes after

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consultation. That is the framework within which broadcasters have a clear responsibility to offer a framework and it is only if an agreement is reached that that is our concern. That creates the right ethos in the BBC, in Channel 4, in ITV and in Channel 5.

Q440 Lord Peston: We will not mention the BBC because that is what this Committee is meant to be about.

Lord Currie of Marylebone: The point is more general.

Q441 Lord Holme of Cheltenham: I would like to move the discussion on to the issue of the approval of new services by the BBC which Ofcom made a bid for in your PSB review. At the moment it is done by the Secretary of State. In terms of the independence of the BBC, I can see a strong case for somebody other than the Secretary of State doing it. It is a particularly tricky issue because new services may well be conceived by the BBC as a strategic issue about their own development. They certainly have implications for competition because it must carry provisions and other things. They also have a connection with the mission of the BBC; they are within a definition of public service broadcasting and so there are issues of accountability. What I am interested in, since it seems to me personally that there has been an over-promiscuous proliferation of new services by the BBC in recent years, is (a) why you should do it and (b) if you do it, what sort of criteria would guide you to decide whether a new service was appropriate or not?

Mr Carter: That is a very complex and highly charged issue because of, as you have described, the “promiscuous proliferation” of new services, but it does not seem that there is an imminent onslaught of additional new services. Indeed, the BBC themselves have said, “Enough for now.” What we have said is that we believe that there should be an independent—and by independent it seems to us that the independent regulator is a reasonable definition of that—assessment of the likely commercial and competitive impact of any of those services, and that that analysis should be done by us and should be made public, so that if a decision is made that says regardless of those commercial and competitive consequences the general public policy benefits outweigh those disadvantages, that decision is made with a full and public understanding of those tradeoffs having been made. At the moment that does not happen. There is then an important second order question which the Green Paper touches on very lightly which is around the fact that there is not an inexhaustible supply of digital spectrum. There is considerably more digital spectrum than there is analogue spectrum but there is not an inexhaustible supply. Of course we also license five out of the six multiplexes, including one of the ones that the BBC

uses so we have a very specific responsibility for the licensing of use of the multiplexes. We indirectly have a control mechanism there already. All we are really saying is we think that it needs to be made clearer. We should publish what the criteria are and do an analysis. We should make that known. Ultimately the decision needs to be made by somebody. At the moment it is made by DCMS. It could be in the model proposed made by the PSBC. You can imagine other ways in which it could be done.

Q442 Lord Holme of Cheltenham: Just reassure me that the scarcity of digital is not upon us.

Mr Carter: It is not upon us. It is a way off but I am not sure I would say a long way off. However, what it does mean is that decisions made about who gets that digital spectrum are ones that need to be made in the full spotlight of public debate.

Q443 Lord Maxton: A brief point on the digital problem. Compression techniques in technology are increasingly making more and more digital available so it is something which in my view will be solved. Again, I am not very clear because I was not in Parliament when you were set up and debated; what is your control over new channels put out by Sky or the cable companies, for instance, which is where of course nearly all the new BBC channels are going? There are no new BBC channels on analogue. They are all on either Freeview or as part of the Sky platform.

Mr Carter: Any channel has to apply to us for a licence. That is a relatively administrative procedure although there are some basic requirements associated with that. I would not quite characterise it as a dog licence but it is a relatively procedural process. If either of the other platforms, the cable platforms or satellite platforms, wish to develop their own channels that is the question and that is largely a matter for them because in the case of the cable companies they are using their own spectrum and in the case of satellite operations they are buying satellite capacity on the open market. The public service broadcasters on digital terrestrial are licensed digital terrestrial multiplexes which we license, so in that instance we have a more direct role.

Q444 Lord Maxton: So things like Discovery and UK Gold are not covered?

Mr Carter: They are licensed channels but administratively.

Q445 Lord Maxton: Could I perhaps go back a little bit to public service broadcasting. It can be argued that the biggest public service broadcaster at the present time is Sky, not with its own channels but the Discovery Channel, the History Channel, the Biography Channel, the extra news things that go

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out. So if Sky were to say or the History Channel were to say, “We can no longer afford to continue,” but it is a public service, it is an educational programme, if they came to you under your proposals in terms of having a public service fund you would be prepared to look at that and say, “We would be prepared to give money to it”?

Mr Carter: I think it is a very interesting question you ask. We in our public service broadcasting review laid out a series of definitions of public service broadcasting which, interestingly, have largely been transposed into the Green Paper which defines a series of purposes and characteristics and part of what was behind our work was to say the rather narrow view of public service broadcasting is no longer entirely applicable because there are many providers—and you named some of them—who are producing broadcasting through their own commercial investment which would pass the test of public service broadcasting. The difference is that none of those at the moment receive state subsidies directly in the shape of a licence fee or some other form of funding nor do they receive state subsidy in the shape of discounted or scarce spectrum, which is the case for Channel 3, Channel 4 and Channel 5. At the moment they are in quite a different place. The point we are making is that come the point of digital switch off so let’s 2012 as a working date—

Q446 Lord Maxton:—As the final date.

Mr Carter:—Indeed, as the final date, and if you wish to encourage more broadcasters to produce the sort of public service broadcasting you would want you will need some incentives for them to do it. One mechanism might be to make some provision of public money that many people could apply for.

Lord Currie of Marylebone: Just very quickly to add to that, the point that we made in our first public service broadcasting review was that although the market will deliver quite a lot of broadcasting which is of a public service kind, nonetheless it is likely to under-provide and therefore there is a case for some public funding of the commercial side of public service broadcasting over and above what the market will provide.

Q447 Lord Maxton: Will you fund any of that?

Lord Currie of Marylebone: We proposed in our final report a public service publisher which may well have aspects of the commercial broadcaster but also be an on-line internet provider. To be clear, we do not have money. That is not for us. It would be for government and Parliament to decide.

Q448 Baroness Howe of Idlicote: Turning to the measuring of public value, interestingly everybody who has produced reports—yourselves, the BBC, the Green Paper—all have different proposals by which

to test what will define public service broadcasting. I am sure you know them all. I could read them out but it will take a bit of time. Are they all really saying the same thing or what are the significant differences, if there are any? Perhaps asking a slightly subjective question to you, which do you think is the best, if you think there is a best?

Mr Hooper: I think, as Stephen has mentioned, there is a remarkable degree of agreement between the public service broadcasting definitions set out by the BBC, particularly in their *Public Value* document, and in our document on public service broadcasting. I think there is a high level of agreement so I do not see them as being on different areas.

Q449 Baroness Howe of Idlicote: If I could just follow that one up a bit. A lot of measures seem to be concentrating on value for money quantitatively rather than qualitatively. Do you think in the way that the measuring is proposed that that is sufficiently taking into account the important qualitative aspects of public service broadcasting?

Mr Hooper: I think the answer is we have to get a balance between the two because if you take something like religious programming, one undeniable fact is that it has to be funded so that there is always going to be at the base of it a money issue. One of the real delights of working within Ofcom is that we do try and bring together the citizen interest, the consumer interest, the money interest, the cultural and wider public service interest, and we do try and keep those in sensible balance.

Chairman: I am going to bring Baroness O’Neill in on this on the citizen-consumer which we have had some interesting debates on.

Q450 Baroness O’Neill of Bengarve: Certainly a hyphen grew between citizen and consumer whereas the Act separates Ofcom’s consumer interest into consumer interest and citizen interest. How has that played out across this period and how has this reflection on the BBC’s particular responsibilities borne on the hyphenation of those two interests?

Lord Currie of Marylebone: Let us be clear that the marching orders that Ofcom has are contained in the Communications Act. We are very clear that there are consumer interests and citizen interests. When we hyphenated those two we simply had in mind the notion that all of us are both citizens and consumers in our different activities and therefore it was just recognising it is not consumers over there and citizens over there; they are one and the same set of people. But of course in guarding the consumer interests of all those people and the citizen interests, we have to recognise those are separate things, and we do recognise that in our work. Perhaps in communication terms we did not achieve what we intended to indicate. I think that you will find in our

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work that we are very much pursuing both the citizen interests and consumer interests and balancing them where appropriate.

Baroness O'Neill of Bengarve: They are kept separate but balanced. As in education and child protection, these are separate interests of children but of course all children receive schooling and if necessary child protection?

Chairman: Can I go to Lady Bonham-Carter. Do you want to go back to the question of commissioning programmes and the public service broadcasting function in particular?

Q451 Baroness Bonham-Carter of Yarnbury: You brought out the public service function. What concerns me and I think concerns others is that this would just lead to a fragmentation of the money available for public service broadcasting. What you need is to concentrate it and that it would undermine the position of Channel 4 as the major competitor in the public service broadcasting field. I do not know what your response to that is.

Mr Carter: It is a very legitimate concern and so far we have, I think rightly, tried to tread a tightrope between those two options. It rather goes back to Lord Maxton's question in part about by the time this public service publisher will evolve—so 2012—as well as being in a fully digital television world we will be in a fully broadband-connected world as well. Whilst Channel 4 is an outstanding broadcaster that is what it is, it is an outstanding broadcaster, and one of the things that the broadcasting community in this country has generally interestingly, with the exception of the BBC, struggled to maximise is internet and on line developed content. I would include in that Channel 4 to date, I am not saying they have not done anything, they have—but they are primarily a broadcaster. One of the questions we as a society are going to have to grapple with is how do we get public service content in a fully on-line broadband world, so our thinking to date has been to say let's keep both those options open. Your fragmentation points are very legitimate ones and I think the Green Paper says that we are required to do further work, and I think that is exactly right.

Q452 Lord Holme of Cheltenham: Could I just follow up on the issue of the public service publisher. I wonder whether it would not be more correctly called public service publishing investor because I am unclear in that we want this body to be a publisher in the sense of and initiating originating concepts and taking them to market, which is what a publisher does. I think what you are saying is that there might be scope for money to encourage broadcasters to be braver and to raise their game by having a pot of money which is potentially available for good projects a lot of which might be co-production, by the

way, so you get some gearing out of the money available, but I wonder whether conceiving it as publisher and initiator of projects, which is what a publisher is, is right?

Mr Carter: On the main thrust of your point I have to say that we are not religiously wedded to the nomenclature. There are very open questions certainly about co-production and gearing and how you maximise the contents generated off that investment. That is the notional £300 million. There is, however, a scale question which rather goes back to the previous question in that it does seem to us—and our consultation largely bore this out—that there is a necessary level of scale that you need to have to be able to play in this market so you need to balance those two and we at the moment are doing further work to see which is the more appropriate.

Q453 Lord Holme of Cheltenham: That is an argument for *grandes projets*.

Mr Carter: It does not necessarily preclude that.

Lord Currie of Marylebone: The Green Paper does ask us to look further at this concept and develop it further. One area of difficulty which is perhaps worth flagging, where the Green Paper talks about looking towards the end of switchover at the possible case for a wider use of public funding for public service broadcasters, we think that review needs to come earlier. If you leave it until 2012 for the review, you are then talking about one or two years later to put something in place. Our existing public service broadcasting of the commercial kind may well have disappeared by then. That could be far too late.

Q454 Lord Peston: I am just trying to clarify your role when you are talking about on-line and websites. I am right that your role would still be limited to people who were designated broadcasters. In other words, to take the best free thing available on-line (leaving aside the BBC on-line) it is the American university system where you can get the most fabulous education for free as long as you have got a computer and can get on-line and there are American universities dedicated to sending stuff out specifically to the poorer world. That would not come within your remit even though if you go into their drama departments you get very close to what you might like Channel 4 and other people to do? I suppose that brings out the point that this is a highly competitive world and people who get the know-how can find what they want in many different places.

Mr Hooper: It does sometimes cause us difficulties in that if we are taking a fairness case the rules are quite clear, it is fairness within the programme. If there is unfairness on the website related to the programme we do not have statutory powers on it. It is sometimes quite difficult to explain to a listener or viewer who is

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complaining, “Sorry, that was on the website; the actual programme itself was not unfair to you.”

Q455 Lord Maxton: That was almost my question which is so you do not regulate the internet?

Lord Currie of Marylebone: No.

Q456 Lord Maxton: Even if you were given the authority to could you under any circumstances consider regulating it?

Mr Carter: That is a tricky question. I will hand that one back to my Chairman.

Q457 Chairman: I have never seen a question so obviously passed!

Lord Currie of Marylebone: The answer is that we do not have powers to regulate it. We are not clear whether if Parliament wanted us to do it and instructed us to do it whether we would be able to do it, but we do have a major piece of work on going this year which will address exactly the question of would internet regulation be feasible and would it be desirable. We are not taking a view on that but it does seem to us that it is worth informing the debate which is going to come on exactly that question.

Q458 Lord Maxton: If the BBC which you do regulate, had decided they were not going to show the Jerry Springer show on the normal channels but were going to put it out on their website, you could have done nothing about it?

Mr Hooper: That happens right now with Channel 4. Channel 4 sometimes have pieces of work on the website that are not on broadcasting and would attract an issue.

Q459 Baroness Howe of Idlicote: I really wanted to follow up this business about responsibility for the internet because certainly during the passage of the Bill a number of us—and I was certainly one of them—were arguing that you should have responsibility, if only for drawing together those that have some authority for working within the internet, but of course you also do have a public duty and responsibility to educate about these processes and you are doing that already.

Lord Currie of Marylebone: We have a role in media literacy and a limited amount of funding for that directly from the DCMS, so we do have a role. Certainly we do see informing the debate around the whole question of internet and internet regulation feasibility as an important part of that.

Q460 Baroness Howe of Idlicote: You would not be adverse, supposing there was a change of heart and the Government did think it had made a mistake in not giving you some role, to that idea?

Lord Currie of Marylebone: That is a question that we would not want to answer until we had done the hard work.

Q461 Baroness O’Neill of Bengarve: I may be being slow here but I cannot see how you cannot take a leaf out of the Government’s book and if you have some regulatory capacities you then write the conditions on how you will treat certain organisations into the rules and they have to behave in certain ways when they are using the internet as well. Of course, you could not regulate the internet and the western governors and other people in the United States could put out whatever shoddy product on the internet but anybody whom you regulate surely you can have a long arm over?

Mr Carter: We do some of that both directly and indirectly. We do work alongside and collaboratively with the mobile operators to help facilitate the production of self-regulated codes for content and access issues. We do have an approval role in relation to ICSTIS, the premium rate regulator and we do work with the Internet Watch Foundation. We do work in and around these areas largely to do what you are suggesting, which is to facilitate and encourage best practice and, where it is practicable and sensible, to put it in as a kind of a responsibility, but that is a very different matter from do we have a legal purchase on the content that is on the internet—we do not.

Q462 Bishop of Manchester: This is an enormously important area because the presentation we were being given the other day by the BBC about the progress of digitalisation and the different ways in which people will access programmes in the future does make it clear that precisely because that is constantly moving so indeed the parameters of what Ofcom may or may not be required to do need to be constantly revisited. I wonder if we could just go back for a moment to the issue of programmes and the relationship that you may have to particular standards that they may or may not achieve. We were talking to Greg Dyke earlier on this morning and he was saying that for decades people have been complaining about the decline in standards of the BBC, dumbing down etcetera, etcetera, but when you come to look at the evidence it is not quite as obvious. It seems to me that we have to be careful about what Lord Peston was describing as orchestrated complaints. As we are on the public record, let me say that the Church of England had no part in that orchestration whatsoever and there is a submission there that the Church of England made which was, naturally, very well balanced and carefully judged. I just needed to make that clear in light of what was said. There is clearly an issue about orchestrated complaints. There is also the fine distinction that you

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have to make in Ofcom about how these programmes are to be assessed. Do you feel that the sort of proposals which exist within the Green Paper are sufficient and the powers that you are given at the moment are sufficient to make those kind of distinctions and then to put some kind of regulation effectively into practice? It seems to me that you are still in the early days and some of these things have got to be refined.

Mr Hooper: I think we do have the powers and I do think that the issue of orchestrated complaints is important, and we do use our common sense. It is important to point out that a programme can receive one complaint, which is entirely valid, and we find against the programme maker and a programme can receive 5,000 complaints, none of them orchestrated and we do not find against the programme maker. We are very cautious about saying "If it is 5,000 then I suppose we had better investigate". It is the nature of the complaint that is important, "I watched this programme. I believe it breached the code in these respects", the clarity of that argument of the complainant and we will take it very seriously. I think it would be dangerous for us to say we would not accept orchestrated complaints, for example, without defining what an orchestrated complaint is. If a lobby group feels strongly about it then I think they have a democratic right to go for it and if they set up a website we can probably spot it because what happens is the postcard, the e-mail or whatever uses exactly the same words. That looks a bit like orchestration. Of course, if it appears before the programme it is a problem anyway because we are a post-transmission regulator.

Q463 Lord Maxton: Do you have any regulation over programmable personal videos?

Lord Currie of Marylebone: No, we do not.

Q464 Lord Maxton: Why I ask that question is because at least some of them have the ability to programme themselves to remove all adverts and that, surely, is not in the commercial interest of the companies that you regulate?

Mr Hooper: We would not have any statutory role.

Mr Carter: That may well be right but we do not have any statutory role.

Q465 Lord Peston: Just one brief question that goes back to the definition of public service. The implication of the approach is that you can also then define what is commercial and then one goes on and therefore some commercial things also have a public service. Wearing my economics hat, I have great difficulty making this class of distinction, I am bound to say, particularly, to go back almost to what Gavyn Davies said, public service broadcasting is what the BBC does and commercial things are what

commercial people do. It would be as trivial or as insightful, in a way. Insofar as our concern is the BBC, one of my personal problems while thinking it through is that I am still not very clear what is commercial and what is public service, given obviously for example the BBC *Music* magazine you might well define as commercial because they sell it, but I would have said it was a superlative magazine that is performing a major public service. I am just a bit lost. Is it if you charge it is commercial; if you do not charge it is not?

Lord Currie of Marylebone: Clearly that is one use of the word "commercial". I think the way that I would try and put it, though we may want to have a longer conversation at another occasion, is that, yes, there are certain types of broadcasting programme that have wider benefits in terms of citizenship and informing people, it educates them, making them aware of the diversity of views in society, plurality and so on. The market may well provide some of that but it is an externality which means that the market is likely to under-provide that itself, hence the major intervention of the BBC funding which is a major provider. It is not so much that the BBC Charter cannot deliver this. It is just that it under-provides relative to what one would like to see. It is likely over the next five years to be under-providing even more than it would otherwise have been doing.

Q466 Bishop of Manchester: Can I just ask a question which is hypothetical in its nature. Let us imagine that there is a programme which really is enormously offensive that we have all heard about is going to come up in the future. From what you say, Ofcom can do nothing about that prior to transmission. I have heard mixed messages from within the BBC as to the powers and conventions of BBC governors over that because, as I understand it from some senior executives, there is a determination within the BBC to prevent even the governors from sometimes getting an opportunity to look at programmes beforehand, so do we have here something that needs to be looked at rather more carefully because otherwise we are left in the unfortunate position of shutting the stable door after the horse has bolted?

Mr Carter: As it relates to our role, we are a post-transmission regulator. That is what we are. As it relates to the BBC question, my own view is that I think that gets to the heart of the governance regulation question. Are the governors a board to be held to account for decisions made by the institution pre and post or are they regulators and can they be both? If they cannot, how do you separate the two? It seems to us that we have reached a point of common understanding now that there needs to be a separation of powers and some clarity. Then you will have an entity, whether it is the executive board of the

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Lord Currie of Marylebone, Mr Richard Hooper and Mr Stephen Carter

trust, however defined, that can be held to account and that, in our view, will be in the best interests of the programme makers and the audience and the BBC itself. At the moment, you are right, there is some blurring of those responsibilities.

Q467 Chairman: Does it follow from what you have just said, which I was going to ask at the end, that really you are sceptical about the BBC Trust proposal in the Green Paper?

Mr Carter: I am expressing a personal view here, Chairman, which my Chairman may disagree with. I think the question that we are yet to answer as a board—and we have not finalised our submission to the Green Paper—and the question I think that needs to be asked and answered is why are we creating a governance structure for the BBC which is different from the received model of governance as laid out, for example in Higgs or other areas? That is not to say you should not but I think there is a hurdle there that needs to be jumped and explained as to why it is different. As a minimum there needs to be a clear explanation as to why it is different. If I am allowed, if I could just come back to a point Lord Peston made, self-evidently this is a review of the Green Paper and therefore largely of the BBC. The point that we have tried to make consistently is that if one assumes this is a ten-year Charter the next time this debate is had about public service broadcasting in the round (not just the BBC) it will be in a very different world, so I certainly would encourage the Committee to look beyond the BBC question into the public service broadcasting provision question, which is a really very important one.

Q468 Chairman: Lord Currie, do you agree with what Mr Carter has said?

Lord Currie of Marylebone: I always agree with my Chief Executive! On this occasion I agree absolutely.

Chairman: I was never sure if that was the right relationship between a chairman and a chief executive. Are there any other questions?

Q469 Baroness O'Neill of Bengarve: It is a very small follow-up to the last one to Mr Carter. The difference between the BBC and a standard plc is that there is a difference between accountability to shareholders

and accountability to the public at large. If you moved from this, we agree, somewhat amorphous trust concept to a more standard plc governance model for internal governance, what additional body would you see as relevant to achieving accountability to the public for the use of public money?

Mr Carter: As a start point, clearly it is not a standard plc and nor should it be treated as such, so there would need to be a further accountability mechanism. I can understand why on a rational analysis you end up where Lord King was earlier which is, “Hang on a minute, is this not just another level of confusion? Is this not one body too many?” But I think you have to provide a mechanism for accountability. At the moment that accountability sits midway between the governors, the DCMS, the management of the BBC and Ofcom. That does not feel clear.

Lord King of Bridgwater: Can I just say, Chairman, you said at the end of our last session that when you have got a bit further down the line it would be very interesting if we could hear a bit more.

Q470 Chairman: As always, you have taken the words out of my mouth. I was going to say we might come back to you with some further questions on this as we go into it more deeply. There is going to be now, I fear, a slight break in transmission as an Election campaign takes place. One of the things we have got from this is that we will obviously need to look at the overlaps you were talking about because I was very struck by what Mr Carter was saying in a sense also that we do this once every 10 years so we had better take the opportunity of getting as much of it right as we conceivably can do at this particular moment.

Lord Currie of Marylebone: The mechanism for looking at the broader public service broadcasting scene is important and on the question of accountability for the use of public funds in the support of public service broadcasting, of which of course the largest part by far is the BBC, we believe there ought to be some diversity as well in addition to that. If you do not address that now, in 10 years' time or even five years' time we will have a monopoly provider of public service broadcasting.

Chairman: Okay, thank you very, very much indeed. I am very grateful for your attendance.

TUESDAY 7 JUNE 2005

Present	Armstrong of Ilminster, L Fowler, L (Chairman) Gibson of Market Rasen, B Holme of Cheltenham, L Howe of Idlicote, B Kalms, L	King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Memorandum by ITV

INTRODUCTION

ITV is the UK's largest commercial public service broadcaster and the primary competitor to the BBC, the UK's main publicly-owned public service broadcaster. ITV1 in particular is BBC1's key competitor for audiences and in terms of quality.

ITV remains committed to broadcasting high quality programmes across a number of genres, including national, international and regional news, current affairs, factual programming, drama, arts, religion, sport, comedy and entertainment. In 2005, ITV1 will invest around £1 billion in network and regional programming on ITV1, very significantly more than any other UK commercial channel.

To respond to the challenges of the transition to digital, ITV has successfully launched a number of digital channels sitting alongside ITV1. ITV2 and ITV3 are each numbered amongst the top 10 most popular channels in multi-channel homes. ITV's family of channels also includes the ITV News Channel with ITV4 planning to be launched later this year. All ITV's digital channels are broadcast free to air on digital satellite, cable and Freeview. ITV is developing its interactive strategy to support these channels and improve further its offering to UK viewers.

THE ROLE OF THE BBC

ITV supports a strong, licence fee-funded BBC. As competition for audiences and commercial revenues intensifies, the BBC's role at the heart of Britain's public service broadcasting ecology may become even more important than in the past. The certainty of public funding should allow the BBC to ensure that UK viewers are still provided with those public service programmes which can no longer be funded in the commercial sector.

To deliver its crucial public service role to best effect, the BBC needs to work within a clear remit defined over the course of the review and set out in the Charter itself. In ITV's view, independent and objective regulation of the BBC is essential to provide maximum accountability to licence fee payers and responsiveness to the legitimate concerns of the BBC's commercial competitors. The overall remit for the BBC needs to be translated down into clear and measurable service licences for each of the BBC's services. And as the pressures on its commercial competitors intensifies, the BBC must ensure that it competes fairly and its actions do not serve to "crowd out" public service broadcasting on other channels.

With a BBC Charter delivering on these objectives and other policy measures to address the pressures on commercial public service broadcasting, the UK should continue to enjoy diverse, high quality programming from a range of supplier, benefiting viewers and the creative economy as a whole.

The remainder of this submission addresses the questions posed by the Select Committee in detail.

THE ROLE OF PUBLIC SERVICE BROADCASTERS AND THE BBC

What should be the main duties of public service broadcasters? Are the core public purposes of BBC services, as defined in the Green Paper, appropriate?

Ofcom's recent review of public service broadcasting set out the core purposes of public service broadcasting. Ofcom was clear that the precise role played by each public service broadcaster—including the BBC and its commercial competitors—should depend on their remit, funding and historical strengths.

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The Green Paper identifies five core public purposes for the BBC, closely following Ofcom. The BBC should sustain citizenship; promote education and learning; stimulate creativity and cultural excellence; reflect the UK's nations, regions and communities; and bring the UK to the world and the world to the UK.

The Green Paper likewise acknowledges that the BBC is part of a wider system of public service broadcasting. The risk is highlighted that with increasing digital take-up, the BBC "may be left as a near-monopoly provider of some services". In ITV's view, the best way of avoiding this is for each of the UK's public service broadcasters to play a complementary public service role, backed by a clear remit for the broadcaster as a whole and for each of its main services.

This is the approach adopted for the commercial public service broadcasters. The statutory remit set out by Parliament in the Communications Act is reinforced by the details of the licence for each service and further underpinned by the annual statements of programme policy.

For ITV1, the channel's statutory remit is provision of a range of high quality and diverse programming. Consistent with this remit, Ofcom has determined that ITV1 should play to its strengths in public service terms and focus on delivering a schedule rich in original programming, produced across the UK, together with high quality national news and regional news services. These requirements are detailed in ITV1 licences and in the annual network and regional statements of programme policy.

The Green Paper—and indeed the Corporation itself—have suggested that the BBC will follow a similar approach. However ITV is concerned that the BBC is more comfortable at setting out overarching objectives for the Corporation as a whole, rather than the clear and measurable requirements for each individual service.

In translating its core purposes into specific remits for individual services, the BBC has promised to introduce detailed "service licences". ITV supports this approach and looks forward to the publication of these licences. However recent history may not inspire confidence that the introduction of these licences will close the accountability gap at the BBC.

Until recently, the Annual Report was the sole supposed means for the BBC to be held to account in governance terms. The opacity of that document and the lack of separation between Governors and executive led to the introduction of the Statement of Promises. This comprised a long list of overarching pledges and specific commitments, to which the Governors would supposedly ensure that the executive were held. When the missing of one of the BBC's main regulatory requirements—the independent quota—led to no apparent regulatory redress, the ineffectiveness of this system was exposed. Over the same period, the Annual Report has been split between Governors and executive; and now apparently been wrested from the management altogether. At the same time, Statements of Programme Policy have replaced the Statement of Promises and service licences have been promised.

ITV hopes that this torturous route will lead to a more effective regulatory regime, but, until the benefits of the system are demonstrated in practice (and the service licences are published), the jury must still be out. What is absolutely clear is that each service licence should establish a detailed remit for every BBC service, which goes beyond warm words and aspirations to offer genuine transparency and accountability.

The foregoing applies equally to new BBC services and to the established BBC channels and services. But the launch of new services involves particular issues which highlight the importance of clear, fixed and detailed remits for BBC services.

The original remit for BBC Online was devised internally at the BBC, without any consultation or market impact assessment. As the independent review under Philip Graf concluded, this led to a vague and fluid remit, which gave the BBC's competitors a lack of certainty. Even the revised BBC remit published post-Graf comprises a set of intentions, rather than a clear set of parameters about areas where the BBC can and cannot operate. Although a step in the right direction in terms of independence and the assessment of market impact, the approvals process for BBC3 and BBC4 was similarly cumbersome and unsatisfactory. The review of the services by Professor Patrick Barwise has also led to concern that—once launched—BBC services may, by accident or design, depart significantly from their original purposes and end up very different beasts from those envisaged at the outset.

ITV supports an externally conducted market impact test for *all* new or materially changed BBC services, as a core part of the assessment process for any proposed new service. ITV agrees that Ofcom is the right body to conduct such a test. However the BBC itself should ensure that there is a built-in check that every new or altered service proposal has been considered in competitive terms, before it goes to the Trust or through a market impact test. Market impact testing should not become a 'bolt-on' to the process, coming into play only when the BBC is effectively committed to launching the service, regardless of the results of the formal market impact test.

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ITV recognises that there have been improvements to the approval process for new services in recent years, with more consultation and the introduction of independent market impact tests. The “public value test” may represent a further improvement to the system. However, past experience demonstrates that, unless the consultation and approvals process is structured carefully, the dice may be loaded in favour of approval. Proposed services (understandably) have tended to be presented in an entirely positive light, in a process led by the BBC, with little emphasis on any potential negative impact. The danger is that in undertaking a “public value test” for a proposed new service, both the BBC management and the BBC Trust will already have determined from their own perspectives that the services deliver such value and should be launched.

How do you see the BBC’s role as a world, national and regional broadcaster?

As the UK’s leading regional public service broadcaster, ITV is best qualified to comment on the BBC’s regional role. Over five decades, ITV1 has developed a unique regional structure with two key strengths: a network schedule rich in original programming produced across the UK; and a system of 27 regional and sub-regional services providing regional programming for viewers across and within each of the main 15 ITV regions. In both respects, ITV1 has acted as a corrective to the metro-centric bias of UK broadcasting as a whole and the focus of the BBC in particular on London and the South East. Improvements that the BBC has made to its offering to regional television viewers over recent years should be seen in this context.

In terms of its regional services, the BBC has focused on regional news services with greater investment and service improvements. The BBC approach chimes with the work by Ofcom which demonstrated that regional news remains the most valued aspect of regional services offered by the public service broadcasters. (It is notable that, even following significant increased investment on the BBC and changes in terms of ITV’s obligations, ITV still offers three times the volume of regional non-news programming in most English regions than the BBC.)

ITV welcomes the increased competition from the BBC in terms of regional news provision. Maintaining a plurality of higher quality regional news suppliers should be one of the prime aims of broadcasting policy over the coming years. Unlike the BBC, ITV does not benefit from guaranteed public funding to underwrite its massive investment in regional news. The risk identified by Ofcom—that the benefits of public service broadcasting are outweighed by its costs—is at its most stark for regional news on ITV1, which (on Ofcom’s own figures) represents a greater investment than all of Channel 4 and five public service obligations combined. In order to ensure continuing plurality in regional news supply, ITV believes that consideration should be given to Ofcom’s proposed “public service publisher”. The regulator is right to conclude that, unless the funding gap for public service genres, most notably regional news, can be closed, there is a risk that the BBC will become their monopoly supplier post digital switchover.

The BBC has also proposed improving the regional dimension to its network schedule, with measures to move departments and potentially services out of London. ITV is supportive of these moves and would urge the BBC to accelerate its plans wherever possible. There may also be scope for the BBC and ITV to work together more closely across the nations and regions, in particular the North West.

ITV would also encourage the BBC to back up its moves with more testing and clear commitments in terms of production. ITV is committed to moving to source at least 50 per cent of its network programme commissions (by volume and value) from outside London. In addition ITV will also invest some £9 million over the next three years in a Regional Partnership Fund, which will fund new-to-network commissions and development. However the BBC retains a commitment for network commissions from outside London of just 25 per cent by volume and 30 per cent by value. With well over 50 per cent of UK licence fee payers living and working outside London, it is only reasonable that at least 50 per cent of BBC production should take place outside the capital.

Should one of the conditions of the new licence fee settlement be that the BBC play a leading role in the process of switching Britain over from analogue to digital television?

Digital switchover creates opportunities for viewers, broadcasters and Government. However, it also involves significant technical and strategic challenges, in particular for the commercial public service broadcasters. Building the transmission infrastructure to replace analogue terrestrial represents a mammoth engineering task and significant costs. At the same time, established channels may lose market share as more and more viewers migrate to a world of at least 30 channels and, in many cases, over 200. In such a context, it is absolutely right that the licence fee funded BBC should be asked to play the lead role in driving the process.

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That leading role should encompass funding key elements of the switchover process, in particular for marketing and the public information campaign. Consideration should also be given to the licence fee becoming a mechanism for targeting funding at those vulnerable groups for whom the costs of transition to digital may otherwise be unaffordable. The BBC should seek as far as possible to undertake its work in this area under the auspices of SwitchCo, the industry body established to co-ordinate the switchover process. ITV Network is a founder member of SwitchCo and has played an active part in scoping its activities from now until 2012.

The Green Paper indicates strong Government support for the development of a Freesat offering on the digital satellite platform, stating:

We welcome the decision taken by the BBC to ensure all its services are available free to view on satellite. We would also like to see the BBC continue to promote the development of a free digital satellite service.

In ITV's view the development of a horizontal, competitive open market for satellite television, along the lines of Freeview on DTT, would bring significant advantages. A viewer-friendly satellite offering which guarantees satellite viewers can receive the public service channels without paying a monthly subscription or a pay-TV contract could play an important role in driving digital take up in those areas which will not get DTT coverage before switchover. As these areas may account for around 25 per cent of the UK—and include in particular remote and rural areas—providing a cost-effective and “no strings” route to digital for such households may be essential to a smooth switchover process.

THE BBC'S CONSTITUTION

Is the Royal Charter the best way to establish the BBC? Is 10 years the most appropriate period for the next Royal Charter to run?

Whether the Royal Charter represents the best way to establish the BBC from a Parliamentary perspective, ITV has no firm view. There may be other statutory mechanisms which provide the same degree of independence, combined with improved transparency and accountability.

However the great advantage of the current 10-year Charter is the certainty that it provides both for the BBC itself and for the market as a whole. A 10-year Charter will provide for the BBC certainty with respect to its position over a crucial decade to 2016. Furthermore, over a period of seismic strategic and commercial change, the 10-year Charter provides the BBC's competitors with an invaluable measure of certainty that the BBC will not be able to introduce any form of commercial funding—in particular advertising and sponsorship. Introduction of any such funding for core BBC services over the next decade would run a serious risk of further damaging revenues in the commercial sector.

But this Charter must be drafted in a more clear and transparent way. In the past, the Charter has been a vague document that gives few defined rules for the way in which the BBC should operate. While ITV endorses many of the proposals in the Green Paper, there is an important job to do now in ensuring the intentions set out in the Green Paper are translated into the spirit and the letter of the Charter. In effect, the Charter should become the equivalent of the commercial public service broadcasters' licences, which set out specific requirements and commitments in some detail.

A 10-year Charter would run until the end of 2016, some four years after the anticipated end of the switchover process. This will mean that over the lifetime of the next Charter, it is likely that the fundamental shifts in viewing patterns will take place. Greater competition and fragmentation can be expected, but the precise impact on the broadcasting sector and public service broadcasters, including the BBC, is difficult to forecast. For these reasons, it has been suggested that there should be scope to review the Charter within the next decade. ITV believes that there should be a five-year review of the Charter and the level of the licence fee to take into account market conditions. Ofcom has suggested that such a review might consider the case for introduction of subscription funding for the BBC. Whilst ITV would agree with the need for flexibility to review the Charter within the next period, in order to provide commercial certainty for the other public service broadcasters, introducing advertising or subscription on the BBC at any time within the coming Charter period must be explicitly ruled out.

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GOVERNANCE AND REGULATION OF THE BBC

Is the proposal to replace the BBC Governors with a BBC Trust and Executive Board the best way to address the issues of governance and regulation of the BBC?

Is the role of the proposed BBC Trust sufficiently clear? How should the Trust be constituted? How can it be made more accountable to licence fee payers?

ITV has long argued the need for a more independent system of governance and regulation for the BBC. As the Green Paper and the BBC itself have now acknowledged, the existing governance system has placed the Governors in an impossible position required to act both as management and regulatory board. This has led to a lack of clarity, accountability and objectivity, which cannot be appropriate in an organisation receiving nearly £3 billion of public money every year.

The Government's structural proposals to address the failings of the current governance and regulatory system are to be preferred to the behavioural measures set out by the BBC. However, ITV is concerned that the difference between the current system and the Trust structure risks being more apparent than real.

The degree of independence with which the Trust operates will be crucial to the success of the new system. With the BBC Chairman and several of the current Governors expected to move across to the new Trust, there are suspicions that the new regulator represents little more than a re-branded Board of Governors. The proposal that the Chairman of the BBC will not be replaced—and therefore effectively will be the Chair of the BBC Trust—reinforces these fears. There must also be concern over the proposal that the BBC Trust, despite nominally surrendering its management role, will still take responsibility for appointing the Director General or equivalent.

If the BBC Trust is to command the confidence of licence fee payers and the industry, ITV would urge the following measures be considered as the details of its operation are confirmed. There should be a BBC Chair separate to the Chair of the Trust. The Director General cannot be his or her own chairman, with less of a check than is provided under the current system; but nor can he or she be answerable solely to a supposedly independent regulator.

The Green Paper suggests that there should be non-Executive members of the BBC management board. ITV agrees with this as an important means of ensuring that the BBC is compliant with the best practice model put forward in the Higgs report. In addition the BBC Trust should not take any part in executive appointments to the BBC (and the appointment of Chairman). As Ofcom has recently concluded with respect to its own appointments to Channel 4, it is inappropriate for the regulator to take responsibility for appointments to the companies that it is regulating. The appointment of the Director General (and Chairman) could be made by an independent panel consistent with Nolan procedures.

Are the current arrangements for the scrutiny of the BBC's spending by the National Audit Office adequate?

ITV believes there is a case to extend the NAO's role over the BBC to examine levels of BBC expenditure and the relationship between the BBC's publicly funded and commercial arms. Proper financial scrutiny is no threat to the BBC's editorial independence. More detailed scrutiny of BBC finances will also help to ensure that the licence fee is set at the most appropriate level.

THE BBC'S IMPACT ON COMPETITION

Are the Green Paper's proposals to regulate the BBC's impact on competition adequate? Should Ofcom be responsible for approving the BBC's internal rules governing their commercial businesses?

The BBC operates in competition with the commercial sector—public service broadcasters and others—across all its areas of operation. To help sustain plurality and competition, the BBC must therefore always have regard to its competitive impact in both its publicly funded and commercial activities.

With respect to proposed new BBC services, conducting a thorough and independent market impact process, which is given real weight in the approvals decision, will be crucial. The BBC should also be required to be more transparent with respect to the operation of its commercial services and their relationship with the BBC public services. As the Burns Committee discovered, the BBC's commercial services may benefit from implicit public subsidies (for example, via cross-promotion) the value, and impact on the market, of which are nowhere

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assessed and acknowledged. ITV also supports the proposal for a mid-term review of the BBC's commercial activities.

In terms of regulation of the BBC's commercial services, ITV would welcome any move to clarify Ofcom's role in relation to the application of competition law with respect to the BBC's activities. There has been a lack of clarity about exactly how competition law and the Fair Trading Commitment are applied to the BBC. This in turn has led to occasions where the Governors have been unwilling to enforce the Fair Trading rules and the regulation of the BBC's commercial activities has fallen between two stools.

Wherever possible ITV would support moving responsibility for policing competition rules from the BBC (or the Trust) to Ofcom as independent regulator. With respect to the BBC's remaining internal rules, ITV would agree that Ofcom should take on responsibility for ensuring that the Fair Trading Commitment is appropriately drafted and policed by the BBC. Any appeals with respect to the BBC's handling of complaint with respect to enforcement of its own rules could then be taken on by the regulator.

THE FUTURE OF PUBLIC SERVICE BROADCASTING

Should there be a further review of alternatives to the licence fee and if so when?

It is surely right that the potential alternatives to the licence fee are subject to periodic review. However, equally, it is important to provide a degree of certainty for the BBC and its commercial competitors over a reasonable period of time. There is clearly no pressing need to explore licence fee alternatives as a result of public dissatisfaction. Although there are concerns over the level of the licence fee and its collection, generally it is well supported and evasion remains relatively low.

Overall the UK's mixed funding model—with different broadcasters funded by the licence fee, advertising, and latterly subscription—has proved remarkably durable and allowed UK viewers to benefit from very high levels of investment in programming. Any move towards the BBC taking advertising and sponsorship would have serious implications on commercial broadcasters' revenues and their ability to invest in high quality programming. However, as switchover approaches, changing market and competitive conditions may demand a further review of BBC funding and remit.

How can plurality of Public Service Broadcasting be safeguarded in the digital age?

In ITV's view, UK viewers have benefited from being served by a plurality of public service broadcasters across national news, UK drama, sport, regional news, current affairs, factual, arts, children's and other genres. Were a BBC monopoly to arise in any of these areas, viewers would lose out, both from the lack of an alternative and because, deprived of a competitive stimulus, the quality of the BBC's own provision could be expected to decline.

However, in several of these genres, the transition to digital does threaten to undermine the analogue funding model. As Ofcom has set out, the benefits of public service status to broadcasters are being outweighed by the costs of public service provision. This is particularly the case in those areas of public service broadcasting which involve most significant costs, notably regional programming. For example, the costs of regional news provision alone on ITV1 outstrip Ofcom's estimate of the benefits of public service status at switchover many times over. Unless this funding gap is closed, the danger is that areas of public service provision will be unsustainable outside the BBC.

Ofcom has proposed the introduction of a public service publisher, funded to the tune of £300 million per annum, to seek to close this funding gap. ITV agrees with Ofcom that some form of public funding, whether direct or indirect, may be necessary: the implicit analogue spectrum subsidies of the past may need to be replaced with more explicit subsidies in an era of digital spectrum abundance. However, in ITV's view, it might make more sense for such funding to be delivered via a "public service fund", rather than a stand alone broadcaster (or "publisher") in its own right. Such a fund could then consider the merits of funding public service programming on channels including Channel 4, ITV1 and Five. Such a fund would involve lower overheads and offers the opportunity to ensure that key programming streams, contributing to the plurality of public service provision, can be sustained in the digital age.

The Burns Committee have suggested such a fund being operated by a Commission which effectively opens licence fee funding beyond the BBC. In response, the Green Paper seems to push the idea of funding public service broadcasting outside the BBC back towards digital switchover. In ITV's view, such funding should not be conceived of as a means of reducing funding to the BBC: the BBC should be adequately funded, regardless of whether or not such a fund is introduced. However ITV is also firmly of the view that Government needs

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to give serious consideration to the introduction of such a fund well in advance of the start of digital switchover in 2008. If decisions over the funding of commercial public service broadcasting are deferred unduly, by the time they come to be taken, it may well be too late.

COMMISSIONING OF PROGRAMMING

What is the best way to ensure the BBC gives independent and external television and radio producers a fair chance to get their ideas commissioned? Should there be mandatory quotas for external commissioning?

Public service broadcasters—including ITV—have a role to play in helping to sustain a vibrant independent production sector and production centres around the UK. ITV1 is subject to strict quotas to ensure that programmes are sourced from a variety of producers. As well as a requirement that at least 25 per cent of ITV1 network commissions are supplied from the independent sector, ITV is committed to sourcing 50 per cent of network programmes from outside London.

In ITV's view, the BBC should be committed to a similar—if not greater—commitment to support independent and regional production. ITV is keen to hear further detail from the BBC about how the “Window of Creative Competition” proposal will work in practice. ITV would certainly be supportive of any proposals which seek to create a fairer opportunity for external, but non-independent producers to pitch for and win BBC commissions. Such producers would include Fremantle and the ITV plc owned producer, Granada. In ITV's view, such moves should be accompanied by a redefinition of “independent producer” to allow any producer with no ownership ties to the commissioning broadcaster to qualify. This would make for a more simple and consistent system, bringing currently non-qualifying producers within the scope of the quota and the Code of Practice.

CONCLUSION

ITV supports a strong, licence fee funded BBC, with a clear remit and regulated robustly and independently. ITV is therefore supportive of the Green Paper and the aim of the Government proposals for the BBC, but believes that as the Charter is confirmed over the coming few months those proposals could be enhanced in a number of key areas.

The proposal for the BBC Trust could represent a step towards a more effective regime for regulation and governance, but only if there is a break with the past and an appropriate distance between the regulator and the BBC. Together with a new regulatory structure, proper accountability requires a BBC subject to clear and unambiguous remits for each service, reinforced by detailed service licences. The BBC needs to be more aware of the impact of its services on the market. The bar for the “public value test” should be set high.

The key task now is to ensure that the objectives behind the Green Paper proposals are translated properly into a Charter which states unambiguously the expectations set for the BBC over the next 10 years, with the scope to review the state of the PSB market in five years' time. This will ensure the BBC is more accountable to licence fee payers and mindful of its commercial competitors, thus helping to sustain a healthy public service broadcasting ecology in the challenging years to come.

May 2005

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Examination of Witnesses

Witnesses: MR CHARLES ALLEN, Chief Executive, ITV, Plc and MR CLIVE JONES, Chief Executive, ITV News, examined.

Q471 Chairman: Gentlemen, welcome. Thank you very much indeed for coming, and thank you very much for your evidence, which we have read. As you know we are looking at the review of the BBC Charter and at the Government's Green Paper; that is the purpose of what we are doing. I fear that time is very much our enemy because we need to have this finished by the end of October and we have been interrupted by small things like election campaigns, not to mention public holidays. We are grateful for your understanding about the time requirements. We have got your biographies in front of us, so I will not ask you to introduce yourselves again; I think many of us know you. I wonder, for the record, if you could just describe in a few words the history of the ITV as it now is, what it covers, what its size is and what its coverage is.

Mr Allen: ITV basically covers all of the English and Welsh stations. We have 11 English and Welsh stations that over the last 12 years have consolidated into giving us 50 per cent of the advertising market—£1½ billion worth of revenue from advertising. We also have another company called Granada that makes programmes for the BBC, for ITV and for the international market; and increasingly we are involved in actually creating new revenues from other businesses, such as telephony. Those are the basic businesses of the ITV group.

Q472 Chairman: You are in the top 100 companies?

Mr Allen: We are a FTSE 60 company.

Q473 Chairman: I stand corrected. You make a strong point in your evidence that it is not just the BBC that is a public service broadcaster but it is also ITV as well. How do you define the sort of Public Service Broadcasting role of ITV?

Mr Allen: We invest a billion pounds in programming in the UK; we invest £800 million in original programming; we invest, in addition to that, £100 million on regional news; a further £50 million on national news; and we provide a range of programming, from drama to current affairs, to religious programming, to factual programmes. We provide a whole gamut of programming. We believe by doing that we actually provide a public service by giving that range of programming. We passionately believe that it should not be the BBC which is seen as the only provider of PSB. We think it is very important that other than the BBC there should be a plurality of voices in public service. We would see that billion pound investment on programming as a clear demonstration of that. We employ nearly 1,500 people in Clive's division in the regions and in our

news-gathering operation, and we feel that provides a very high level of public service, both in terms of news and regional current affairs.

Q474 Chairman: On the regional side you actually say that you are the United Kingdom's leading regional public service broadcaster. That is accepted by the BBC, is it?

Mr Jones: I would hope so. We provide 27 regional and sub-regional news services—far more than the BBC. In addition we provide 1½ hours a week of regional programming in every ITV region—current affairs and topical features—and obviously in the nations (Wales, Scotland, and Northern Ireland) around 4½ hours a week, far more than the BBC both in terms of the depth of regional news services and the range of regional programmes.

Q475 Chairman: You are pretty outspoken as far as the BBC is concerned. You say ITV 1 has acted as a corrective to the metrocentric bias of UK broadcasting as a whole, and the focus of the BBC in particular on London and the south-east?

Mr Allen: I think that is borne out by the facts. We have just committed to our Regulator to make more than 50 per cent of our programming outside London. If you look at the BBC's track record then their programming outside London would be less than 30 per cent. Basic facts and statistics would demonstrate that ITV—because of its history of being 15 regional companies—has actually over the years made more programming outside London. Therefore, our philosophy is Britain broadcasting to Britain, rather than London broadcasting to Britain; and that is both on the national stage by ITV and on our focus on regional programming.

Q476 Chairman: The crunch could come, in your view, with the digital revolution, that the kind of Public Service Broadcasting you do could come under challenge because of the feeling of the position now that there is a subsidy, if you like, from analogue into ITV. How strongly do you take that as a threat?

Mr Allen: If you just think of the history of ITV, effectively we had very valuable spectrum. We were one of either four or five channels. In return for that valuable spectrum we have paid £200 million in cash to the government for the privilege of having those licences, and spent £250 million in Public Service Broadcasting costs. These are not ITV figures; these are Ofcom figures. That is what we have done to date. As we move from analogue to digital we are no longer one of four or five channels and, therefore, do not have that very valuable spectrum. We are actually

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one of 30 channels if we are in Freeview, or 300 channels if we are in Sky. Therefore, as we move forward, what we are working towards is finding a new model for us to continue to be able to provide Public Service Broadcasting in the future.

Q477 Chairman: How would you see that? What is the new model you like?

Mr Allen: Ofcom, as you are aware, have proposed something called the PSP—Public Service Publisher. We do not think that is the right way forward. Our fear with the PSP is that you would be creating a mini BBC with around £300 million, versus the BBC with £3.7 billion. Our fear with that is that a lot of money would be tied up in overhead and marketing and, therefore, of the £300 million, arguably £100 million would be tied up in creating the infrastructure. We believe the best way to do that is to have real clarity on what role the BBC plays in PSB and then have a set of decisions that said where there should be plurality; what other areas? Should it be in regional programming; should it be in regional news: should it be in arts and religion? Then we should use the mechanisms that have been tried and tested in commercial television with licences to provide those services. ITV, Channel 4, Channel Five, Sky, any channel for that matter, could bid for providing those licences. Therefore, the way forward is to have a competitive plurality of voices providing these services; but real clarity of definition of what public service is worth going forward. We think that model would give the public exactly that: plurality of voices and providers of PSB.

Q478 Lord Holme of Cheltenham: I would like to follow the very same area, if I may, Chairman. I have been very impressed since the merger by the skilful way in which you and your colleagues have been building the case that with the end of spectrum scarcity you need some sort of new deal. I just want to press you on that point because I think we need to understand why it is that the leading commercial terrestrial broadcaster needs a special subsidy to do things which in some cases would seem to be in the obvious interest of the leading commercial terrestrial broadcaster. For instance, is it part of your case that you need to be subsidised to provide a good news service? With your share of the market and with your place in the British market, is your case that to do anything which is of higher quality is a public service and therefore needs to be subsidised? In other words, are you trying to replace the stick of spectrum scarcity—where in the past you had to be good because otherwise you did not get any spectrum—by saying, “Okay, there is no stick any more in the digital age so we now have to have a carrot; because we will not be good unless somebody gives us a carrot”? Apart from the case which any acute

commercial management body like your own would make (and you obviously want to get as favourable a deal as you can out of Ofcom and out of the public purse), I really think it would help the Committee a lot if you could tell us what fundamentally you see your role as, as a good national competitive major broadcaster, and the sort of programming you would produce in that respect? Could I have a quick supplementary, Chairman, while I have the floor on a slightly different but related issue? How far are you going to move from regional news to local news? The technology is all there. There is enormous public interest and demand in having news which is generally local instead of these preposterous regions which do not really offer people anything they would identify with described as “local news”? This is not the case in other countries. When can we have local news? That is a small question in brackets; the big question is my first question.

Mr Allen: I will let Clive think about the small question in brackets and I will try and answer the big question. Of the billion pound investment in programme-making we believe, going forward, we will be able to continue to invest in high quality programming such as drama and our factual programming. That programming we think we can continue to do. There is a question mark over certain children’s programming. There is a question mark over the commerciality of certain regional programming, including regional news. Therefore, if we cannot make that stack up commercially the question is, how will that be provided? Of the bulk of high quality programmes we make, 72 per cent of our money is spent on drama which, if you look at the research, demonstrates that is the thing which is arguably most valued; our current affairs programming is valued. Those are things we can continue to do. The area we are talking about is the £250 million that Ofcom calculated it cost us to provide the broader range of PSB programming. One-third of the ITV schedule is what I would call pure PSB programming. That is the area we are saying. In the past, because we had this valuable spectrum, this was another form of tax. Going forward, absent another mechanism, that programming is not commercially justifiable. What we are trying to find is a sustainable model for PSB other than the funding for the BBC. The bulk of our programming, such as drama, would carry on. It is that £250 million which covers areas we have touched on, such as some of our factual programming and some of our news programming, which would not be viable.

Mr Jones: In simple terms, Chairman, we spend around £150 million a year on our news services: £100 million of which on our regional news services—there are 27 services going out simultaneously up and down the country; and around £40–50 million on national

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news and a 24-hour news channel. At the point of analogue switch-off, which is only three years away as predicated by government, in 2008, when we are due to have the switch-off in the Border region, in Wales and the West Country, the value of that gifted spectrum to us (and the EAG position and we must carry, must offer provision on Cable and on Sky) actually falls to about £25 million. There is £25 million of benefit from that, from the status of being a Public Service Broadcaster, but £100 million going out of the door, if you like, on one service, on regional news. It would be much cheaper to provide a single half-hour original production. We want to keep on doing regional news and we want to keep on doing national news. We think it is one of the signature aspects of ITV over the last 50 years, but we are not a charity. We are a publicly-quoted company and we have a duty to our shareholders. We want to keep on doing that but we have to have this balance between the money we are spending on providing national and regional news and the money that actually comes back as a benefit from having this position of being a public service broadcaster. Coming on to your smaller point, the whole issue of broadband and providing local news services, we have already started an experiment in London providing local news. London is one of our most complex areas—12 million people—but obviously people living in Streatham have little regard for what is happening in Muswell Hill or what might be happening in Surrey or Buckinghamshire. We are providing dedicated broadband services in conjunction with Video Networks, who are dividing our news service into much more locally-defined areas. If we can make that a success and if we find that viewers want to use that service and adopt it we can use it as a model to provide local news services all around the country. Because the digital transmitters will not be that much different in terms of providing regional news services as the analogue transmitters currently do so, the way forward is probably through broadband delivering to television sets.

Q479 Lord Holme of Cheltenham: Are you finding there are advertising markets to match that localisation?

Mr Jones: I think that will be part of the journey. It is finding out if people will want to consume local news. Then it will possibly be creating a new competitive market for ITV where we still seek to attract the big car advertisers and food advertisers for our network programmes and actually go into competition with local newspapers for a different form of local display ads. It is quite an interesting development.

Q480 Bishop of Manchester: In your written evidence you talked about the possibility of scope for greater partnership with the BBC and particularly in

the regions and the nations, and specifically you did mention the north-west and I also have a lot of interest in that. I wondered if you could just expand a little on how you see such a partnership with the BBC developing in the future.

Mr Allen: I think it is a fantastic opportunity for ITV, the BBC and the independent sectors to create what I would call “creative hubs” around the country. The north-west would be a fantastic example. Rather than all of us having separate studios, separate infrastructures, separate broadcasting, I think there is a great opportunity to pick areas in the country that would become “creative hubs”. You would have ITV there, you would have the BBC there and you would have the independents physically in that location. A lot of money is wasted through duplication: we have our own studios; they have their own studios; we have our own transmission; they have their own transmission; we have our own infrastructure; they have their own infrastructure. What I am really keen to do is actually get the money on the screen rather than wasted in infrastructure. I passionately believe that the north-west is a fantastic opportunity to pilot this idea of a creative hub, where we literally would have the independents, the BBC and ITV working together with the focus on the money going on the screen rather than being wasted in buildings and infrastructure.

Q481 Bishop of Manchester: Have discussions already started?

Mr Allen: We have initiated discussions with the BBC. We are very keen, particularly with their move to the north-west, to actually find a way of working together. Rather than separate buildings, we actually would have this creative hub, which I think would be to the benefit of the regions. One of the things which was an issue for us with Granada Television 14 years ago was that the BBC took out of the north-west their drama productions and put in a number of other things. They put religion in the north-west but that, frankly, was an outside broadcast operation. The idea of having in the north-west the ability to make drama, factual programming and entertainment programming—not only made by ourselves and the BBC, but the independents as well—I think would be a fantastic way forward for British broadcasting. It is something I am personally very passionate about.

Q482 Lord Maxton: How much of your news budget is spent on digital channels, in particular your 24-hour news channel; and how many viewers do you actually get for that?

Mr Jones: We run the ITV News Group as one entity. The money we invest in regional news, the money we invest in national news and the money we invest in the ITV News Channel all counts as one pot. In many ways we spend far more money than Sky News, for

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instance, do on their 24-hour news channel because our news channel has full access to all the regional news rooms we have around the country, plus the news rooms of Scottish, Grampian and UTV.

Q483 Lord Maxton: It does not do regional opt-outs?

Mr Jones: No, it does not do regional opt-outs. It regularly uses the regions during the day, where we will cut to individual regions to take regional news services.

Q484 Lord Maxton: One of the complaints about BBC 24 News is the fact that it has very small viewing numbers?

Mr Jones: Yes.

Q485 Lord Maxton: Presumably you are all the same? They all do, do they not?

Mr Jones: The average audience—even for Sky News and the BBC's News 24, which is just about equal now because we are a third—is about 50,000–75,000 people at any one time; it is very small: largely men who wear anoraks who are over 55. It is very specialised.

Q486 Lord Maxton: How do you justify it with the budget and keep it going?

Mr Jones: Because it is an aspect of multi-channel. ITV is building a family of channels: we now have three, soon to be ITV 4 as well, plus ITV News; plus it is a sustained service. So when there are major events like a Tsunami or tragic events like Beslan we are able to cut (which we have done on a regular basis) from ITV 1 to take a full open-ended service from the 24-hour news channel; so it is up and ready to go when sudden major tragedies happen.

Mr Allen: We are actually in the process of investing £40 million to put state of the art digital television centres in each of our 11 regions in England and Wales and we are half way through that programme. What we are doing is completely digitising all of that content. Going back a point about local television, what that means is the entire picture, everything you are collecting, can then be used in local television as well, so we are planning for the future and we are making a very substantial investment.

Q487 Baroness Gibson of Market Rasen: It is a very interesting idea about you working with the BBC. I wonder if you envisage this working as well in a rural area, shall we say East Anglia, as you would in another area where there are larger conurbations.

Mr Allen: I think the model would work basically in large creative pots as well as in small. The reason I focussed on Manchester is that is currently a big operation for them and potentially a big operation for us. A good example of that would be Bristol,

where we moved our wildlife operation, to actually put our wildlife operation next to theirs, but not actually in the same building. What that has allowed us to do is create a specialism in a particular area. Although I do not see the ability to create (as we had in the past) 15 regional production-making centres, because the market is not big enough, I think what you can do is have “critical mass hubs” in a number of areas, say four; and you could actually create specialisms in areas around the country. Bristol would be a very good example where we do work with them to make that the specialist area for wildlife. If you apply that model then there is an opportunity to have critical mass hubs and what I call “specialist hubs” throughout the regions.

Q488 Chairman: When do you think the critical point is going to come when you are going to have to consider cutting back on your Public Service Broadcasting function, including the news?

Mr Allen: As Clive says, the critical point comes when, in some of the regions, we actually move analogue to digital, and that starts in 2008. That is why we are working hard to try and create a new model that can be put into effect from 2008. At that point in time the benefits we had as an analogue broadcaster literally disappear overnight. That is why we are working very hard. Our position is very clear—we want to remain a public service broadcaster. We are not asking for that to be handed to us; but we do think we need to have a sustainable model for Public Service Broadcasting going forward.

Q489 Chairman: But you do not want the licence fee to be top-sliced?

Mr Allen: I think “top-sliced” is a pejorative term. That assumes the money is the BBC's. The money is the public's money. Let us just put that into context. In 2000 we had revenues of £1.9 billion and the BBC had revenues of £2 billion; and looking to the current forecast, the BBC will have revenues of £3.7 billion, and ITV will have revenues of £1.6 billion: that is because they have guaranteed revenue from the public, whereas ours is dependent upon advertising. I think the issue is that we have got to look at putting that into context. The BBC did benefit from an inflationary level increase, plus 1.5 per cent, plus the windfall benefit of more homes. No-one predicted that there would be more people living single. Basically there is nearly £300 million of additional revenue. We are looking at a £300 million pot. I think that easily could come from saying to ourselves, “Okay, going forward, maybe that funding should come from the monies collected from the public”. I get a lot of letters from the public thinking they already pay for ITV and they own it, because when they pay the licence they do not think that money just

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goes to fund the BBC. I respond to them politely, but also remind them that the money that gives those a billion pounds worth of free programming actually comes from the advertiser. It is important we try and align that process going forward and create this new model of funding for the digital world.

Q490 Chairman: You would not turn your back on a solution which in fact took money from the licence fee?

Mr Allen: No, we would not but, equally, I think we have to look at the various funding models. What I am saying is that there is a number of ways to fund it. I do not see it as top-slicing the BBC's money. Frankly, what we have to do is go back to basics. I think we need to go back and that should define the BBC. I think we need to have a contract. We hand over £2.8 billion. I have been in business many years and I cannot think of a situation where you hand over £2.8 billion and do not have a contract knowing exactly what you are going to get. I fundamentally believe we need the Service Licences. The BBC have talked about Service Licences: I think that is a fantastic move forward. We need to be explicit on that. Once we have the licences then we can cost what those services should be, and then we should decide where the money comes from. I think there is a process we should go through to establish whether the BBC should have the right to the money. Maybe to put that in context—I addressed the BBC's senior management only a couple of months ago and they found it very strange the Chief Executive of ITV, apparently a major competitor, was saying, "Actually we want a strong BBC"; but if you understand the macroeconomics then you will understand why I say that. Firstly, they have got total revenues of £3.7 billion; we, as an industry, have advertising revenues of roughly £3.4 billion; and the pay market is worth about £4 billion; so if you take away that funding from the licence fee, and the only other place they can get it is either advertising revenue or pay revenue, therefore the whole industry would be actually be impacted by roughly a third of a particular revenue stream. The whole industry would be impacted by reducing the amount of money coming into British broadcasting, which has made it a fantastic place over the last 50 years.

Q491 Baroness O'Neill of Bengarve: I was wondering, when you think of the spectrum of ways in which the sorts of changes you are suggesting could be brought about, whether you think it is mainly a matter of service agreements and, as it were, perhaps a bit of top-slicing; or do you think it is a fundamental matter of governance of the BBC?

Mr Allen: I do not think they are mutually exclusive. What we need is a better way to establish exactly what the BBC should be. Having established what it

should then I think there is a governance point as well. If we look at the processes I described, which are the Service Licences, the licence fee review, involving the public consultation, having done that then I think it is very important that a separate body governs the BBC. Having established those Licences I think it would be wrong to cast them in stone. I think there does need to be a process to be able to change them, and that is where the governance role both of the BBC and the regulator comes into play. There is a role for the regulator of the BBC—"The Trust" as we call it—to actually get involved in that process. Frankly, I have been here through a number of Charter renewals of the BBC and what we have got to do, surely, is write down what we say they are going to do and then review whether they have actually done it. If you look at some of the more recent reviews—the BBC 24 review referred to, and the report on Online—from when we started out on the journey things have changed, and that is why I think the Trustees have a role to play in ensuring that what we set out to achieve at the BBC is in fact delivered.

Q492 Lord Peston: Could we go a bit further into the whole licence fee thing? Speaking as an economist, I always felt the licence fee was ridiculous until I tried to think of a better way, and I know of no one who has ever thought up a better way of making sure we have some first-class public service broadcasting. What you are saying puzzled me a little. I take it we are discussing things at the margin. Public service broadcasting can be immensely profitable for you: it gives you access to AB class people; it can affect the kind of advertising you get and so on. So I take it you are discussing marginal variations in the PSB of what you are doing. When it was first mooted that we would have private television it was generally assumed that the standard would fall to nothing and it simply has not happened. So clearly it can be profitable. What puzzles me about the position you are adopting is two things: one is if you had any access to public money in terms of share of licence fee, no matter how it was done, would you not then run into all the accountability problems, all the government interference problems and everything that would go with that? In other words, if I were one of your shareholders I would be very doubtful that it was in my interests to let any of that money get anywhere near me. Turning it on its head; if you get that, surely the next move will be that people will say, "In that case it is about time the BBC had full access to the best advertising". I am just slightly surprised at the position you take. You must have done very hard-headed commercial thinking about this, but I am still surprised that you would not want, as far as possible, to stay away from public money and keep the BBC away from advertising. It is not my job to

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advise you (and I am very expensive) but I am still very puzzled.

Mr Allen: I think we are in that game already. We are already paying in the form of tax so we are already doing it now. So it is no different to what we are doing now. We happen to be paying the costs of this organisation, £250 million a year, at least, to provide these services. So it would be in my shareholders' interests to actually not have to bear that burden going forward; it would be in my shareholders' interests to have that replaced by some of those services continuing to be provided but continuing to have them appropriately funded. The bulk of my revenues do not come from the areas we are discussing; the bulk of my revenues come from ABC1s etc who come for the drama. So what we are talking about is what I would call more minority programming that is currently deemed to be public service broadcasting rather than the bulk of programming which falls into, I believe, the broader sense of public service broadcasting, which we would continue to do anyway. My dramas cost £1 million an hour and they give me the best returns, and I will continue to do them. These are all the other programmes that give me no return or a very limited return. The other thing that is an issue for us—

Q493 Chairman: There is no problem of definition?

Mr Allen: No, I think it is very clear. One group makes money and one other group does not make any money, and that is very, very clear. That is why Ofcom have been able to very clearly identify the exact cost of public service, and they have made an estimate of the opportunity costs of having PSB programming in place rather than commercial programming. I can give you a very practical example: *Coronation Street* would deliver 12 million viewers. Because I would have had to put PSB programming at peak time following *Coronation Street* I would get 3 million viewers for PSB programming. Not only do I lose the revenue of that slot but actually I lose the inheritance because for my next show to get 8 million it has to work incredibly hard to bring all those viewers back. So there is a real opportunity cost of that PSB bit. The areas we are talking about, where we would be keen to provide, are the areas where we are well-placed, which is regional programming and to protect the regional news.

Mr Jones: We have been accountable for 50 years. That is how long we have been going. We have been a regulated industry for 50 years and we have made annual returns to the various regulators that we have had: the ITA, the IBA, the ITC and now Ofcom. We have made annual statements of account so we are well-used to this. We do recognise that our news services, in particular, are part of the signature mark of the channel, and we are keen to provide it going

forward. It is this question about plurality of voice, both at the regional level and the national level. There is a crucial hour for news services. We were talking earlier of news channels getting audiences of 50,000 to 75,000, but if you look at the news hour between 6 and 7 on ITV and the BBC, where the audience split 50/50 between the two big channels, we are talking about audiences of 10 to 11 million. That is the biggest watched period of news on British television. So I think it is vital, in terms of democracy and plurality of voice going forward, that we try to find a way to maintain this plurality of service. As Charles has indicated (I do not know whether it is top-slicing or using a slice of the PSP) we are talking about public money and we are talking about public service.

Q494 Lord Peston: Presumably, with any programming you provide with public money you could not carry advertising? It must be a programme that would be done without any advertising on it whatsoever, so you would therefore lose the revenue.
Mr Jones: We already have a state broadcaster in Channel 4, wholly owned by the Government, which carries advertising and is fully funded by it.

Q495 Lord Holme of Cheltenham: An area of great sensitivity for you is new BBC services, whether they are, as it were, authentically public service, how far they compete with you and in what way and what effect they have on the market, and so on. Who do you think should be making the decision as to whether the BBC should be allowed to launch a new service? Just to give you a few options: should it be these new BBC trustees saying whether it is consistent with the BBC remit; should it be the Secretary of State, who it is effectively at present, saying, "Yes, you can have it; no, you cannot have it"? Should it be Ofcom? What particular role do you think Ofcom has in this?

Mr Allen: If the assumption is that basically we would have a very clear set of licences for BBC services—because unless you have that as a starting point you do not have clarity of what are new services (I am making the assumption, in answering your question, we have got very clear service provision, because at the moment, if you look at the charter, there is no clarity whatsoever on the services the BBC can provide)—and if you make the assumption that basically we have had public debate on the services they should provide, then that is our starting point. From that point on I think what should happen is that the BBC as an entity then should propose the additional services that it wants to provide; I think they should put that to the trustees, the trustees then should make a decision. If there are no commercial implications in that, and they approve it, that should move forward with the approval of the trustees. If there are commercial implications then I think there

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is a role for Ofcom to actually do market analysis, because they have the data. Why would we have the trustees doing the same job as we have asked Ofcom to do? So Ofcom should then be asked to review the market implications of that and make a decision. There is a debate whether—and I have not a clear view—you could either stop there and leave the final decision to Ofcom, or the final decision could be with the Secretary of State. What makes the important part to the process is that there is a public debate. There is a very clear, transparent process, in my view, which flows from the BBC to the trust and if there are no commercial implications they can make the decision, and they can implement it, and people can then bring that to Ofcom, if there are any commercial implications, and then either Ofcom can make the decision or the Secretary of State, if they wish to go to the Secretary of State, who ultimately makes the decision. But a much more public process than there is now.

Chairman: I am going to bring in Lord King at this point to ask about this competition between the BBC and yourselves.

Q496 Lord King of Bridgwater: Your paper refers to “... the BBC must always have regard to its competitive impact . . . it needs to be more aware of the impact of its services” and it talks about more transparency in relation to services. Would you like to give us illustrations of where you think it has not been?

Mr Allen: I think there are two ways the BBC can have an impact on the commercial market. First, is that the BBC decided to provide services free of charge when there are already people in the market trying to provide those services. I believe you have taken evidence from one of our subsidiary companies, ITN, who are trying to provide a set of services, news services, in the marketplace and if the BBC then provides those as, say, telephony services then the BBC is arguably not allowing the innovation there needs to be in the marketplace. So there would be quite a call: free services from the BBC can distort the marketplace. Then there are commercial services where the BBC can compete with buying or selling programming, for example, in the international marketplace. I am a great supporter of the BBC’s commercial activities; all I am asking for is transparency, so there is absolutely transparency between the public service broadcasting element of it and the commercial element of it. Either of those two can be a distortion; all I am saying is those should have actually been discussed and debated through Ofcom.

Q497 Lord King of Bridgwater: The question I actually asked was could you give us illustrations of where you think it has not happened? Are there that

things they are doing now that they should not have done, where they were not sufficiently aware or were not sufficiently transparent?

Mr Allen: I think if you look at what is in the public domain, BBC 3 is a good example of that, where it has worked. We have now got a BBC 3 that was publicly debated, and the remit changed. We now have a debate saying BBC 3 is not quite delivering what it set out to achieve and then should we change it? So BBC 3 would be an example. I think BBC online is also a good example. In children’s (which is not an area of my business which is affected) but if you talk to a number of the children’s broadcasters they say the BBC’s involvement in children’s programmes and in providing channels have distorted that marketplace and have created a significant distortion in the marketplace.

Q498 Lord King of Bridgwater: So children’s programmes on main—

Mr Allen: Children’s programmes on mainline BBC channels—CBeebies etc.

Q499 Lord King of Bridgwater: You do not have any other illustrations on the main channel activities otherwise? I am interested in this issue about programming; whether you think they are duplicating what you are doing.

Mr Allen: I may be a lone voice in this but I would not want to hobble or restrict the BBC. I am not in the camp that says “Let’s keep them to minority programming”. I think we would kill what is good about the BBC, and I passionately believe the BBC should be allowed to provide *Eastenders* as well as it should be allowed to provide high quality programmes. I do not believe that it should be hobbled and curtailed into a very narrow definition of public service broadcasting. I think if we did that we would end up with a system very similar to the American market. I absolutely do not believe that they should be hobbled in that way at all, and that would not, I think, be in the BBC’s interests and it certainly would not be in the broadcasters’ best interests.

Q500 Lord King of Bridgwater: Can I clarify one point you said earlier? I think you were saying, when you qualified public service broadcasting, that part of it was that the very placing of contracts for new programmes in the UK—irrespective of what those programmes were—qualified as a public service.

Mr Allen: What I was saying is that a lot of our programmes, over 50 per cent of our programmes, are made in the regions. We have a higher proportion made in Britain; it is a very small proportion of our programming that is actually acquired programming. I think that part of the role that we play in the broader aspects of public service goes back

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to the point about the regions and the role they play in terms of regions speaking to Britain rather than as seeing ourselves as—

Q501 *Lord King of Bridgwater*: Just to be clear: public service is irrespective of whether the programme is higher or pretty ordinary quality; the postcode of where it is produced is a public service (?)?

Mr Allen: No, I think that would be taking what I said too literally. What I said is that 72 per cent of our programming is drama, and I would argue our drama

is pretty high quality. 50 per cent of our programmes comes from the regions. Therefore, I am making two distinct points.

Chairman: I am afraid I am going to have to bring this session to an end because we have run out of time. We could actually go on for a very, very long period indeed but we have got two other important companies behind you, so unless we want to be here until midnight I think we had better end here. Can I thank you very much, both of you? It has been fascinating. If we have got any supplementary points perhaps we could put them to you. Mr Allen and Mr Jones, thank you very much indeed.

Memorandum by Channel 5 Broadcasting Limited (Five)

Channel 5 Broadcasting Limited (Five) is pleased to provide its responses to the questions posed by the Department for Culture, Media and Sport (DCMS) for its consultation following the publication of the document *Review of the BBC's Royal Charter: A strong BBC, independent of government* (March 2005).

INTRODUCTION AND EXECUTIVE SUMMARY

- Five welcomes the Review, which provides the framework for important reforms of the BBC for the next Charter period, and in particular addresses the crucial issue of corporate governance. We agree that it is important for there to be a clear distinction between the management and regulatory oversight of the BBC. In our view the proposals in the DCMS Review go a fair way toward ensuring this.
- Five accepts that the role of the BBC should be to meet the purposes outlined in the Review, and that the DCMS has correctly identified the main characteristics of a BBC for the 21st century. The BBC should “inform, educate and entertain”, and the licence fee is the best way to fund the BBC’s public services.
- We support much of the detail in the Review, specifically related to the need for the BBC to provide high-quality programming, significant regional output and impartial news. We also support the Government’s strong backing for the licence fee, which Five has always argued is the best way of funding the BBC. Similarly, we think it right that the BBC takes the lead in ensuring a smooth switch-over to digital.
- Five is encouraged that the DCMS intends to involve Ofcom in providing market assessments for the consideration of any new services and for reviews of existing services. We believe however, that in order to prevent ambiguity there should be greater clarity over the precise roles and responsibilities of the BBC Trustees and Ofcom—possibly through a “memorandum of understanding”.
- In recognition of the pace of change, and despite our support of the licence fee mechanism, we accept that a review of the licence fee will be required before the end of the Charter period. This review should take into account developments in video on demand and subscription television. We underline our view, however, that the BBC’s publicly funded services should be available to all licence fee payers on the same terms and that the BBC should not, for as long as it has access to a licence fee, take advertising or sponsorship revenue.
- Five believes that the BBC should be the major supplier of public service broadcasting in the UK but that the commercial broadcasters will continue to have an important role to play. The Government is right to keep under review the issue of plurality in the supply of public service broadcasting. However, we are opposed to top-slicing the licence fee, and believe that a new compact can be achieved between commercial broadcasters and the regulator to deliver plurality in the supply of PSB programming in the future.

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- Five believes that the BBC should not routinely bid up the prices of acquired programming as this is a poor use of licence payers' money and provides inappropriate competition to commercial broadcasters.

Detailed Responses to Questions

THE ROLE OF THE BBC

Question 1: Do you think it is helpful to define the BBC's purposes in this way?

As a publicly funded institution the BBC needs a clear set of guidelines in order to assess its contribution to public service broadcasting; the exercise of attempting to define the purposes and characteristics as advocated by Ofcom will play an important part in this process.

Question 2: Are these the right purposes?

Five broadly agrees with the purposes outlined in this section, and in particular the emphasis on the BBC's role in the nations and regions and its mandate of "bringing the world to the UK and the UK to the world." The BBC plays a key role in the life of the nations and regions. It acts as a benchmark for quality in programming, is an important source of—and influence on—impartial news and current affairs and acts as an exemplar of Britain in the wider world.

Five also broadly agrees with the purposes related to the BBC's role in sustaining citizenship and civil society and promoting education and learning. In the context of the BBC's objective of stimulating creativity and cultural experience, Five is pleased by the emphasis on "using the licence fee as venture capital for creativity." However, it is wrong to see the BBC as the only home for new talent and innovation.

Finally, we note the brief reference here to the BBC's commercial activities, and the way in which the BBC can help create a global audience for UK talent and creativity and in the process supplement the licence fee. This is an admirable effect of the BBC's commercial activities; but as we discuss in the relevant responses below, some of the BBC's commercial operations, particularly in the UK marketplace, are not always so benign. The trade-off between the global benefits for UK talent and creativity and any likely negative commercial impact should be actively monitored and managed by the BBC trustees.

Question 3: Are these the right characteristics?

The broad list of characteristics provided by the DCMS appears suitable to the role of the BBC. In particular, BBC programming should always be of high quality, reflecting its core mandate to "inform, educate and entertain." Five does not believe that the BBC should only make programmes that the commercial sector does not make, but does believe, with the DCMS, that it should be committed to making programmes of minority interest that are more challenging than mass-market entertainment. It is difficult to be prescriptive in regard to defining the characteristics of the BBC's output, and Five does not believe in any mechanistic approach.

Five strongly believes, however, that the BBC should not routinely bid up the prices of acquired programming (specifically Hollywood product), as it is a poor use of licence fee payers' money and provides inappropriate competition to the commercial, advertising-supported broadcasters.

BUILDING DIGITAL BRITAIN

Question 4: Do you agree that the BBC should be at the forefront of developments in technology, including digital television?

Five accepts that the BBC has an important role to play in relation to ensuring universal access to its output. On that basis, it is right that the BBC should take the lead in securing the switch-over to digital.

Five believes it should be a condition of the next licence fee settlement that the BBC bears a significant share of these costs, and that it should also lead the communications campaign needed to give effect to it.

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THE BBC'S CONSTITUTION

Question 5: Do you support the proposal for a further review of alternative funding methods, before the end of the next Charter period?

Within a few years, television viewing will have fragmented further through the increased take-up of multi-channel television; in addition, the number of homes with PVRs will have increased, further eroding traditional business models, and new funding models (subscription and video on demand, for example) may have been rolled out aggressively.

Five believes that the licence fee remains the best way of funding the BBC. There may be arguments for change in the future, if for example digital homes are able to access BBC programming on a chargeable basis, so we agree that a review of the market take place in 2010–11. For the avoidance of doubt, Five believes in the concept of universal access to the public service programming of the BBC, and does not believe that the BBC should be allowed to take advertising or sponsorship income for so long as it has access to public money.

Five is concerned at Ofcom's references to a possible subscription model for some BBC services (albeit not during the next Charter period). The right to the licence fee should be coupled with the obligation on the BBC to provide all its licence fee-funded services universally, and free at the point of access. A premium market must not be allowed to develop whereby some licence fee payers get more BBC services through their willingness and ability to pay.

Finally, Five concedes that the next licence fee settlement (from 2007) will have to be reviewed against the additional burdens on the BBC regarding, in particular, digital switch-over. However, any additional monies granted to the BBC for such purposes will need to be transparent; the BBC itself should not receive a blank cheque.

Question 6: Do you have a view on any aspect of the operation of the licence fee: concessions, its collection or its enforcement?

The licence fee itself may be more efficiently collected through advances in technology—including increasingly sophisticated mobile and Internet payment options. The BBC should be required to optimise its collection capability.

GOVERNANCE AND REGULATION

Question 7: Have we defined the roles of the BBC Trust and the Executive Board sufficiently clearly?

Five concurs with the DCMS's view that a split between the roles of oversight and execution is critical for corporate governance reasons.

Five supports the concept that the BBC Trust be responsible for approving a detailed service licence in each instance against which performance can be measured. While we would look forward to the detail, a public value test appears to us to be appropriate in light of the public nature of the BBC funding. However, we still have some questions as to the make up and purpose of the Executive Board. We look forward to being able to see the detail of the proposed protocols that will be written into the BBC's Charter or Agreement.

In the balance of responsibilities between Ofcom and the Trust, Five welcomes the proposal that Ofcom should have "a key role in competition issues—conducting market impact tests for proposed new services and agreeing the terminology used for any other such tests (for example those applied to changes to existing services)." However, we believe that in order to prevent ambiguity there should be greater clarity with regard to the precise roles and responsibilities of the BBC Trustees and Ofcom—possibly through a "memorandum of understanding".

More generally, efforts should be made to ensure that the new Trust has the relevant professional experience required to undertake its oversight role. Access to an expert separate staff, on the model of the BBC's own proposed Governance Unit, is a good starting point. Although account should be taken of regional, gender, ethnic and socio-demographic interests, Trust members should be appointed primarily on the basis of their experience.

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Question 8: Is this the right way to define the public interest remit of the BBC Trust?

Five concurs with the definition of the public interest remit as laid out in the Review. In particular, we are pleased to see an explicit reference to the requirement on the Trust that any activity undertaken by the BBC “doesn’t unfairly or unduly damage commercial media businesses.”

Question 9: How many of these options would you like to see adopted in the Trust’s statement of promises?

Five welcomes the DCMS’s emphasis on accountability to the licence fee payer, and in particular the concept of ongoing research into the views of audiences about BBC programming. Five also believes that various forums should be created or restructured to create lines of input into the Trust.

On the issue of openness and transparency, Five suggests that the meetings of the Trust should not be conducted in public, as this might limit the willingness of Trustees to openly and critically debate the many issues. However, minutes of meetings should be made available.

Question 10: Have you any views about how the BBC Trust should handle complaints?

The process for dealing with complaints needs to be as open, accountable and transparent as possible. Consideration should be given to separating those programme issues that fall within the remit of the BBC (such as impartiality) and those that fall within the remit of Ofcom (such as harm and offence). It is neither desirable nor effective for someone complaining about a harm or offence issue to have to complain first to the BBC Executive, then to the BBC Trust and then to Ofcom. The BBC should make it clear which issues it has final say over and which are the responsibility of Ofcom and organise its complaint procedures accordingly.

Question 11: How many members do you think the BBC Trust needs?

Provided that there are adequate measures in place to ensure good use is made of expert opinion (with the separate expert staff envisaged by the DCMS), and research and input from the public, then the optimum number would be between six and 12.

Question 12: What skills and expertise do you think they need?

We are pleased that the DCMS lists broadcasting and media industry knowledge and expertise as the first of the requirements for members of the Trust. This is crucial in our view, particularly in light of the rapid changes our industry is undergoing. Thereafter, we agree that an understanding of the “financial, legal and corporate aspects of overseeing a large and complex business that spends significant sums of public money” will be mission-critical, and has not always been available to the BBC in adequate abundance. One might add to this expertise in ethics and corporate and social responsibility. A further crucial skills set for the Trust will be the ability to commission and interpret quantitative and qualitative research from the public on important aspects of the BBC’s output and activities.

More broadly, we do not believe that the Trust should be an amalgam of the “great and good”. The first expertise should be in media and broadcasting (or at least in businesses where lessons can be applied to media and broadcasting), with the second in general corporate oversight. The interests of the regions and special interest groups should be provided for, but not slavishly and not so as to undercut the first two skills set requirements. Proper representation by ethnicity, gender and socio-economic groupings is important, however, to ensure a proper range of input and views. The selection should be done in such a way as to ensure a wide range of views and skills. There should be a mechanism for “recall” of members who do not add value. Moreover, there should be term limits to membership.

Question 13: Are there any particular communities or interest groups that you think the Trust members should represent?

Provided there is adequate and formalised account taken of the interests of the regions (through new or re-constituted regional councils, for example, as suggested in the Review) and of a range of special interests (minorities, disabled viewers, etc)—particularly through proper research, then there is no need to create a “committee by numbers”.

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ORGANISATION AND INFRASTRUCTURE

Question 14: Do you think a “window of creative competition” can be made to work? If not, would you support a raised quota for independent production in BBC television?

Five broadly supports the idea of the WOCC. It is important to keep the quota for independents as a guaranteed floor, but there also needs to be room beyond that for independent producers and for non-independent outside producers (such as Talkback Thames and Granada) to compete.

Question 15: Do you think a voluntary 10 per cent quota for radio is sufficient? Or should the quota be increased or made mandatory?

Five has no particular corporate expertise in radio, and no views on this issue.

Question 16: Do you agree that the BBC should be able to propose changes to its range of services over the course of the next 10 years?

The BBC, like any broadcaster, should have the freedom to alter its range of services in light of changing technology and consumer behaviour. However, the BBC is privileged in that it has access to public funds to finance the provision of its services. As a result, any change must be subjected to careful tests as to the balance between the public good and the undue and unfair effects such changes might have on commercial competitors. Where services are properly provided by the commercial sector in the non-core programming areas, the BBC should be required to limit its activities or to withdraw. Similarly, where there is evidence that the market is failing to provide appropriate services, the BBC should be allowed, indeed encouraged, to step in.

Question 17: Do you agree with our proposals for handling new services?

It must be right that the BBC has flexibility in responding to the changing market. It has been our concern in the past that some new services have been launched without proper consideration as to their effect on the marketplace and on the overall balance between the public good and private initiative. Moreover, reviews of new services were in the past too sporadic and too late to address issues of “crowding out” of private-sector investment.

Five is therefore encouraged by the proposal that all new services would be subjected to a review by the BBC Trust (which must set detailed licence terms for each new service) and that Ofcom would have the duty of carrying out “the necessary market impact assessments”.

Question 18: How strictly should the BBC’s commercial services be restricted to those businesses that are linked to public purposes and public services?

The BBC has already launched a number of pay-TV channels in partnership with the private sector, and continues to sell its programmes abroad. Providing the BBC’s relationship with its commercial partners is undertaken on an arm’s length, transparent basis, and that all programming is sold at market rates, this strategy appears to Five to be an appropriate way of ensuring the BBC—and by extension the licence fee payer—benefits from the appreciating asset value of its investment in original programming.

The BBC’s involvement in other media businesses, particularly magazines with no link to BBC programming, is already subject to review by the BBC. It is likely to exit these businesses in the short term, and this appears right.

Five’s view is that all commercial operations must meet two critical tests: that they should be limited to furthering the BBC’s purposes and that they are not unfairly subsidised by the licence fee in any way. In order for this to be judged, a combination of an alert oversight role by the Trust and input from Ofcom needs to be brought to bear.

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Question 19: Is the existing fair trading commitment a useful addition to the arrangements for regulating the BBC's commercial services? If not, what option would you prefer?

The BBC's commitment to fair trading must be judged by an external assessor, which ought to be Ofcom. We accept that external business practices are already subject to the review of the competition authorities. The internal arrangements ought to be reviewable, and Ofcom is the obvious body to do this. In general, any increased scrutiny of the BBC's commercial services, and the degree to which they might be "crowding out" the private sector or unfairly using the licence fee to gain a commercial edge, would be welcomed by Five. In similar fashion to the proposals on Ofcom's role in reviewing new licence-fee funded services, Five believes that Ofcom should have a formal role, via input to the Trust, in the review of the BBC's commercial activities.

Question 20: Do you agree that the case for a plurality of publicly funded broadcasters should be kept under review?

Five is of course in favour of keeping the supply of public service broadcasting under review. We are concerned, however, about the proposals for a PSP and the prospect of contestable funding, and how these would work in practice.

Five recognises the danger forecast by Ofcom of the BBC becoming the only supplier of PSB content, as a result of market trends in the move toward digital. For this reason, the plurality afforded by a sensible commercial PSB regime is vital. Five has always taken its PSB obligations seriously and believes that commercial PSBs should continue to play a part in ensuring a plurality of public service programming. Increased fragmentation of the market may lead to reduced obligations: the issue will be to get the balance right.

The next PSB review in 2009 should:

- Examine the position of commercially funded PSBs.
- Look at how much PSB type programming is being delivered by the market.
- Consider whether a new compact—including appropriate prominence on EPGs, Must Carry status on cable, gifted capacity on DTT and spectrum price waivers—is feasible (as suggested in the Ofcom PSB Review phase two report).

Once this work has been undertaken it will be possible to assess whether additional public funding of other (non BBC) PSB providers is possible or desirable.

Five questions whether the current proposals for a PSP should be pursued. In addition to questions about its funding (is there appetite to increase public funding of television?) we believe that a new "channel" offering just three hours a day of original programming would seek to maximise its reach in peak viewing hours, even if new distribution models, including the Internet and DSL, were to be explored. This could have the effect of impairing the core business of the legacy of terrestrial PSBs. Note that Five operates on a programme budget less than two-thirds that of the proposed PSP, to cover a 24/7 schedule.

If the proposition were to be taken further, Five would wish to ensure that the PSP is not allowed to take advertising or commercial sponsorship in any form and that cross-promotion between a provider channel (whether terrestrial or multi-channel) and the new service not be allowed.

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Examination of Witnesses

Witnesses: Ms JANE LIGHTING, Chief Executive, and Ms SUE ROBERTSON, Director of Corporate Affairs, Five, examined.

Q502 Chairman: That was almost seamless between ITV and Channel Five. Thank you very much, and sorry to keep you waiting. As I said, we are taking evidence and we are up against time, as we are demonstrating. I wondered, just before you begin, could you just tell us a little about the history of Channel Five: from whence you came and the size of your audience, and things of that sort?

Ms Lighting: I would be delighted to. Five started, actually, only eight years ago (we have just had our eighth birthday) and it is worth remembering that

Five was the last of the terrestrial broadcasters to launch and it was the only terrestrial broadcaster that launched into what was already what we now describe as a fragmented, multi-channel universe, so it was already a very competitive environment. When it launched it was awarded a national licence which, at the time, was only guaranteed to give coverage of around 60 per cent of the UK. I am very pleased to say that a lot has moved on from our launch and the channel itself has evolved a lot. We now have, in terms of coverage and in terms of people who are able

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to reach us across the UK, around 92 per cent coverage—

Q503 Chairman: But not the Isle of Wight.

Ms Lighting: Not the Isle of Wight. That is a combination of being able to access the channels not just via analogue but, of course, importantly, through digital technology—whether that is pay or, importantly, through Freeview, which has been a very important platform for us. We now have a market share in terms of our viewing of around 7 per cent of audience, which I am pleased to say is a number that is increasing. Also, in terms of our overall programming and our schedule, we have evolved a long way from our early days when we needed to perhaps make quite a lot of noise and create some disruption in what was already a very crowded market. The channel is now evolving in terms of its programme strategy, in terms of the range of programmes that it brings to the schedule, and actually now is an important contributor to public service programming in the UK.

Q504 Chairman: Let me take up that point exactly—the public service broadcasting role that you have. How would you define that?

Ms Lighting: I think it is across a number of different areas. I think one of the biggest contributions we make is actually in the diversity of the schedule itself. Five is now well-known for its contribution in terms of arts programming and in terms of science, history, and so on. I think, importantly, when the channel moved into arts programming it did so at a time when it was clear that arts was not being, if you like, over-provided by the other terrestrials; it had somewhat, not exactly fallen under the radar but it was certainly not being over-provided. What we were able to do, I would say, was actually provide something that was supplemental where we were able to plug a gap that I think existed in the market place. Again with science, which I think, in terms of the science programmes we have brought to the schedule, we have started to provide some very important public service broadcasting.

Q505 Chairman: Like ITV, would you be concerned that the more we go to digital the more that product is going to be under pressure?

Ms Lighting: My position would be different from the position that ITV have taken. Whilst I understand some of the points that Charles is making, I thought my Lord Lord Peston asked a very good question earlier; not all public service programmes are not commercial. We have a number of programmes—and I would also say that in terms of the overall environment of Five we actually consider that our public service programming has a very important job in terms of the reputation of the channel and the

overall diversity of what we offer. That does not mean to say that there are not some programmes, certainly our news programmes and some of the current affairs programmes we do, which would not be our highest rating programmes but, nonetheless, it creates an environment where the overall channel offering becomes an attractive one to a very broad range of people. Certainly, some of those programmes can attract very commercially attractive audiences, such as ABCs or 16-34 year-olds.

Q506 Chairman: So you would not advocate a sort of fund of some kind which you could dip into?

Ms Lighting: I do not think that is the right way to go. I personally think that whatever it is called—top-slicing or using public money—I do not see that that is actually going to have the benefit of increasing the overall pool of money that is put into public service broadcasting, I think it is a redistribution of it. I would also say that—unlike Charles' point—I do think that there is real clarity over where the licence fee goes, and the fact that you can point to the BBC and ask how that money is being spent. I think if that were to end up being spent in 10, 12 or 20 different places it would be much harder to be able to specifically say, for example, in our schedule, which of the public service programmes had been funded by ourselves and which had been funded by public money. I also believe it would be a very difficult fund, frankly, to administer. I can see bureaucracy coming.

Q507 Lord Peston: Just to clarify: I take it therefore that, if we call it a honeypot, you are not seeking to dip into that.

Ms Lighting: We are not.

Ms Robertson: No.

Q508 Lord Peston: You would, even in the new digital area, still like to go for your current style. Is that what you are really saying in terms of the future of Five?

Ms Lighting: Absolutely, and I would say that actually a number of the decisions that we have made to invest in public service programming, the investment that we make in regional programming, although we are not a regional broadcaster, we do produce regional programmes from the regions. Currently, 24 per cent of our regional output is from the regions and our quota is only 10 per cent. This is not always something that a stick is there to make you do it.

Q509 Lord Holme of Cheltenham: If I might say so, I think that decision does greatly increase your moral authority on other issues that you have raised, like the competitive bidding with the BBC in Hollywood. I think your position for saying that is a problem is

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stronger because you are not saying, “Well, we want to be subsidised for our civic obligations”, as it were.
Ms Lighting: Yes.

Q510 Lord Holme of Cheltenham: I am very curious how you think that could possibly operate. Take your admirable CSI series running at the moment—a very high-class, presumably Hollywood, output. Were you bidding against the BBC and ITV for that?

Ms Lighting: In the case of CSI (and I am trying to make sure I have remembered my details right) I do not believe that is one that the BBC bid for. We did have other commercial broadcasters who have bid for it and, in fact, even last year when we were renewing and securing the rights for that we had some fairly aggressive bids made against us from commercial broadcasters. So, in that case, I would say the BBC were not bidding for that particular show, but they have, on a number of other occasions, either for movies or for American series that are coming to the market. Certainly at last year’s Los Angeles’ screenings it was noticeable there that we were bidding, at the time we thought, against a very aggressive commercial broadcaster. When it transpired that our competitor had won the product—we were outbid, we got to a point where we said, “This is too far, the market cannot stand it, we are holding at this point”—it turned out it was BBC 3. That, I think, is where we have our issue. There is another competitive point. I am a great believer, and Five believes, that the BBC should be competitive across a range of programmes. It really is important, not that the BBC should be ghettoised into worthy programming but I think it is important that it is providing great quality in terms of entertainment as much as it is in terms of documentaries. We do, however, have another issue, which I do not think went in our written submission, which is actually over the scheduling of the BBC. We have two direct examples of this. One was last year when the BBC launched a series called *The Culture Show*, which was an arts series. They decided to put it in the schedule directly against what was our Thursday night, regular arts slot. So not at a different time or on a different day but exactly against us. Two weeks later we decided there was only one thing to do, and that was to move our own arts programme. This year we have had the same problem, both from BBC 2 and from BBC 1 with their wildlife programming, which we produce quite a lot of. We have a regular Wednesday slot, it came straight into the Wednesday; we moved to the Tuesday to avoid them, they followed us to the Tuesday; we went back to the Wednesday. We are beginning to feel stalked. This is not sensitive use, I think, of public money because this is not offering the best of public service broadcasting. Not everyone has access to the recording devices like TIVO and so on, and I think we

should be looking at how we use this programming as well as simply how much is spent on programming.

Q511 Chairman: Is there no mechanism at the moment to sort that sort of thing out?

Ms Lighting: The difficulty, if you like, is that there is some transparency—a little—just before the schedules go to air. There is nothing to prevent people going head-to-head. The question really is whether or not it is the BBC’s job to go head-to-head on public service programming, and one would also question against a broadcaster that would not say he is in direct competition necessarily to BBC 1.

Q512 Lord Holme of Cheltenham: I have not quite finished, Chairman, on the very same point. Given that, short of forming (at least on purchasing rather than scheduling) a cartel, which I imagine the competition authorities would not be very keen on, I do not see quite how this problem can be solved unless perhaps you are suggesting that as part of the receipt of the licence fee and the public service obligation the BBC should have regard to the pluralistic ecology of British broadcasting or something of that sort, whether there should be a general responsibility. It is easier to see the problem than see the solution.

Ms Lighting: I take your point. I would hope that accountability and transparency would help, and if you had a trust which was separate from the BBC I would hope that there would be a form of accountability over how it could be justified that an amount of money had been spent competing directly.

Q513 Chairman: But you are saying—just to be absolutely clear—that in the examples you gave the BBC is in a sense literally targeting that particular time in the schedule?

Ms Lighting: In terms of the scheduling they absolutely have been. That has been quite deliberate, yes. That is not a coincidence.

Q514 Lord Peston: In terms of what you do I always die at the last ditch because you provide baseball on Sunday nights and I only wish you bid for a good deal more baseball slots so that I could watch it every night.

Ms Lighting: We have just got the cricket highlights.

Q515 Lord Peston: Cricket I regard as quite inferior to baseball! What I am intrigued by in terms of the bidding process is which way round does it work? You reach out and know about what is, say, in the American output and so bid for this, that and the other, or is it rather like tapping up? Are they coming to you and saying, “We have got this, that and the other. Do you want to bid for it?”, or do both things happen?

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Ms Lighting: No. In fact, we have just come back from one of the big events that happen in the year, which is called the May screenings or the LA screenings. This is the week in the year when all the Hollywood studios show the pilots which are going to be their new series for the forthcoming season and BBC, ITV, Channel 4 and all the multi-channel broadcasters are invited to go and view those programmes and make bids for them.

Q516 Lord Peston: So that is basically the way it is done?

Ms Lighting: Yes.

Q517 Lord King of Bridgwater: What do you understand as their purpose? They chose an alternative time which they presumably thought was the right time for that programme to go on their channel and yet the moment you were on at a different time they decided they were wrong and you were right, or is it that you think that they are positively trying to victimise you and crush you in some way?

Ms Lighting: We are taking it as a compliment; I think that is the most positive thing I can say about that, because clearly there is an element of competition here. We are now producing arts programmes and we are producing a high quality wildlife programme. I think you could say that there is a situation, or perhaps the BBC are just pitting their arts programme against ours, may the best man win, and the same with the wildlife programme. In a sense there is absolutely no problem with competition and if this were one of our commercial competitors I would say absolutely, "Give us a run for our money", and that is fine, but this is public money that is being spent and you could argue is not being spent in the most sensible way if you are going to put it directly against a programme of exactly the same genre and ilk where you could be offering more diversity to your viewer and instead of offering one opportunity to choose between arts programmes you schedule them in a complementary way so that you give them two opportunities to view that sort of programme.

Q518 Lord King of Bridgwater: Does your grapevine suggest to you that this is Corporation policy or one nervous producer down the line who decided to have a go on his own initiative?

Ms Lighting: The schedules would not be run by an individual. I do not think that it is quite as clear-cut as being either of those things. It will not be an individual who does that. It will be something happening at scheduling and controlling level.

Q519 Chairman: Did you take it up with the BBC?

Ms Lighting: We have not taken it up to the top of the BBC but it is something that we discuss at an operational level.

Q520 Lord Maxton: Among the terrestrial broadcasters am I right in saying that you are the only one that has not gone into the digital world in the sense that you have not got a digital channel as such? You obviously are on the digital platforms, so the Chairman could watch you in the Isle of Wight if he were prepared to buy a Sky disk but not otherwise?

Ms Lighting: We are not, as I think everyone has now started saying, multi-channel yet. We do not have a family of channels. Because first of all we are the youngest of all the terrestrials our focus has been on getting Five itself right before we start to launch ancillary channels. A family of channels will make sense for Five but the big difference also with Five is that we are still in the growth stage of our business. We still have growth ahead of us. We are the only one that is growing on the air. If you look at our viewing share in analogue, we are the only terrestrial broadcaster that, if you look at our viewing share on the Freeview digital platform, it is larger than it is in analogue, whereas if you look at BBC or ITV they actually drop by almost a half.

Q521 Lord Maxton: The point I am trying to make, however, is that when you go digital you will maybe have more than one channel.

Ms Lighting: We will.

Q522 Lord Maxton: But the fact is that large amounts of what you have purported to be public service broadcasting—the arts, the documentary programmes, history, science—will all be provided on the digital channels by the Performance channels, by the massive Discovery channel, by the History channel and so on, so where do you fit in with that sort of broadcasting?

Ms Lighting: I think it is really important to remember that when you talk about channels like the Discovery family of channels, which is a very good broadcaster, that is only available by payment, and I think it is important to remember what is free and what is available if you are prepared to pay for it. For a lot of the channels that we describe as these niche channels, which we say deliver public service type programmes, they do, but at a price. It is not available to you unless you are prepared to subscribe on a monthly basis. If you look at the Freeview platform, which of course has a more limited spectrum of around 30 channels, in future it may well swell as technology allows to 40, but if you bear in mind that ITV are probably going to have a good five of those and the BBC are going to have a chunk of those, you will not have enough room for all these niche channels. It is still going to be very important that a range of programmes is available from some key broadcasters.

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Ms Jane Lighting and Ms Sue Robertson

Q523 Chairman: Do you have concern about the BBC's commercial activities and operations?

Ms Lighting: I have described the areas that I have some concerns over. Clearly, where the BBC is involved in exploiting programmes that it is producing via its public service broadcast outlets that is absolutely fine. Where the BBC is perhaps looking at areas to exploit, for example, it could be launching a magazine which is not linked to the output of its public service channels, whether that is radio or television, I think that would not be appropriate.

Q524 Chairman: Who should police that? Ofcom?

Ms Lighting: This is where I have more of a leaning towards some of what Charles was saying but in the first instance I would hope that the trust would be frankly catching these things before they were launched. One of the problems historically perhaps has been that so much of this is discussed after the event and this does require the discussion to be had up front. I think that the mere act of transparency and accountability will weed out a lot of things that perhaps today we might say would not be appropriate.

Q525 Lord Kalms: How profitable is Five?

Ms Lighting: It is profitable now, I am pleased to say. Our shareholders, because we are a privately owned company, invested around £560 million in Five before Five made its first profit and we made our first profit just over two years ago. I am pleased to say that that profit is going up, and we have not yet published the 2004 numbers in terms of that but it would be small beer in comparison with ITV.

Q526 Lord Kalms: But you have got a progressive plan to improve your profitability?

Ms Lighting: We have, and to improve our spend in terms of programming. There is an absolute correlation between the amount that we invest in the quality of our programming and what we believe we can also then derive in terms of profit through our stronger position in terms of our own market share.

Q527 Lord Kalms: You have got no problem about surviving in the competitive jungle, albeit you get a little irritated with someone who pinches the best slots?

Ms Lighting: it is a very competitive environment out there and the worst thing anyone could do is sit here and say, "We are complacent about the number of challenges coming through". However, we do believe that digital, in terms of the Freeview platform from where Five is coming, is a very positive future for us to look forward to. We do not see it in such negative

terms as it is sometimes described in the press by some of our other commercial counterparts.

Q528 Lord Kalms: You have been running, you say, for eight years?

Ms Lighting: Yes, eight years.

Q529 Lord Kalms: And it has taken you six years to get into the black?

Ms Lighting: Yes.

Q530 Lord Kalms: So you have very patient shareholders?

Ms Lighting: Yes.

Q531 Lord King of Bridgwater: You say there are profits. Is that after servicing your capital?

Ms Lighting: Yes, it is.

Q532 Lord King of Bridgwater: After paying interest?

Ms Lighting: Yes.

Q533 Lord King of Bridgwater: You are making a profit after interest?

Ms Lighting: Yes.

Q534 Lord Peston: And if you went for a second slot on Freeview, or whatever it is, your calculation would be, "Is it profitable to do that?"

Ms Lighting: Whenever you launch a second channel—oh, gosh you are asking me—

Q535 Lord Peston: We will call it Five Two.

Ms Lighting: If we were to launch a second channel—and we will—we would not expect that channel, any channel, to be profitable in its first year.

Q536 Lord Peston: But you do a calculation normally on when it will be profitable.

Ms Lighting: You would do a calculation, you would have a business plan and you would expect that the revenue would come from the advertising market and therefore you would have a projection for your return.

Q537 Chairman: Under the Communications Act I can remember that ITV could be taken over by an American company, for example. Is that the same with Channel Five?

Ms Robertson: Yes, but the ownership rules are not exactly the same for ITV as for ourselves. There was an extra quite controversial clause, (particularly in this House,) with regard to a large newspaper group, subject to various plurality tests, being able to buy Five.

Chairman: I am very grateful. Lord Peston dying in the ditch is obviously an issue for CSI, but thank you very much indeed.

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Memorandum by B Sky B

The memorandum sets out some of Sky's initial observations on the DCMS' Green Paper entitled "Review of the BBC's Royal Charter".

1. THE OVERALL REMIT OF THE BBC

1.1 The Green Paper indicates a commendable desire to define the BBC's remit (and the scope of its services within that remit) with more clarity and rigour than in the past.

1.2 The Green Paper proposes, however, to define the BBC's remit by reference to five very broad "core" public purposes¹ which can be (and indeed are) met by a wide range of content from a number of broadcasters. Furthermore, the Green Paper concedes that individual BBC programmes need not meet any of the public purposes, notwithstanding the relative ease with which they can be met.

1.3 Whilst conceding that each individual programme need not meet any of the public purposes, the Green Paper suggests that every programme should display at least one of five specified characteristics.² This requirement is, again, not onerous: the BBC should, for example, be able to claim that all its programmes are "engaging".

1.4 The Green Paper refers to a number of other attributes in addition to the specified purposes and characteristics.³ The hierarchy between the purposes, the characteristics and these other attributes is unclear. In particular, although it is encouraging that the Green Paper recognises the need for the BBC's programmes to be distinctive, "distinctiveness" does not appear to be one of the five prescribed characteristics.

1.5 To achieve the stated objective of defining the BBC's remit with greater clarity and rigour, the Government must ensure that it is mandatory for every BBC programme and service to fulfil at least one of the five specified public purposes and to be distinctive from that provided by the commercial sector. The BBC itself recognises that it should aim for distinctiveness "both in the sense of offering something different from other broadcasters in kind (for example, a broader range of subjects or the inclusion of genres which are not offered by others) and in the sense of offering something different in degree (for example, documentaries which have had the benefit of longer periods of research and preparation).⁴ The proposed new service licences should set out in detail the way in which each BBC service will be distinctive.

1.6 The BBC's commitment to distinctiveness could be strengthened, and its contribution to public service broadcasting enhanced, by requiring it to prioritise its resources in areas where viewers' needs are not being met. Thus, the Green Paper's suggestion that the BBC should support the types of programmes that commercial broadcasters do not tend to commission should be translated into a clear obligation.

1.7 The corollary to an obligation on the BBC to prioritise its resources in areas where viewers' needs are not being met, would be an obligation to withdraw resources from areas where viewers are well served. There should be a mechanism for regular review of services to determine the extent to which they are, or are not, meeting needs that are unmet elsewhere.

2. BUILDING DIGITAL BRITAIN

2.1 The Green Paper has proposed a sixth public purpose for the BBC, of "building digital Britain", which is also couched in broad terms. It includes "helping to bring the benefits of digital services to all households".⁵ The sixth purpose could, therefore, be interpreted as sanctioning an extension of the BBC's activities into almost any area using digital technology. Thus, the broad nature of this sixth purpose is not consistent with the Green Paper's commitment that the new Charter will "set out the limits of [the BBC's] mandate".⁶

2.2 The other five public purposes proposed for the BBC can be seen as ends in themselves. Using digital technology is a means for the BBC to achieve the five specified public purposes, rather than an end in itself. Thus, instead of specifying "building digital Britain" as a standalone purpose for the BBC, a preferable

¹ Paragraph 1.17 of the Green Paper: sustaining citizenship and civil society; promoting education and learning; stimulating creativity and cultural excellence; reflecting the UK, its Nations, regions and communities, and bringing the world to the UK and the UK to the world.

² Paragraph 1.19 of the Green Paper: high quality; challenging; original; innovative; and engaging.

³ Paragraph 1.19 of the Green Paper: eg wide availability, excellence and distinctiveness.

⁴ BBC Response to the Green Paper, May 2005, page 30. Emphasis in original.

⁵ Green Paper, page 47.

⁶ Paragraph 1.8 of the Green Paper.

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approach would be to add a specific reference to the digital environment in the other public purposes (eg “informing ourselves and others . . . through appropriate use of digital technology.”)

2.3 Within the context of “building digital Britain”, the Green Paper proposes a number of specific switchover related tasks, including using the licence fee to build out the digital terrestrial television (DTT) network so as to replicate analogue coverage levels. Such use of state funds would favour DTT over other means of receiving digital television such as digital satellite and would not, therefore, adhere to the principle of technological or platform neutrality. The BBC should, therefore, act in a technological and platform neutral manner in all of its switchover activities including information campaigns (whether its own or Switchco’s) and schemes (including financial assistance) to help the vulnerable cope with switchover.

3. THE SCOPE OF THE BBC’S INDIVIDUAL SERVICES

3.1 In order to maintain an environment in which private investment may flourish and businesses may operate with certainty, the scope of the BBC’s services must be clearly prescribed. In this regard, the Green Paper proposes that the new Trust will hold individual BBC services to specific service licences, which will be developed by the Executive Board.⁷

3.2 The BBC has already produced Statements of Programme Policy for its services. These Statements have specified such anodyne policies for its television channels that they have been described as being “virtually interchangeable”.⁸ Based on past practice, therefore, it would appear that industry is unlikely to gain any certainty as to the scope of the BBC’s services from the service licences which the BBC will, itself, draft.

3.3 Not only should these new service licences specify clearly the scope of the BBC’s services (and the means of distribution or delivery for those services), they must be subject to an adequate approvals process. Furthermore, any extension of those services, for example—as suggested by the Green Paper—“taking advantage of completely new platforms or means of delivering programmes”,⁹ must be subject to an adequate approvals process.

3.4 In this context, the Green Paper proposes that, when assessing whether to authorise new services or extensions to existing services, the Trust will determine whether the “public value” outweighs the market impact of a new or extended service. In relation to proposals for new services, Ofcom will conduct a market impact assessment that the Trust will take into account in determining whether the “public value” of the service outweighs any impact upon competition. In relation to extensions to services, which could potentially have a more significant impact upon competition than a proposed new service, the Trust will conduct the market impact assessment itself, notwithstanding its lack of overview of the industry and its inability to call on the vast amounts of data and information that Ofcom has readily available.

3.5 The BBC put forward the concept of “public value” in its “Building Public Value” document last June. Neither the BBC nor the Green Paper has, however, produced a definition of “public value”, nor have they set out in any detail methods of measurement and assessment that will apply when determining “public value”. There are clear difficulties in defining and measuring “public value”. These shortcomings in the concept of “public value” would be compounded if the task of assessing “public value”, and in particular whether it outweighs any negative impact upon competition, were to be handed entirely to the BBC Trust, as proposed by the Green Paper.

3.6 It would be better, therefore, for the Trust to determine whether a new or extended service (i) falls within the BBC’s public purposes, (ii) is an appropriate use of licence fee funds, and (iii) would be sufficiently distinctive from commercial offerings. If the Trust were satisfied on all counts, it should ask Ofcom to perform a market impact assessment. If Ofcom were to find that the new or extended service risked foreclosing a market or significantly lessening competition, then the proposal could not proceed.

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⁷ Page 11 of the Green Paper.

⁸ *The Guardian*, 9 May 2005.

⁹ Page 89 of the Green Paper.

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Examination of Witnesses

Witnesses: MR RICHARD FREUDENSTEIN, Chief Operating Officer, MR MIKE DARCEY, Director of Strategy, and MR MICHAEL RHODES, Head of Regulatory Affairs, BSkyB, examined.

Q538 Chairman: I am sorry to keep you waiting. Let us begin. Would you like to introduce your colleagues?

Mr Freudenstein: I am Richard Freudenstein. I am the Chief Operating Officer of Sky. Mike Darcey is Head of Strategy and Michael Rhodes is Head of our Regulatory Team.

Q539 Chairman: I have asked ITV and I have asked Channel Five: could you tell us a little bit about your history, ownership audience and the rest?

Mr Freudenstein: Sure. BSkyB is the largest provider of pay TV services in this country. We are a public company in the FTSE top 30 companies. We are 35 per cent owned by News Corporation and most of the rest is owned by public institutions. We launched digital services in 1998 and we currently have 7.7 million subscribers and employ over 11,000 people in the UK. We pride ourselves on bringing a range of choice and diversity to UK consumers and currently have 400 television and radio channels available on the satellite platform together with a range of interactive services. We also pride ourselves on our leadership in technical innovation. Having launched digital television in 1998 and invested large amounts of money to drive digital television, we are now investing in Sky Plus which is our hard drive set-top box where you can record programmes at the touch of a button, pause live TV, record a whole series very easily, which is another step forward in consumer technology, and we also plan in the near future to launch high definition television, which again will be a step change in our customers' viewing habits, and indeed the satellite platform is ideally suited for that with a wide amount of band width. We look forward to continuing to grow our business in the coming years and are happy to answer any questions you may have.

Q540 Chairman: Both ITV and Channel Five said that they were in favour of the BBC being supported by the licence fee. Is that also your view?

Mr Freudenstein: That is not a simple question. To decide whether the licence fee is the right way to support the BBC or not you must first decide what you want the BBC to do, and then, once you have decided that, which is not easy, you must then decide how much money you will need to do what you want to do. The third question is then what is the best way to fund that, and that depends a lot on the answers to the first two questions. Given the way things are with the licence fee it is probably the least worst way to fund the BBC.

Q541 Chairman: That takes us on to the next question: what do you want the BBC to do? You seem to be fairly restrictive in what you want the BBC to do. You want BBC programmes to be "distinctive" from those provided by the commercial sector. What do you mean by "distinctive"?

Mr Freudenstein: I think the issue here is that we are talking about a large amount of public money and you have to decide why you are using public money to do something that could potentially otherwise be done by commercial broadcasters. The Green Paper identified a number of good reasons for the BBC to do what it does and it came up with a number of core purposes for the BBC to try and fulfil. Having said that it should strive to be distinctive I think that we would put that a bit higher and say that it should be distinctive because otherwise it is just doing what the commercial broadcasters will do anyway. Is that the best use of public money? If you are using public money I think you need to be striving to do innovative, quality programming and something that is different from what is being done elsewhere on television.

Q542 Chairman: Would that mean that you would park the BBC in a corner and it would be confined to doing the kinds of programmes that no-one else did and be almost a minority channel?

Mr Freudenstein: No, not at all. I think there are a number of ways in which the BBC can be distinctive and they themselves identified that in their response to the Green Paper, where they say they can be distinctive in kind, as in doing different programmes, or just in the way they do a certain programme, ie, spending more time doing a documentary programme which commercial broadcasters could not afford to do. There is a whole range of ways in which the BBC could be distinctive but I think it needs to be doing something different.

Q543 Chairman: It would actually reduce the competition to you, would it not? It would be quite helpful if the BBC was reduced in this way.

Mr Freudenstein: We do not mind competition at all. We are very happy to have competition. We do quite well when we compete. We just want to understand what we are competing against, and again it comes back to the fact that if you are using public money you should use it in a way that is driving public purposes.

Q544 Lord Maxton: Outside of sport you really are not competing with the BBC except possibly on the News channel. In fact, you are a carrier of the BBC

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in a variety of different ways. There are the main channels, of course, but there are BBC3 and BBC4 on as well now and the UK Gold channels are all based very largely on BBC programmes. The Discovery channels are based on ex-BBC documentaries, as are the animal programmes. The History channels are also, at least in part, so you are not really competing with the BBC at all, are you? You are a carrier for the BBC rather than a competitor.

Mr Freudenstein: It is certainly true that the BBC is on the satellite platform and it is certainly true that some of their joint ventures are part of our package. Like a lot of people who have appeared before you, we have a complicated relationship with the BBC where we compete in some areas and we are partners in other areas.

Q545 Lord Maxton: Is there an obligation on you to carry the BBC?

Mr Freudenstein: There is an obligation for us to offer services to the BBC so that they can be on the satellite, yes.

Q546 Lord Maxton: By law, under the Act?

Mr Freudenstein: Yes. We have to offer them the ability to be on the satellite.

Q547 Lord Maxton: That is true even when you sell your packages to cable companies as well?

Mr Freudenstein: Michael might be better placed to answer that.

Mr Rhodes: The obligation on us is to provide conditional access services, EPG services, things like that, so we have to make the technical services available so that the BBC's channels can be watched through our boxes. We have no obligations in respect of the BBC when it comes to cable. We supply our channels to cable. The BBC has its own relationship with cable which has nothing to do with us.

Q548 Lord Holme of Cheltenham: We must get absolute clarity on this. The must-carry, must-provide provisions do not apply to BSkyB?

Mr Rhodes: It is a different thing. It is not must-carry in the sense of cable where cable takes the BBC's channels and puts them within its own packages, but we have to offer the technical services to the BBC. We are required by legislation to operate an open platform, so if the BBC said to us, "We want to make our channels available to your viewers", we do not have the ability to say no. We are required to make the technical services available so that the BBC can reach our viewers.

Lord Holme of Cheltenham: That is a very useful clarification.

Q549 Lord Maxton: When it comes to your digital programmes and you click on the thing and up comes your list of programmes, are you obliged to put the BBC high up? You do put the BBC high up. Is that because you have to or because you want to?

Mr Rhodes: Originally we were under a requirement to offer due prominence to the BBC's channels and that has now evolved with the new Communications Act. We are now under an obligation to offer appropriate prominence, which is a reasonably undefined term. In practice what we did when we launched the digital service was to list the channels which were present at launch by audience share which, as you will appreciate, had the effect of putting the five analogue terrestrial channels at the top. We chose to adjust the order slightly so that they appeared in the order in which viewers would be used to finding them, BBC1, BBC2, ITV, rather than perhaps ITV at the top. It was a sensible way to populate the EPG which we did by choice. It just so happened to result in appropriate prominence as well, so everyone seemed quite happy with it.

Q550 Lord Holme of Cheltenham: Lord Maxton mentioned Sky News. We were just hearing before you took the floor from ITV that to produce good news of public service quality appears to potentially need some sort of subsidy in the new digital age. I have to say that, although I do not see a great deal of BSkyB, in many foreign hotel bedrooms I watch Sky News and I would like to compliment you on it. I think Sky News has got a very high standard and represents an extremely good alternative to BBC World News or CNN.

Mr Freudenstein: Thank you.

Q551 Lord Holme of Cheltenham: The question I would like to ask you is: how does that work? Thank God for all of us it is not Fox News which, given your proprietor, it might be, but it is not Fox News; it is Sky News—high quality, objective, impartial, good coverage. How does that work? Is that profitable? Why do you do it? Why is it done so well? Could you talk about it both commercially and as a matter of company strategy and policy?

Mr Freudenstein: Thank you for your comments. We are very proud of Sky News. It is one of our pioneering services, the first 24-hour news channel in the UK. We do invest in that channel because it is important for our brand, it is important as part of our overall subscription package, and we are continuing to invest in that as time goes on, even though we receive no public subsidy. It did become a tougher economic proposition when BBC News 24 was launched because that channel was then given away free to cable operators and our ability to charge for Sky News was reduced. However, it does derive good

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advertising revenue as well and is a good component of our overall package.

Q552 Lord Holme of Cheltenham: But you basically have Sky News because you think it is an important component of a comprehensive offer that you make. You think without it you would be less strong?

Mr Freudenstein: That is correct. It is important as part of our overall subscription offering that people have a wide choice of channels—news, sports, movies, general entertainment, arts channels, foreign language channels, documentary channels. The whole range is important.

Q553 Chairman: Does it make money?

Mr Freudenstein: We do not break it out as a separate entity.

Q554 Chairman: You do not break it down to see whether Sky News does make a profit?

Mr Freudenstein: No. Because it is part of our overall subscription package it is not something we break out.

Q555 Chairman: What audience does it have? Can you tell us that?

Mr Freudenstein: It rates about the same as BBC News 24, above or below, depending on the story in the week.

Mr Darcey: It rates more highly than News 24 on the satellite platform and less well than News 24 on the Freeview platform, and it balances out at the moment at just about parity. It is about 0.7 per cent share of viewing on average.

Q556 Chairman: How many people are actually watching?

Mr Darcey: That is not really the way we think about it.

Chairman: Perhaps you might think about that and come back.

Q557 Lord King of Bridgwater: Why do people subscribe to Sky? In what order do you put your services or your programming, which channels?

Mr Freudenstein: When we research it there are a number of reasons why people subscribe. The main reason they give now is the wide variety of choice. There are over 400 channels. There are a lot of radio channels as well. There is the interactivity. It is the ideal choice of platform. Within that choice people break it down. There are a large number of people who subscribe to our sports services, movies, but the overall driver is the range of choice.

Q558 Lord King of Bridgwater: Is not sport really the pull?

Mr Freudenstein: No. The number one reason is choice. Sport is one of the popular reasons. Better picture quality and sound quality is another reason. There is a whole range of reasons but the highest one is choice.

Q559 Lord Peston: Of course, I agree with Lord Holme in what he said about Sky News. I would apply the same point to Sky Sports News. Of course, you gain from the fact that you are competing with someone very good, namely, the BBC, on this. It is a symmetric thing. You have told us why you do what you do, at least in that area. The question that has always intrigued me, and I am an ardent Sky viewer, largely because of sport, but not entirely; you show more rubbish films than anybody and I am devoted to rubbish films, but the serious question is, what makes you decide not to do things? To take an obvious example, you show a programme like 24, which is marvellous, but yet there must be available to you, again from the Americans, things like opera transmissions from the US and concert transmissions, and on the whole (although I am not sure what you show now) it is not exactly the main focus of what you do. Do you not do certain things solely because they are unprofitable or because they do not contribute to your corporate image or what? What is the negativity criterion as opposed to the positive one?

Mr Freudenstein: We now own the channel called Artsworld in this country. We were previously 50 per cent owners of it; we have now taken full ownership of Artsworld and we do therefore invest in a range of high quality arts programmes.

Q560 Lord Peston: If I may just interrupt you, of course, what people like me do not know is that that is you.

Mr Freudenstein: Yes. It has only in the last few months been us. We will be investing more in arts programming going forward. There are a number of reasons why we may not invest in something. One reason is that we are a commercial entity; we have to at the end of the day make money, so we will look at whether there is room to make the investment or whether the area where the investment may take place has already been crowded out by other commercial or public service broadcasters, and that very often happens. The second reason is allocation of resources and what is the best thing to invest in. We have found as our strategy has evolved, and in the early days we were quite driven by sport, that we have wanted to make our service available to more and more customers and attractive to more and more customers. You asked how we would invest in different programming and arts is the obvious example.

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Q561 Baroness Gibson of Market Rasen: I am interested in one part of your submission to us. You have just talked about wider choice. In one part of your submission you talk about the BBC actually withdrawing resources from areas where viewers are well served. I wonder if you can tell us how you measure whether viewers are well served and who would take the decision in relation to all of you juggling together about the BBC withdrawal.

Mr Freudenstein: There are a number of ways that you would do it and you would really do it on a case by case basis. There are both quantitative and qualitative ways you can do it. Quantitatively you can look at a number of other programmes which fit into that genre across the channels. Qualitatively you can do a range of audience research. The Davies report last time this came round did a whole bunch of qualitative research talking to people about what channels do things well and what channels do things better. I think it is important that the BBC themselves accepted this idea of withdrawing in a sense. In their response to the Green Paper they talk about moving on from formats that have become commercialised and that is a valid point. The whole issue of who judges it is a difficult issue because you have the Green Paper's concept of the Trust but I think you still have the flaw which the government identified in the Green Paper itself, that if you have an entity which is both the cheerleader and supporter of an organisation and at the same time is trying to be the regulator and the judge of that organisation that problem still exists. In theory it would be the Trust but I do not think they have quite sorted out that issue yet.

Q562 Lord Kalms: You made a lovely remark before. You said, "We do not mind competition". I remember when I was in business I was a dreadful(?) monopoly. You mentioned that you have got high definition now. Are you to have this uniquely or will the BBC have it? Are you talking about transmitting on 1,000 lines and are you talking about the industry having to sell sets to accommodate a thousand lines? Are you talking about seriously going into high definition transmission? The BBC I doubt have got the plans to do that because this is one of the most massive capital investments you can have.

Mr Freudenstein: We are talking about high definition television. We are talking about 1,000 lines or 720, both high definitions. In terms of new sets, industry research says that there are going to be over a million high definition capable televisions sold this year in the UK and the same number next year and probably more over time, so a number of television sets capable of receiving high definition will be out there already and all the retailers will be dying to sell them. The BBC does have plans to start investing in this area. We will again be taking the big risk and making the

big investment of buying set-top boxes and bringing them out in the market for people to receive the services by satellite. As I mentioned, satellite is a great platform for high definition television because we have got broadly unlimited capacity because it does take up more capacity than the standard definition signal. My understanding is, and we have had some preliminary discussions with the BBC, that they will begin to invest in high definition and they will presumably roll it out on every platform they can, which will obviously be satellite and may in time be cable and digital terrestrial as well.

Q563 Lord Kalms: It is a quantum leap though to change the standard transmission. It is a very serious decision to do so. It will put a lot of strain on your competitors.

Mr Freudenstein: Again, we pride ourselves on leading technical innovation and giving customers what they want and so we will be investing in this. It is an investment for us and it will be an investment for others but if that is what customers want that is what we have to do.

Q564 Lord Kalms: Many of the sets are free now. The sets are going to sell for, what, thousands of pounds? They are going to be very expensive, so you are going to have two standards of transmission: those who can afford the high definition set and the standard transmission. A million sets is nothing in relation to the size of the market. It is going to restructure the whole way of receiving television signals.

Mr Freudenstein: It will. There will be standard definition for a long time and high definition will be for people who are willing to invest a bit more because of their enjoyment of television. Yes, there will be two signals but that is the case at the moment with analogue and digital.

Q565 Lord Kalms: But if the BBC cannot or will not or are not ready because they have not got the capacity or the capital, you will have a very substantial competitive edge and in our discussions with the BBC we have not heard them quantify their desirability to go full-frontal with you, so you will jump ahead of them quite substantially.

Mr Freudenstein: That is probably right. In 1998 we led the country in digital television and now we are taking the next step and we hope that others will follow, but yes, but the whole idea is to continue our investment.

Lord Kalms: I am sure you will but it has implications.

Q566 Chairman: The BBC are showing us next week their programme on HDTV.

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Mr Freudenstein: So they are planning to be involved.
Mr Darcey: I think we are slightly talking at cross purposes here because the real sense in which Sky is pushing ahead is that Sky has the satellite platform. It is the capability of the platform that is pushing ahead. We see that the cable industry will respond and it remains to be seen where the DTT platform will go, given that it has more serious capacity constraints. As a broadcaster, once Sky and the total industry have done the work of putting the platforms in place it will then be open for all broadcasters to create high definition channels and to broadcast them. They will be able to benefit in the same way as everybody else from the fact that a high definition platform is being established. I am not sure it does put the BBC at a disadvantage. I think you could flip it round and say that Sky is going to make quite a significant investment here and the BBC will have an opportunity to show off what great programming it can make in an HD environment and having it shown on the satellite platform.

Q567 Chairman: The cost of transmission is substantially greater, is it not, by definition?

Mr Freudenstein: Yes, but in relative terms the cost of transmission on satellite is not very much, whether it is high definition or a single channel. In relative terms it is a small difference. They will have to make a small investment in facilities as well. We will be the ones making the big investment.

Q568 Bishop of Manchester: I would like to turn to the concept of public value which is something that occupies several paragraphs in your written submission. If I remember correctly, one of the things that you say is that neither the BBC nor the Green Paper has given an adequate definition of that. In its document *Building Public Value* the BBC mentions three areas in terms of individual value, citizen value and net economic value. I wondered if there was anything you would like to say on that because you do not take that up in your paper, and whether in general terms you would talk about public value as you see it from the point of view of Sky and how that relates, for example, to the BBC.

Mr Freudenstein: You have seen some of the statements that have been coming from Michael Grade and Mark Thompson. It is very difficult to define. The BBC came out with a theory a year ago that it is like putting meat on the bones. I do not know what that means. At the moment the concept is so vague and nebulous that it will allow the BBC to do whatever it wants to do but I think it certainly needs to be tightened up a little.

Mr Darcey: Our main concern is that very point. We have read the words and we understand what the words mean but even the BBC is admitting that it is going to be very hard to put any quantification on

this. In terms of individual value you could argue that some reasonable work could be done on that and you could survey viewers and ask what their willingness to pay for a service would be and I think you could get some insight there. The real problem comes in with the second part, citizen value. Trying to put any sort of figure on that, strikes me as very difficult. In the BBC's paper it says that these are "complex judgmental issues. Assigning monetary value is likely to be very difficult and sometimes impossible". I think that sums up the problem. Once you have something that is sufficiently nebulous that you cannot really put a value on it, then I think our concern and the concern we have heard expressed by some others is that it can therefore be used to justify just about anything.

Q569 Bishop of Manchester: Would you be able to provide an alternative description of public value or is it a concept that you do not wish to see expanded?

Mr Darcey: I am not sure that it adds a great deal to the debate.

Mr Rhodes: As regards public value, its key use as it was proposed was to measure whether or not the BBC should embark on a new service. An assessment would be made both of its public value and its market impact and then some sort of balancing would take place to see whether or not the public value exceeded the adverse market impact. What we would propose is taking something which, as Mike says, is so nebulous that you cannot really put an objective measure to it and carrying out that sort of function is very difficult, and we have proposed doing away with public value and having a different approach, which involves looking at the principles within the Charter, the purposes that the new services should be achieving, seeing whether or not they are capable of being distinctive, seeing whether or not it is an appropriate use of public money, and then looking at the market impact and seeing whether or not there is a risk that this new service would either foreclose entry to that particular market or otherwise result in a substantial lessening of competition, and if it does have that sort of impact it should not go ahead, but if it does not and it satisfies the principles and purposes of the Charter and it is an appropriate use of public money, then potentially it could go ahead, but you would come up with a test which did not introduce this thing which you cannot measure.

Q570 Lord Peston: First of all, following the Bishop, it seems to me that it is very hard to define public value. If you go abroad and see their systems of television and just concentrate on that, let alone their radio, and you compare it with ours, even if you cannot explain it, the difference in class is just unbelievable. I do not mean just the US; I mean other countries as well. That, some of us would at least put

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to you, is due to the BBC. You then and others make a great contribution as well but it is the BBC that makes sure you do that. I could not answer the question that Michael Rhodes puts, defining it, and yet I can see it. I have no doubt about that at all, what the value created here is. My main point is, again doing the negative thing, you were asked about public value by the Bishop but the converse is the definition of commercial value, and your view was, as I understand it, that you need to distinguish the commercial activity from the public service activity but is it not just as difficult doing that? When I look at the BBC, and they do things which seem to me try to get some money in because that is what the licence payer would like, so what? What is there about the BBC that says they should not, having made a very good drama, try and sell it?

Mr Freudenstein: There is nothing wrong with that. The issue is that it is very difficult to know where to draw the line between what they are doing with the public's money and what they are doing commercially, and to be clear that what happens commercially is in a sense a stand-alone business that does not then unfairly compete with what other people are trying to do commercially. That is where there needs to be some more clarity.

Q571 Lord Peston: If we could push you a bit further in terms of commercial, at the moment one can watch test matches on Sky. Some of us would regard the ability of young people to watch the English game of cricket as rather important in terms of building the value of the nature of our society. It could be argued—I am not putting it more strongly than that—that the fact that this is not shown terrestrially on BBC represents a net loss of value to our country. What is your answer to that?

Mr Freudenstein: I think you should start by asking the BBC that question, seeing that they did not bid for the cricket this time round. Clearly they did not think there was any public value in showing it.

Mr Darcey: I think Channel 4 show it.

Q572 Lord Peston: You show it.

Mr Freudenstein: Yes.

Mr Darcey: Actually, out of seven home test matches we show one. Channel 4 shows the other six.

Q573 Lord Peston: I have seen a lot of cricket on Sky.

Mr Darcey: You may be talking about overseas cricket.

Mr Freudenstein: We show all the overseas cricket, which again, until we started showing it, was never shown in this country.

Q574 Lord Peston: But your view is that it is not that the BBC could not afford it and they have been outbid by others but that they decided not to spend the money?

Mr Freudenstein: Certainly in this particular example, the next round of domestic test cricket, they did not even bother to bid. They have got a large amount of money. It is up to them to prioritise how they think it should be spent. They decided this was not what they wanted to spend it on. In terms of what terrestrial broadcasters do with cricket compared with what we do with it, you end up with a situation where cricket has suffered a little bit, certainly at the margins, by having been cut off because they want to go to another programme, having started earlier in the day because they want to finish by a certain time, all the things where multi-channel television is much better suited to it because we can show the whole thing uninterrupted.

Q575 Lord Peston: Could you give us an example of a commercial activity that the BBC are in that they should not be in?

Mr Freudenstein: It is all a judgment call. If you look at what the BBC did on line, the on-line service was given a very broad and vague remit and now they can just extend that business to a whole range of things such as fantasy football websites where there are three or four other people doing the same thing and that now has shut down. That is one example. The rest all become very subjective and we can debate that, but there are lots of examples.

Q576 Lord Maxton: But surely if the BBC produces a good commercial programme that people want to watch it is to your benefit because you are going to have to carry it and therefore you are going to attract more people to Sky because people watch BBC on you.

Mr Freudenstein: Except, as Michael pointed out, that we are different from cable. When the BBC is on cable it is part of the cable operator's service. When the BBC is on satellite it is because we are an open platform. You can see the BBC on satellite without subscribing to Sky, so there is a difference there.

Q577 Lord Maxton: So the BBC do not pay you anything?

Mr Rhodes: They pay for the services that I described earlier, the technical services which we provide which enable them to be on the platform.

Q578 Lord Maxton: So they do pay?

Mr Freudenstein: It is a flat fee.

Mr Darcey: They are not part of our package. They are not part of what we retail to customers. If the BBC were to have twice as much money as it has today and had twice as many channels and they were

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even better than they are today, they would all be available free to air on analogue or on the Freeview platform, and that would tend to operate in the other direction. That would lessen people's need to go out and seek further choice. I am not sure we would agree with your premise. I think that tends to make it harder for commercial operators to attract viewers.

Q579 Lord Maxton: It is interesting that the one area you have mentioned, the specific example you gave, is not an area in which you are directly involved, which is on-line.

Mr Freudenstein: We are involved in on-line.

Q580 Lord Maxton: But the BBC were the innovators in terms of on-line broadcasts.

Mr Freudenstein: Well, no, there was a whole range of—

Q581 Chairman: Is that the complaint you are making?

Mr Freudenstein: It is part of it. There is a whole range of on-line operators who would perhaps have done more in that space except that the BBC was able to get in there and take over and crowd out a lot of people from doing that, because clearly if you can come in and provide a service for free then almost by definition a commercial operator needs to charge for that service. We are not saying what they should and should not do, but when they do something like that there needs to be a framework to assess why they are doing that or what is the market impact of having done that. We are not saying what is right or wrong. We want to see a robust framework to make sure that the right people get to assess that and make that decision.

Mr Darcey: The thing that the industry is looking for is clarity on what the BBC is and is not allowed to do. If they are going to do something and the service is approved then it is finally clear what it is and what it is not.

Q582 Chairman: Who would police that to make it clear? How would that clarity be produced, because it can only be produced if there is some sort of control mechanism?

Mr Darcey: The service licences.

Mr Rhodes: Absolutely right. One of the key aspects of the proposal in the Green Paper is for service licences. Whether or not the proposals in the Green Paper eventually prove fruitful depends on those documents which we have not yet seen. There is a commitment in the Green Paper to introduce a set of parameters for the BBC with more rigour and clarity than we have had before and I think that requires a proper specification of each service in the service licence, its budget, its means of distribution, so that the commercial sector is well aware of what it is they

are competing against and where the BBC is going to go and where it will not go. At the moment we have a suggestion that this is coming. We have not yet seen that.

Q583 Chairman: What would your proposal be?

Mr Rhodes: Our proposal is absolutely that the each BBC service should have a service licence on the lines that I have just described. I think that is absolutely vital. You then get into the question of who enforces the terms of that service licence.

Q584 Chairman: And then?

Mr Rhodes: Possibly, unusually for us, we feel that Ofcom has come up with some good suggestions on this.

Q585 Chairman: Why unusually?

Mr Rhodes: I think it is in the nature of a regulated company that it and its regulator disagree, or at least do not always see eye to eye.

Q586 Chairman: So the fact that you have come up with a proposal, and I do not know whether it is a proposal yet, but at least a warm feeling as far as Ofcom is concerned, is quite significant?

Mr Rhodes: It is. It is not just Ofcom; it is also the Independent Panel. If you look at what is proposed by both of them you need a very clear separation between regulation and governance. Regulation and governance are not synonyms. Michael Grade described governance as being stewardship of the money and regulation is something different entirely. It is about setting the rules and then enforcing the rules over things like fair trading, taste and decency, accuracy, impartiality, those rules that govern the content. What you find in the Green Paper is that these key concepts of governance and regulation remain blurred. They both vest in the Trust and I think that poses real problems because one of the things that the Green Paper suggests is that the Trust will remain if you like the champion of the BBC. They do say expressly in one place that the Trust will be a buffer against pressure from government. It has to be the champion of the BBC's independence. If you think back to the issues that concerned the Hutton report you had a situation there where the government made a complaint about the BBC over an alleged lack of accuracy of a story. The relevant regulator there was the BBC Governors. They were also the champion of the BBC and they were charged with defending its independence, so when faced with this complaint their initial reaction was to defend the independence of the BBC, not to act as a regulator and investigate the merits of the complaint. You have exactly the same situation now with the Trust. You have a regulator which also in certain circumstances will be defending the BBC. From our point of view

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that is not the right body that should be carrying out these tasks. We think that what the Burns Panel and Ofcom have said about separating governance and regulation is absolutely right. Can I just give you one other analogy about this? If you look at Sky, for example, there are effectively three tiers involved in management and governance and regulation of Sky. We have a management committee of the senior executives of the company that is responsible for day-to-day management. They are governed by the board of directors and the board complies with the Combined Code. We have a non-executive chairman; we have a majority of non-executive directors. They are responsible for checking that the management acts in the interests of the company's owners, ie, the shareholders. That is where governance happens. It happens in a separate body from the management. Nobody thinks that it will be sufficient for our governors, ie, our board, to act as our regulator. It is totally accepted that there should be an independent regulator, another body still, which is Ofcom.

Q587 Chairman: But your board presumably is a standard commercial board?

Mr Rhodes: It is a standard plc board.

Q588 Chairman: You have got a management board with a management executive, whatever you want to call it, underneath that?

Mr Rhodes: Correct, but that is what is proposed with the BBC, that you have a management board, the Executive Board of the BBC, and then you have the Trust.

Q589 Chairman: It is not quite like that because on this management board you have got non-executive directors.

Mr Rhodes: Which is a very interesting point. If you are putting non-execs on the management board does that have some sort of governance role which it should not have? The governance role should be one step up, in which case why are there non-execs on the management board? It seems very blurred.

Q590 Lord King of Bridgwater: Just on your non-executives, are they UK residents?

Mr Freudenstein: Most of them are UK residents. As Michael said, we have a plc board, the majority of whom are independent non-execs, and then most of those are resident in the UK. We do bring some expertise from the US.

Q591 Lord King of Bridgwater: You are running a hugely successful operation generating substantial cash, doing extremely well, and you are coming in here to complain about unfair competition from the BBC. I know you have been very careful not to put it like that, but you have put in all sorts of suggestions

about how you think the rules ought to be changed, how it is all terribly difficult for poor, humble people like you to earn an honest crust, when we know you are a hugely successful operation. Lord Peston has made the point that now I shall not be able to watch cricket any more and next season we have got the Australian tour and then it is out. Do you not find that a little ironic?

Mr Freudenstein: First of all, we are successful but we took a big risk to become successful. We invested a lot of money. Referring to something Mike said earlier, we are looking for certainty, we are looking to understand that as we continue to invest money where will the BBC be, what are we going to be competing against? I am not saying the BBC should not do anything. We just want some certainty around a framework about what they are going to do. Sky is doing quite well but we are investors and we are partners with a number of channels who are not doing so well. The reason we now own 100 per cent of Artsworld is that that channel has gone out of business twice. It launched, it found a niche in the market, it appealed to high arts consumers, and very soon after it launched BBC4 was launched to compete directly against it with government money. We had no idea that was going to happen when this channel was launched. It has been a very tough struggle for that channel. We have kept it alive by investing in it and finally owning it 100 per cent. We think we can make money. Similarly, we are an investor in a children's channel, Nickelodeon, which makes a little bit of money, but again it has had its business attacked by the BBC launching two children's channels. Again, when Nickelodeon first came to the market there was no thought that the BBC would launch children's channels. There are numerous examples of owners of businesses that really do need to know what is going to happen to have some idea whether they are taking a huge risk in investing money in this market.

Mr Rhodes: I do not think it is fair to characterise what we are doing as coming here and complaining about the BBC.

Q592 Lord King of Bridgwater: You did it very discreetly.

Mr Rhodes: I think what we are doing is echoing a lot of what has been said elsewhere, including in parts in the Green Paper, which is that we are at a stage now where it is absolutely appropriate to define what the BBC is and what it should do and where it can go with real rigour and clarity and to make sure that it is distinctive from what the rest of the sector is providing. Those are all concepts that are in the Green Paper and these are ones that we have wholeheartedly endorsed. What we are saying though is that we need to make sure that it actually happens and does not stop with those warm words

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but you go through and put in place the right service licences and the right governance and regulatory regime to make sure that these commitments get delivered.

Q593 Chairman: If you were going to try to summarise your attitude to the BBC in a few words, what would it be?

Mr Freudenstein: The BBC is a producer of high quality programmes and channels and we have a great deal of respect for the BBC.

Q594 Chairman: You would not like to go any further on what the limits should be?

Mr Freudenstein: Michael is saying they are a very capable competitor.

Q595 Lord Peston: I have just one supplementary. In a competitive world, and I heard these arguments you gave to Lord King, why should the BBC not look at something you do and say, "We can do it better and we are going to do it"? The BBC has been set up and if they simply say, "We did not think of the idea of this arts channel; you did, but we now realise we can do it better than you", I cannot imagine why in the licence payers' interests the BBC should not then do it, assuming that this is not just an example of wilful attempting to stop you doing something but a genuine attempt to do something better.

Mr Freudenstein: I suppose it is a question of why they are doing it. We are talking about a large amount of public money. The question is, why are they doing that? If they are bringing something distinctive and different then you may argue maybe they should be doing that. They have to decide how to allocate their money to do things for these public purposes and if it is already being done well in the commercial sector then why should they do it?

Q596 Lord Peston: Because they can do it better. Let me take the converse. I would regard your football commentators as better than the BBC's, no doubt about that. I would rather have a filter that did not have any commentators at all, but that is by the way, but yours are very good. I can well see you are saying, "We can do this better than the BBC. We will get into

it and we will do it", and that seems perfectly fair to me and I assume you would do it, not for destructive reasons but because you genuinely do it better, so I am slightly puzzled at your response to Lord King by implying that the BBC might not be doing it solely because they can do it better. They are stealing your idea; I agree with that, but that is the nature of competition.

Mr Freudenstein: I do not think that *per se* is enough because they will always think they can do it better, the same as we will always think we can do it better. There has to be some other criterion than just, "We think we can do it better".

Q597 Lord Maxton: But at the end of the day you are complaining about the BBC competing with you and doing things that they can perhaps do better. We have great admiration for what you do in sport but at the end of the day you very largely killed a large amount of sport on BBC because you simply offered the governing bodies of sport considerably more money than the licence payer and the BBC were prepared to pay, so rugby very largely went off; it is now coming back maybe, and that is my sport. Football, golf, large numbers of sports are not now on the BBC where they were in the past and if the cup finals and things like that were not protected by law you would have them as well. You would outbid the BBC and take them away.

Mr Freudenstein: I need to correct that because the BBC and ITV now show more hours of sport than they did before we came along. When we first bought the Premier League rights, for example, the BBC showed nine and a half football games a year. The half was the second half of the international against Greece; they did not bother showing the first half because they were showing *Neighbours*. They now show more sport than they did before we came along because we have raised the bar and I think we have done a good job with sport. I do not think that proposition is correct.

Chairman: We have to bring this to an end. We are actually looking at the future of the BBC. I am immensely grateful to you for coming. Thank you and your colleagues very much for answering the questions. Perhaps if we have any other questions we can put those to you by letter.

Supplementary letter and memorandum from BSkyB

At the end of our hearing on 7 June, you mentioned that you would welcome further comments from Sky on the issues of governance and regulation of the BBC.

I attach a brief paper which expands upon the views we expressed during the hearing.

We would be very willing to answer any further questions which you or your Committee may have.

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Governance and Regulation of the BBC

EXECUTIVE SUMMARY

- Governance and regulation are not synonyms. Governance involves the arrangements which ensure that an organisation is effectively managed on behalf of its members/owners; regulation involves the specification and enforcement of rules across a particular sector. Defects in the regulation of the BBC cannot be remedied by adjustments to the governance of the BBC (and vice versa). (See section 1.)
- There have been almost universal calls for reform of the arrangements for governance and regulation of the BBC, with particular emphasis on the need clearly to distinguish the separate functions of governance and regulation. (See section 2.)
- The Green Paper eschews such a clear distinction and effectively perpetuates the current conflation of the functions of governance and regulation. By proposing a new BBC Trust to be responsible for “oversight” (a term which encompasses both governance and regulation) and a new Executive Board to be responsible for “delivery”, the Green Paper seeks to clarify the distinction between the governance and management of the BBC, rather than clarify the distinction between the governance and regulation of the BBC. Whilst this clarification of the distinction between the governance and the management of the BBC is welcome, it does not address shortcomings in the current regulation of the BBC. (See section 3.)
- The Green Paper states that the BBC Trust will be “the sovereign body” for the BBC and “the guardian of the BBC’s strength and independence”. Thus, the BBC Trust will be “cheerleaders” for the BBC, just as the Governors have been to date. Despite recognising the conflict of one group of people being both “cheerleaders” and “objective assessors” of the BBC, the Green Paper proposes that the BBC Trust should assume all the regulatory functions which currently reside with the BBC Governors. (See section 4.)
- The Green Paper suggests that regulation of the BBC by Ofcom would not be desirable as Ofcom is Government-appointed. Yet, the BBC Trust will, in effect, also be Government-appointed. The other reasons put forward by the Green Paper for rejecting regulation of the BBC by Ofcom demonstrate that the Green Paper takes insufficient account of the difference between governance and regulation. In practice, the Green Paper concludes that Ofcom should not regulate the BBC because it would not be appropriate for Ofcom to govern the BBC. (See section 5.)
- For the reasons put forward by many other parties, including Ofcom and the OFT, independent regulation of all aspects of the BBC is warranted. Furthermore, such independent regulation of the BBC’s publicly funded activities is necessary in order to comply with the European Commission’s guidance on the application of State aid rules to public service broadcasting. As “the guardian of the BBC’s strength and independence”, the BBC Trust will not be sufficiently independent to regulate the BBC. (See section 6.)
- Even if all the regulatory responsibilities of the BBC Governors were not to be transferred to Ofcom, certain specific activities should be so transferred. For example, the Green Paper recognises that complainants (such as the BBC’s private sector competitors) need to have fair and equal access to a transparent and objective complaints procedure. Yet, instead of introducing such a procedure, the Green Paper proposes that complaints must be submitted to the Executive Board itself and, in difficult cases, to “the guardian of the BBC”, the BBC Trust. This proposal perpetuates the inconsistency between the current arrangements and the first principle of natural justice: nobody should be a judge in his own cause. (See section 7.)
- During Parliamentary debates on the then Communications Bill, the Government was adamant that *ex ante* competition powers were needed in the broadcasting sector. Such powers were included in section 316 of the Communications Act in respect of commercial broadcasters. The Green Paper now proposes, however, that, contrary to the advice of Ofcom and the OFT, such *ex ante* competition powers are not required in respect of the BBC. Thus, the Green Paper adopts the untenable position that, uniquely in the broadcasting sector, the BBC should be subject to *ex post* competition powers but not *ex ante* competition powers. (See section 8.)
- Due to the flexibility permitted to the BBC under its Fair Trading Commitment and the fact that this Commitment is not subject to external scrutiny or enforcement, the Commitment does not ensure that the BBC trades fairly. In future, therefore, the scope of the Fair Trading Commitment should be extended to include the BBC’s public services and the terms of the Commitment should be approved, and enforced, by Ofcom. Such an approach could be used to ensure a consistent

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application of *ex ante* competition powers to the BBC as well as its commercial competitors. (See section 9.)

- The Green Paper proposes that Ofcom will carry out market impact assessments in respect of new services but that the BBC Trust will, itself, carry out market impact assessments in respect of enhancements to existing services. In practice, the BBC Trust will not have access to the information it needs in order to be able to carry out such assessments. Indeed, it would be wholly inappropriate for the BBC to have such detailed information about its commercial competitors. Accordingly, Ofcom should, as it has proposed, carry out all market impact assessments in respect of the BBC. (See section 10.)

Governance and Regulation of the BBC

1. TERMINOLOGY

1.1 A precursor to detailed consideration of the governance and regulation of the BBC is the definition of the relevant terms. With this in mind, Ofcom has drawn a distinction between, among other things:

“regulation: for example the rules, codes and regulations which would normally apply, in varying degrees, to all players in the industry—for example, competition rules, environmental laws and—in this case—programme codes”; and

*“governance: the arrangements which any large organisation should have established to ensure that it is effectively managed and governed on behalf of its key stakeholders . . .”*¹⁰

1.2 The BBC has recognised that:

“Governance is not the same as regulation. Governance is about stewardship. Stewardship of the money. And stewardship of the public interest. This is the difference between the BBC Governors and Ofcom. Ofcom has no responsibility for anybody’s money”.¹¹

1.3 The BBC’s Chairman of Governors has also confirmed that:

“All my experience at Board level in the public and private sector has lead me to this understanding: governance is not the same as regulation. Regulation is about post facto policing of rules—quotas, guidelines, codes and so on. Governance is not about regulation—although ensuring regulatory compliance is part of the job”.¹²

1.4 The Green Paper, itself, includes in a “list of 11 principles for the reform of governance structures” the objective that the system:

*“. . . [be] clear about the distinction between governance and regulation . . .”*¹³

1.5 Thus, it is widely understood that governance and regulation are not synonyms and that, as a consequence, defects in the regulation of the BBC cannot be remedied by adjustments to the governance of the BBC (and *vice versa*).

2. THE NEED FOR CHANGE

2.1 As well as being widely understood that governance and regulation are not synonyms, it is widely accepted that the present governance and regulation of the BBC need to be improved.¹⁴ For example, the Independent Panel, chaired by Lord Burns, stated that:

“[t]here is . . . a high degree of consensus that the current system of governance and regulation at the BBC is unsustainable, and reform—perhaps radical reform—is required”.¹⁵

¹⁰ Paragraph 6.9 of Ofcom’s Review of Public Services Television Broadcasting: Phase 3 Report—Competition for Quality, dated 8 February 2005.

¹¹ BBC press release dated 29 June 2004 entitled “BBC launches its vision of the future and manifesto for Action”.

¹² CBI conference on 8 November 2004.

¹³ Box 5.2 of the Green Paper (page 68). The OFT has, in its response of 2 June 2005 to the Green Paper, also noted that regulation is a “distinct” issue from governance.

¹⁴ The BBC, itself, has acknowledged that: “. . . public expectations of scrutiny and accountability are greater today than in the past and the BBC recognises that its system of governance must change significantly if it is to retain full public confidence over the next Charter period”.

¹⁵ Page 3 of Lord Burns’ letter to the Secretary of State dated 27 January 2005.

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2.2 In its Phase 3 Report on Public Service Television Broadcasting, Ofcom noted that:

*“ . . . clarifying the separate roles of governance and regulation of the BBC should be a central objective of the Charter Review process ”.*¹⁶

2.3 In light of these and other comments, the Green Paper noted that:

*“ [t]here are calls from both the public and broadcasters for reform of the arrangements for governance and regulation [of the BBC] ”.*¹⁷

and the Green Paper ultimately concluded that:

*“ [t]he system needs reform. ”*¹⁸

3. THE GREEN PAPER’S PROPOSALS

3.1 Despite the wide acceptance that the present governance and regulation of the BBC need to be improved and despite the imperative to be “*clear about the distinction between governance and regulation*”,¹⁹ the Green Paper eschews such a clear distinction and effectively perpetuates the current conflation of these functions.

3.2 Instead of clearly defining and separating the roles of governance and regulation of the BBC, the Green Paper introduces the terms “*oversight*” (which encompasses both governance and regulation) and “*delivery*” and states that:

*“ [t]he central principle behind any new governance structure should be increased differentiation and separation of two different sets of functions—those relating to oversight and those relating to delivery ”.*²⁰

3.3 Although there is an acknowledged need for reform leading to a clear distinction between governance and regulation, the Green Paper proposes only a “*new governance structure*” rather than new structures for governance and regulation.

3.4 In respect of the proposed new governance structure, the Green Paper seeks:

*“ [a] clearer separation of function . . . between the part of the BBC that devises and delivers strategy and whatever body is given the task of holding it to account for performance ”.*²¹

and the means for doing this is:

*“ . . . to replace the Board of Governors with a new BBC Trust (a working title), with ultimate responsibility for the licence fee and for upholding the public interest in the BBC. The Trust would assess the performance of the BBC’s services, and approve high-level strategy and budgets. It would devolve issues of day-to-day management and delivery to a separately-constituted Executive Board ”.*²²

3.5 In effect, therefore, the Green Paper seeks to clarify the distinction between the governance and management of the BBC, rather than clarify the distinction between the governance and regulation of the BBC.

3.6 On the issue of regulation, the Green Paper concludes that:

*“ For the time being, regulatory responsibilities should be divided between Ofcom and the BBC Trust in the same way that they are currently divided between Ofcom and the BBC Governors. . . . We propose to leave the arrangements as they are for five years before reviewing them ”.*²³

3.7 Thus the Green Paper effectively proposes no change to the regulation of the BBC. Specifically, the Green Paper proposes to retain the responsibility for governance and some of the responsibility for regulation of the BBC within one body, the BBC Trust.²⁴

¹⁶ Paragraph 6.4 *ibid*.

¹⁷ Section 5 of the Green Paper (page 64).

¹⁸ Paragraph 5.6 of the Green Paper.

¹⁹ Box 5.2 of the Green Paper (page 68).

²⁰ Paragraph 5.12 of the Green Paper.

²¹ Section 5 of the Green Paper (page 64).

²² Section 5 of the Green Paper (page 64). As the Executive Board it is to be tasked with “*day-to-day management*” and not “*holding [the BBC] to account for performance*”, it is somewhat incongruous for the Green Paper to propose that a significant minority of non-executives should form part of the Executive Board (paragraph 5.27). As non-executives, these individuals would not be involved in day-to-day management. Their presence on the board merely seems to blur the distinction between governance and management.

²³ Page 11 of the summary to the Green Paper.

²⁴ The remaining responsibility for regulating the BBC already resides with Ofcom.

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3.8 For the reasons explained below, the Green Paper’s proposals fail to address almost all of the flaws which have been identified in respect of the regulation of the BBC.

4. PERPETUATION OF CONFLICTING ROLES

4.1 With regard to the proposal to draw a clearer distinction between the governance and management of the BBC, the Green Paper confirms that the current approach to governance of the BBC (even with the amendments proposed in the BBC’s document entitled “*Building Public Value*”):

“... gives the Governors too much flexibility to involve themselves in almost any area of management”;²⁵

and the solution to this problem is for:

“... the boundaries of the Trust’s involvement in strategic and financial decisions [to] be clearly set out”.²⁶

4.2 This proposal to draw a clearer distinction between the governance and management of the BBC (and to exclude those charged with governance from day-to-day management decisions) undoubtedly has some merit. It does not, however, eradicate the key conflict of interest which the BBC’s Governors currently experience.

4.3 When considering the need for reform, the Green Paper confirms that:

“[i]t is inherently difficult for one group of people to be convincing both as cheerleaders for the BBC and as objective assessors of its performance”;²⁷

and that the Governors:

“... have also accepted that there is some tension between the two broad roles that they are being asked to fulfil”.²⁸

4.4 Despite recognising this key problem, the Green Paper proposes not only that the BBC Trust will carry out the distinct functions of governance and regulation of the BBC but also that:

“[t]he Trust will act as the sovereign body in relation to the BBC...”;²⁹

“... there is only one, clear sovereign body... [which] will make the Trust a powerful advocate for the public interest and able to safeguard the BBC’s independence...”;³⁰

“[u]ltimately, the Trust will still be responsible for upholding the strength and independence of the BBC itself”;³¹ and

“[the Trust’s] structure should establish it as the guardian of the BBC’s strength and independence—a buffer between the Executive and any external Government or commercial pressure”.³²

4.5 Thus, the Green Paper expressly acknowledges that the BBC Trust will be “the sovereign body” for the BBC and “the guardian of the BBC’s strength and independence”—ie the BBC Trust will be “cheerleaders for the BBC”,³³ just as the Governors have been to date. The Green Paper, therefore, implicitly acknowledges that the approach that it is putting forward for the governance and regulation of the BBC will perpetuate the current conflict between the Governors’ role as cheerleaders for the BBC and their role as regulators.

4.6 The most high-profile events of recent times, which have highlighted the conflict of interest described above, were assessed during the independent inquiry conducted by Lord Hutton in 2003. Lord Hutton reached the following conclusions in respect of this conflict:

“The Governors were right to take the view that it was their duty to protect the independence of the BBC against attacks by the Government...”.

“The view taken by the Governors, as explained in evidence by Mr Gavyn Davies, the Chairman of the Board of Governors, that they had to rely on the BBC management to investigate and assess whether Mr Gilligan’s source was reliable and credible and that it was not for them as Governors to investigate

²⁵ Paragraph 5.16 of the Green Paper.

²⁶ Paragraph 5.29 of the Green Paper.

²⁷ Paragraph 5.7 of the Green Paper.

²⁸ Paragraph 5.8 of the Green Paper.

²⁹ Paragraph 5.26 of the Green Paper.

³⁰ Paragraph 5.32 of the Green Paper.

³¹ Paragraph 5.48 of the Green Paper.

³² Paragraph 5.50 of the Green Paper.

³³ See paragraph 4.3 *ante*.

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whether the allegations reported were themselves accurate, is a view which is understandable. However this was not the correct view for the Governors to take . . .”.

“ . . . rather than relying on the assurances of BBC management, I consider that the Governors themselves should have made more detailed investigations into the extent to which Mr Gilligan’s notes supported his report”.

*. . . the Governors are to be criticised for themselves failing to make more detailed investigations into whether this allegation reported by Mr Gilligan was properly supported by his notes and for failing to give proper and adequate consideration to whether the BBC should publicly acknowledge that this very grave allegation should not have been broadcast”.*³⁴

4.7 As these quotes demonstrate, the independent inquiry conducted by Lord Hutton highlighted the conflict which arises when, in the words of the Green Paper, “*one group of people [seeks to be] both . . . cheerleaders for the BBC and . . . objective assessors of its performance*”.³⁵ Lord Hutton acknowledged in his Report that the Governors were “*right to take the view that it was their duty to protect the independence of the BBC*” and that their decision not to investigate the complaint against the BBC was “*understandable*” because the Governors were cheerleaders for the BBC and thus sought to defend it. Nevertheless, Lord Hutton concluded that this decision not to investigate was “*not . . . correct*” because the Governors were also the regulators of the BBC and had a duty to ensure that its news reporting was accurate. Thus, due to their conflicting roles as cheerleaders and regulators, the Governors were placed in an invidious position.

4.8 In a statement to the House of Commons on Lord Hutton’s report, the Prime Minister said:

*“[t]he report itself is an extraordinarily thorough, detailed and clear document. It leaves no room for doubt or interpretation. We accept it in full”.*³⁶

Yet, despite the careful analysis by Lord Hutton of the structural deficiency in the current governance and regulation of the BBC, the Green Paper proposes to perpetuate this flaw when it replaces the BBC Governors with the BBC Trust. It is, of course, acceptable for the body which is tasked with the governance of the BBC to champion the BBC and seek to protect its strength and independence (as is the case today). A body which has such a responsibility should not, however, also be tasked with regulating the BBC.

5. NO BASIS FOR REJECTING REGULATION BY OFCOM

5.1 As is noted in section 3 above, the Green Paper concludes that the regulatory responsibilities which currently reside with the Governors should be transferred to the BBC Trust, rather than Ofcom. The initial reason canvassed in the Green Paper for rejecting any additional regulation of the BBC by Ofcom is that:

*“ . . . an external Government-appointed regulator such as Ofcom may in fact be more inclined than the Governors to act in a way that it imagines Government would wish”.*³⁷

5.2 The Green Paper seeks to contrast this position when it states that:

*“Members of the Trust would be appointed by the Crown (as the Governors are now) . . .”*³⁸

The reasoning seems, therefore, to be that regulation by the BBC Trust is to be preferred to regulation by Ofcom because Ofcom is Government-appointed whereas the Trust is not.

5.3 This purported distinction between Government-appointment and appointment by the Crown is illusory and has not existed for over three hundred years.³⁹ The Green Paper subsequently concedes that the BBC Governors are, and the BBC Trust will be, Government-appointed when it states that:

“[a]t present, the BBC is ultimately accountable to Government and Parliament through the Charter In addition . . . the Queen appoints the Chair and Governors on the advice of the Prime Minister . . .”,⁴⁰ and

*“ . . . the Trust model . . . makes sure there is only one Government-appointed Chair”.*⁴¹

³⁴ Paragraph 467(2)(v) of the Report of the “*Inquiry into the circumstances surrounding the death of Dr David Kelly CMG*” by Lord Hutton dated 28 January 2004.

³⁵ Paragraph 5.7 of the Green Paper.

³⁶ Hansard, 28 January 2004, Col 337.

³⁷ Paragraph 5.18 of the Green Paper.

³⁸ Paragraph 5.24 of the Green Paper.

³⁹ The very first page of the seminal text on the English constitution states that: “*At the Revolution, the arbitrary rule of the Stuart kings finally gave way to parliamentary government, with ministerial responsibility. Such a change portended the subjection of future kings to the will of Parliament . . .*”. (Chapter 1, Volume 1 of “*The Constitutional History of England*” by Sir Thomas Erskine May—Sixth Edition, 1878.)

⁴⁰ Paragraph 5.62 of the Green Paper.

⁴¹ Paragraph 5.32 of the Green Paper.

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5.4 Thus, the claim that regulation by the Trust is preferable to regulation by Ofcom because Ofcom is Government-appointed (and thereby more inclined to act in a way it imagines Government would wish) is fallacious as the Trust will be similarly Government-appointed.

5.5 Further reasons provided in the Green Paper for rejecting regulation by Ofcom are that:

“Given its range of responsibilities across the commercial sector, it may be difficult for Ofcom to devote itself fully to upholding the public interest in BBC services and programmes, in defending the independence of the BBC itself or in satisfying the need for direct accountability to licence fee payers”; and

*“Significant organisational change would be needed if it were to be entrusted with the guardianship of the BBC—Ofcom is not at present responsible for the direct oversight of public spending on the scale represented by the licence fee”;*⁴²

5.6 When considering these reasons, it should be remembered that regulation and governance are not synonyms: functions of regulation include “policing of rules” whereas functions of governance include “stewardship of the money”.⁴³ The Green Paper’s reasoning, cited above, demonstrates yet again that the Green Paper takes insufficient account of the difference between governance and regulation. Activities such as “defending the independence of the BBC”, “the guardianship of the BBC” and “oversight of public spending” amount to governance not regulation. In essence, therefore, the Green Paper argues that Ofcom should not regulate the BBC because it would not be appropriate for Ofcom to govern the BBC.⁴⁴

5.7 The Green Paper presents no credible reasons why the regulatory (as opposed to the governance) functions which currently reside with the BBC Governors should not be transferred to Ofcom. The reasons why such functions should be transferred to Ofcom are briefly rehearsed in the sections below.

6. THE NEED FOR INDEPENDENT SCRUTINY

6.1 In its evidence to the House of Lords Select Committee on the BBC Charter Review, Ofcom suggested that, if one were to assess regulation on a quantitative basis, Ofcom could be viewed as undertaking 75 per cent of the regulation of the BBC, with the Green Paper proposing that the remaining 25 per cent (which is currently undertaken by the Governors) being transferred to the BBC Trust.⁴⁵

6.2 Ofcom has, in its Phase 3 Report on Public Service Television Broadcasting and its written and oral evidence to the House of Lords Select Committee on the BBC Charter Review, put forward compelling reasons as to why it should have sole responsibility for regulating the BBC.⁴⁶ It is not necessary to restate all these reasons here. It is, however, worth highlighting the principle that:

*“[w]hile **governance** mechanisms may vary between players, depending upon their individual circumstances, it is less and less possible or desirable to think about the **regulation** of individual participants in the sector in isolation from the environment in which they operate”.*⁴⁷ (Emphasis in original.)

6.3 Although the BBC’s unique nature may well justify an idiosyncratic approach to its governance, the BBC should be regulated by the industry regulator, Ofcom, in a consistent fashion with all other participants in the industry.

6.4 There are two further reasons, which have not been canvassed by Ofcom, as to why the regulatory functions of the BBC Governors should be transferred to Ofcom rather than the BBC Trust. First, the Green Paper states that:

*“[t]he Trust will have access to all the information it requires in order to carry out its functions”.*⁴⁸

⁴² Paragraph 5.18 of the Green Paper.

⁴³ See section 1 *ante*.

⁴⁴ In order to seek to bolster its conclusion that Ofcom should not be given additional regulatory responsibilities in respect of the BBC, the Green Paper then states: “[w]e note that Ofcom agrees with this view in its PSB Phase 3 Report” (paragraph 5.18 of the Green Paper). This statement is misleading. Whilst, in its Phase 3 Report, Ofcom agrees that it should not be given governance responsibilities in respect of the BBC (such as acting as its guardian and defending its independence), it expressly concludes that the regulatory functions which currently reside with the BBC Governors should be transferred to Ofcom. (Chapter 6 of Ofcom’s Review of Public Service Television Broadcasting: Phase 3 Report—Competition for Quality, dated 8 February 2005.)

⁴⁵ Response by Stephen Carter, Chief Executive of Ofcom, to question 434 on 6 April 2005.

⁴⁶ See Section 6 of Ofcom’s Review of Public Service Television Broadcasting: Phase 3 Report—Competition for Quality, dated 8 February 2005 and Part 2 (d) of Ofcom’s Written Evidence.

⁴⁷ Paragraph 6.3 of Ofcom’s Review of Public Service Television Broadcasting: Phase 3 Report—Competition for Quality, dated 8 February 2005.

⁴⁸ Paragraph 5.26 of the Green Paper.

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6.5 In practice, in order properly to regulate the BBC, the BBC Trust will need access to substantial amounts of information about the rest of the broadcasting sector (particularly if it is going to carry out market impact assessments—see section 10 below). Ofcom currently has extensive information gathering powers but the BBC Trust would apparently have no such powers. It would not be appropriate for the Government to seek to impose a legal obligation on commercial broadcasters to disclose confidential information (including commercially sensitive information) to the BBC Trust, ie the “*sovereign body*” of a competitor, which will be tasked with setting “*overall objectives*” for the BBC and approving “*strategies*”.

6.6 In the circumstances, therefore, unlike Ofcom the BBC Trust will not have access to the information needed for it to be able to discharge its regulatory functions.

6.7 The second additional reason for transferring the regulatory functions of the BBC Governors to Ofcom is that the European Commission has confirmed that Member States must implement a “*mechanism to ensure effective supervision of the fulfilment of . . . public service obligations*”.⁴⁹ The Commission has also confirmed that:

“*The role of such a body would seem to be effective only if the authority is independent from the entrusted undertaking*”.⁵⁰

6.8 The Green Paper acknowledges that the BBC Trust will not be independent from the BBC: it will be the BBC’s “*sovereign body*” and will be “*the guardian of the BBC’s strength and independence*”. The BBC Trust will, therefore, be the champion of the BBC. As such, it is not appropriate for the BBC Trust to be tasked with holding “*individual BBC services to specific service licences that prevent any significant change in their character*”,⁵¹ as is proposed in the Green Paper.

6.9 Whilst the Trust can discharge governance functions, such as “*stewardship of the money*” and act as the BBC’s champion, it will, as a consequence of taking on those roles, not be sufficiently independent to discharge regulatory functions, such as holding the BBC to its new service licences. That function, together with the BBC Governors’ current regulatory responsibilities, should be transferred to Ofcom.

7. ABSENCE OF A FAIR AND OBJECTIVE COMPLAINTS PROCEDURE

7.1 The principles of good governance which are specified in the Green Paper emphasise the need to provide:

“*. . . adequate protection for those outside the corporation who may be affected by the BBC’s activities (principally, although not confined to, its private sector competitors)*”.⁵²

7.2 The Green Paper also emphasises that:

“*[i]n future, complainants need to have fair and equal access to a transparent, objective process, with the BBC Trust acting as final arbiter in difficult cases*”.⁵³

7.3 It appears, therefore, that, in the first instance, complaints must be submitted to the Executive Board itself. Ultimately, but only “*in difficult cases*”, a complaint may be submitted to the BBC’s champion (ie the BBC Trust).

7.4 Thus, far from providing access to a fair and objective complaints procedure, the Green Paper proposes an approach in which the BBC will be both defendant and judge in respect of complaints over issues where the regulatory responsibility currently resides with the BBC Governors (such as the accuracy and impartiality of its news coverage and the enforcement of the BBC’s Fair Trading Commitment). This approach manifestly fails to satisfy the first principle of natural justice: *nemo iudex in causa sua*.⁵⁴

7.5 Ofcom’s written evidence to the House of Lords Select Committee on the BBC Charter Review sets out (i) the areas in which Ofcom has a regulatory role in relation to the BBC⁵⁵ and (ii) the areas in respect of which the Governors currently act as regulators.⁵⁶ There is no legitimate reason for maintaining this distinction. In respect of all these areas, every other broadcaster in the UK is subject to external regulation and aggrieved

⁴⁹ Paragraph 42 of the Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04).

⁵⁰ *Ibid.*

⁵¹ Summary of the Green Paper (page 7).

⁵² Box 5.2 of the Green Paper (page 68).

⁵³ Precursor to question 10 of the Green Paper (page 12). See also the Principal Functions of the BBC Trust in box 5.5 of the Green Paper (page 73).

⁵⁴ Nobody is allowed to be a judge in his own cause. See Chapter 8 of the Second Edition of “*Judicial Review*” by Michael Supperstone QC and James Goudie QC.

⁵⁵ Paragraphs 4 to 10 of Ofcom’s written evidence to the House of Lords Select Committee on the BBC Charter Review.

⁵⁶ Paragraph 11 *ibid.*

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viewers and competitors are able to submit complaints to an independent regulator. The basic tenets of natural justice should apply in respect of all the BBC's activities in the same way that they do in respect of the activities of commercial broadcasters.

8. THE CASE FOR EX ANTE COMPETITION RULES

8.1 In addition to its failure to introduce a fair and objective complaints procedure, the Green Paper proposes to persist with the current inconsistent approach to *ex ante* and *ex post* competition rules. In respect of the latter, the Green Paper states:

“Ofcom is the sectoral competition regulator for broadcasting and has the same Competition Act powers over the BBC as it does over any other broadcaster”.⁵⁷

8.2 This statement is probably an oversimplification. As Ofcom has noted:

“[t]he application of Competition Act powers in relation to the BBC is not necessarily straightforward. Specifically, there is a potential lack of clarity over whether the BBC is an ‘undertaking’ for the purposes of Competition law, and whether ‘abuse’ can be established given that the BBC does not have an intent to exploit its position in order to make profits”.⁵⁸

8.3 The OFT echoes these views in its response to the Green Paper in which it states:

“... although general competition law certainly applies to the BBC's activities, it may not be sufficiently tailored to the unique position of the BBC to enable competition authorities to investigate some conduct that undoubtedly has the potential to harm competition”.⁵⁹

8.4 Accordingly, the Green Paper should not be quite so sanguine in respect of the application of *ex post* competition law to the BBC. Nevertheless, on the basis that *ex post* competition law does apply to the BBC and can be enforced by Ofcom and the OFT, the Green Paper states:

“We fully support this position. It makes no sense to duplicate expertise in this area”.⁶⁰

8.5 In respect of *ex ante* competition rules, Ofcom noted in its Phase 3 Report on Public Service Television Broadcasting that there is:

“[a]n inconsistent approach to the application of competition law—Ofcom has a much wider tool kit of powers that it can use with its commercial licensees than it has for the BBC”.⁶¹

Ofcom proposed, therefore, that:

“... the approach to competition issues should be the same across the sector—with the BBC subject to the same *ex ante* rules as are the commercial broadcasters. This would allow Ofcom to intervene promptly in the event of a possible threat to competition, and ensure a consistent approach across the market. The BBC would then become explicitly responsible for compliance, and Ofcom for regulation”.⁶²

8.6 Despite these well reasoned representations, the Green Paper concludes that:

“We do not think that Ofcom should be given an additional, open-ended ‘*ex ante*’ power to ensure the BBC acts fairly—we believe that, as proposed, this would cut across the BBC Trust's overriding duty to uphold the public interest in this area”.⁶³

8.7 During parliamentary debates on the then Communications Bill, the question of whether *ex ante* competition powers were needed in the broadcasting sector was considered in some detail. The Government's position, at that time, was summarised by the Broadcasting Minister as follows:

“Those who argue against clause 304⁶⁴ believe that the Competition Act is sufficient to protect against anti-competitive behaviour in broadcasting. That is a cause of fundamental disagreement. Under the prohibitions in the Competition Act—those prohibitions on which Ofcom would largely have to rely were its sector-specific powers to be removed—intervention would be allowed only if there was [sic]

⁵⁷ Paragraph 5.35 of the Green Paper.

⁵⁸ Paragraph 3.11 of Ofcom's Response to the Green Paper, dated 8 June 2005.

⁵⁹ OFT's Response to the Green Paper, dated 2 June 2004.

⁶⁰ Paragraph 5.35 of the Green Paper.

⁶¹ Paragraph 6.20 of Ofcom's Review of Public Service Television Broadcasting: Phase 3 Report—Competition for Quality, dated 8 February 2005.

⁶² Paragraph 6.22 *ibid.*

⁶³ Paragraph 5.36 of the Green Paper.

⁶⁴ Clause 304 of the Communications Bill subsequently became section 316 of the Communications Act.

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an abuse of a dominant position, or if agreements existed that appreciably prevented, restricted or distorted competition. We are concerned about cases in which markets should be opened up to greater competition but where the legal tests required by the Competition Act are not met. That is when the anorak expertise of the hon. Member for South Cambridgeshire becomes important. I shall attempt to explain why.

The sector-specific powers contained in the Bill can be used to supplement those contained in the Competition Act. The Competition Act cannot be applied until the regulator has reason to believe that an enterprise has harmed the market by acting anti-competitively, or that the market has been harmed by existing agreements. As such, there are situations in which the use of sector-specific powers may be more effective, especially where advance action or action in a short time frame is required to ensure effective competition”.⁶⁵

8.8 Thus, the Government was of the view that ex post competition powers alone would be inadequate in the broadcasting sector and that Ofcom should also have ex ante competition powers. Apparently, however, such powers are not required in respect of the BBC even though, as Ofcom has noted:

*“[i]n the past, the BBC’s activities have been subject to competition investigations, and competition problems have been identified”.*⁶⁶

Similarly, the OFT has noted that the BBC:

*“... can ... produce outcomes that are uniquely damaging to effective competition and to commercially funded innovation on media markets, due to [its] unique scale, scope, status and ambition”.*⁶⁷

8.9 The only reason given in the Green Paper for not providing Ofcom with the same ex ante competition powers in respect of the BBC as it has in respect of all other broadcasters is that:

*“[t]his would cut across the BBC Trust’s overriding duty to uphold the public interest ...”.*⁶⁸

8.10 Thus, the Green Paper is either proposing that:

- only ex ante competition powers (and not ex post competition powers) conflict with the BBC Trust’s duty; or
- it is acceptable to have such a conflict when any proposed intervention happens ex post but not when any proposed intervention would happen ex ante.

8.11 Both these propositions are untenable. It is appropriate for Ofcom to have the same ex post competition powers over the BBC as it has in respect of all other broadcasters. It is also appropriate for Ofcom to have the same ex ante competition powers over the BBC as it has in respect of all other broadcasters.

8.12 In its Response to the Green Paper, Ofcom has proposed a pragmatic way to resolve this issue. In order to ensure that there is a consistent approach to competition issues across the broadcasting sector, the scope and enforcement of the BBC’s Fair Trading Commitment should be modified.⁶⁹ Ofcom’s proposal is considered further in section 9 below.

9. THE FAIR TRADING COMMITMENT

9.1 The Green Paper recognises two particular criticisms of the Fair Trading Commitment:

*“... it is expressed in fairly general terms and some have argued that the Governors have not upheld it rigorously enough”.*⁷⁰

Both of these criticisms are valid.

⁶⁵ House of Commons Communications Bill Committee (Standing Committee E) Nineteenth Sitting, 28 January 2003.

⁶⁶ Paragraph 3.11 of Ofcom’s Response to the Green Paper, dated 8 June 2005. In paragraph 3.10, Ofcom noted that: “[j]ust like other broadcasters, the BBC can behave in a way that raises competition concerns”.

⁶⁷ OFT’s Response to the Green Paper, dated 2 June 2005.

⁶⁸ Paragraph 5.36 of the Green Paper.

⁶⁹ See paragraphs 3.16 *et seq* of Ofcom’s Response to the Green Paper, dated 8 June 2005. At present it appears that, not only is the BBC entitled to be a judge in its own cause, it is also entitled to set the competition rules in respect of which it will sit in judgement, as it drafts its own Fair Trading Commitment.

⁷⁰ Green Paper, paragraph 9.17.

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9.2 The Fair Trading Commitment and accompanying Guidelines are drafted in a manner that gives the maximum flexibility to the BBC. For example, where the BBC's commercial activities require use of publicly-funded BBC inputs, page 7 of the Fair Trading Commitment provides that:

*“... fair prices will be negotiated which take proper account of the cost of provision of such inputs. We would not **normally** expect such prices to be out of line with the prevailing market price for similar inputs”* (emphasis added).

The caveat “*normally*” significantly dilutes the impact of this provision.

9.3 The Governors have been slow in updating their procedures to ensure due process in the consideration of complaints about the BBC's commercial services. There is no published procedure for handling such complaints, which appear to be dealt with on an ad hoc basis. In the past, the Governors' published reasons for rejecting complaints have been brief to the point of being meaningless, relying on self-serving statements from the BBC without reference to evidence. For example:

“The Chairman... was confident that the BBC has not, and has no intention of making licence fee funding, or any other direct or indirect subsidy available to UKHistory, UKTV or Flextech”.⁷¹

The Governors did not provide any reasons for the Chairman's confidence.

9.4 In light of these deficiencies and the need to ensure a consistent application of *ex ante* competition rules across the sector (see section 8 above), Ofcom advocates a “*competition-focused Fair Trading Commitment... which is subject to independent approval and oversight*”.⁷² In essence, Ofcom's suggestion, which is endorsed by the OFT, is that the BBC's Fair Trading Commitment should be approved by Ofcom and any substantive complaints about alleged breach of that Commitment should be investigated and adjudicated upon by Ofcom.⁷³

9.5 Ofcom also proposes a further material modification to the Fair Trading Commitment. As the Commitment currently focuses on the BBC's commercial activities, it seems to be assumed that the BBC's public service activities cannot give rise to an anti-competitive effect. In practice, the two key areas in respect of which the BBC is most capable of having an anti-competitive effect concern (i) those of its activities which are publicly funded and (ii) the nexus between those publicly funded activities and the BBC's commercial activities.⁷⁴ At present, the BBC's Fair Trading Commitment does not adequately address these areas. It is, therefore, entirely appropriate that, as Ofcom has suggested:

“[t]he scope of the Fair Trading Commitment should be widened such that it covers licence fee funded services as well as the BBC's commercial services”.⁷⁵

9.6 In practice, the Green Paper actually canvasses the possibility of making the BBC's Fair Trading Commitment subject to Ofcom's approval and applying it “*as a form of 'ex ante' regulation*”.⁷⁶ As is noted in paragraph 8.1 above, the Green Paper concedes that it makes no sense to duplicate expertise in the area of ex post regulation. Clearly, it also makes no sense to duplicate expertise in the area of ex ante regulation. On the assumption that the BBC's Fair Trading Commitment is to be modified and applied in the manner of ex ante regulation (in order to remedy the deficiencies described in section 8 above), the industry regulator is clearly the appropriate body to apply and enforce such regulation.

10. MARKET IMPACT ASSESSMENTS

The Green Paper states that:

“Whenever a proposal is put together for a new service, or the extension of an existing one, it should be submitted to... a market impact assessment, to be conducted according to a standard formula agreed between Ofcom and the BBC Trust, and to be conducted by Ofcom itself in the case of a new service”.⁷⁷

⁷¹ Summary of Fair Trading Complaints, June–August 2002.

⁷² Ofcom response to the Green Paper, paragraph 3.16.

⁷³ Section 3.17 of Ofcom's Response to the Green Paper dated 8 June 2005 and page 7 of the OFT's Response to the Green Paper, dated 2 June 2005.

⁷⁴ It has been said that: “[c]ross-subsidy, predation and self-preference (departure from fair trading obligations) are... forms of anti-competitive behaviour for which the BBC has both the means—the licence fee—and the motive—output maximisation. They are also types of behaviour which are exceptionally difficult to detect without the ability on the part of the regulator or competition authority to build up information and expertise”. M Cave *et al*, Regulating the BBC, at paragraph 6.2.)

⁷⁵ Paragraph 3.17 of Ofcom's Response to the Green Paper dated 8 June 2005. This paragraph also states that “[a] revised Fair Trading Commitment should be agreed... following consultation”.

⁷⁶ Paragraph 9.18 of the Green Paper.

⁷⁷ Paragraph 5.42 of the Green Paper.

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Elsewhere, the Green Paper states that Ofcom's role in respect of market impact assessments for changes to existing services will be limited to "*agreeing the terminology used*" with the BBC Trust.⁷⁸

As is mentioned in paragraph 6.5 above, there is a material practical issue with the BBC Trust carrying out market impact assessments in respect of proposed changes to existing services (even if it has agreed the "*terminology*" with Ofcom). In order genuinely to assess the impact of any proposal on the market, the BBC Trust would need to obtain a significant amount of commercially sensitive information from the BBC's competitors. It would, however, be wholly inappropriate for the BBC's competitors to divulge such information to the BBC's "*sovereign body*".

Furthermore, there is no sound basis for treating applications for new services and applications for changes to existing services in this different fashion. As Ofcom notes:

*"... [s]ignificant changes or repeated changes to existing services are not different in nature to new services, as to their impact on the market(s), competition and on predictability/certainty in the market. Ofcom believes that they should not be treated differently. In fact, if they are treated differently, there is a risk that the objectives of the market impact assessment regime—namely ensuring that the BBC's market impact is limited to an acceptable level—could be circumvented by simply reclassifying a new service as a change to an existing service".*⁷⁹

In the circumstances, all applications for new BBC services and applications for changes to the service licences for existing BBC services must be subjected to a market impact assessment which will be carried out by Ofcom.

11. CONCLUSION

11.1 Despite the myriad calls for improvements to the regulation of the BBC, the Green Paper proposes to maintain the current approach, save for transferring the BBC Governors' regulatory functions to the BBC Trust. For the reasons explained above, such a transfer will not remedy the current deficiencies with the regulation of the BBC.

11.2 The Green Paper puts forward no credible reasons why the BBC Governors' regulatory functions should not be transferred to Ofcom.

11.3 Even if all the BBC Governors' regulatory functions were not to be transferred to Ofcom, certain specific activities should be so transferred:

- neither the Executive Board nor the BBC Trust should adjudicate on complaints about the BBC—in order to have a fair and objective complaints procedure, Ofcom should be the adjudicator;
- the terms of the BBC's Fair Trading Commitment should be approved, and enforced, by Ofcom; and
- Ofcom should carry out all market impact assessments in respect of the BBC.

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⁷⁸ Summary of the Green Paper (page 11).

⁷⁹ Paragraph 3.21 of Ofcom's Response to the Green Paper dated 8 June 2005.

WEDNESDAY 8 JUNE 2005

Present	Armstrong of Ilminster, L Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Gibson of Market Rasen, B Holme of Cheltenham, L Howe of Idlicote, B	Kalms, L King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Memorandum by Voice of the Listener & Viewer (VLV)

THE ROLE OF PUBLIC SERVICE BROADCASTERS AND THE BBC

What should be the main duties of public service broadcasters? Are the core public purposes of the BBC, as defined in the Green Paper, appropriate?

1. It is helpful to define the BBC's purposes, and to do so in more detail than has hitherto been formal practice. However, VLV has three reservations about this approach.

- (i) Although VLV has always believed that accountability is key to achieving quality and diversity in broadcasting, we consider that accountability must be demonstrably both democratic and true to British traditions of tolerance.
- (ii) Since every household is required to pay a television licence, the balance between popularity and distinctiveness in BBC programming is crucial. While VLV agrees that programme-makers should strive to achieve at least one of the listed characteristics which contribute to excellence and distinctiveness, they should also be allowed to fail.
- (iii) There is a danger that the Green Paper's unduly precise formulation of programme remits may lead to a lower BBC audience share which will undermine the political and economic case for licence fee funding.

2. Despite our reservations about over-prescription, VLV is broadly supportive of the proposed purposes.

THE BBC'S ROLE AS A WORLD, NATIONAL AND REGIONAL BROADCASTER

How does VLV see it?

3. The importance of the BBC as a world broadcaster can become even greater than today. The vision shown in setting up and expanding the BBC web-sites, with the enormous following generated, resulted in new services for the information and educational role that the BBC alone amongst international broadcasters has established. This is the one area of international activity where Britain is visible in leading the world. It needs to be nurtured and further expanded.

4. In addition the BBC offers a valuable example to emerging democracies anxious to establish the citizenship and social values fundamental to the evolution of civil society and typically absent from their previous regimes.

5. The BBC World Service and BBC Online are enormous national assets, giving credibility to cultural and commercial opportunities way beyond the current perception of many politicians and the public. The Green Paper seems to give too little recognition to the current and potential international importance of the BBC and its reputation. BBC World television as currently constituted, often using local advertising, is not the appropriate vehicle to develop the BBC's reputation. The option of an advertising-free television service, funded by Foreign and Commonwealth Office grant-in-aid, with potential to download to other media, should be thoroughly examined. So should television services in key non-English languages (not only Arabic—but some others). Although the current offer of radio foreign language services requires re-examination, television's potential will not be fulfilled if funding is limited to cost savings extracted from radio.

New media in general should be seen as an opportunity to be seized for disseminating BBC content.

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6. The BBC's role as a national broadcaster is well covered in the Green Paper. The role of radio should also be singled out for its effectiveness in achieving universal access, its ability to meet the BBC's purposes, its continuing growth and its unique role in personalising broadcasting. Much debate surrounds the achievements or otherwise of BBC TV channels whilst BBC Radio is without rival in achieving its public purposes and also provides a unique platform for commissioning new music and creative writing.

7. The BBC's role as a regional and local broadcaster needs further extensive analysis beyond what is said in the Green Paper. OFCOM's release of ITV from many of its regional obligations places an increased responsibility for this activity on the BBC.

8. REGIONAL TELEVISION

One of the problems with regional broadcasting in the UK has arisen because the geographical limits of the regions—both for the BBC and for the ITV franchises—were based on the reach of respective transmitters rather than on existing civic or administrative areas. The introduction of digital offers the possibility for re-shaping and re-aligning broadcast regions in accordance with civic and administrative boundaries, thus furthering the role of broadcasting in serving the interests of citizens.

9. LOCAL RADIO

The BBC already provides a distinctive service, particularly in news and speech programmes, through its local radio services in England and in the National Regions. VLV considers that BBC Local Radio has clear obligations to meet the informational needs of citizens at the local and, indeed, regional levels; and to assist in building local communities by partnering and encouraging other broadcasters

10. THE BBC, TECHNOLOGICAL DEVELOPMENT AND DIGITAL SWITCHOVER

Should one of the conditions of the new licence fee settlement be that the BBC play a leading role in the process of switching Britain over from analogue to digital television?

11. Yes; and this should include major BBC involvement in promoting and developing, alongside other public service broadcasters, a free-to-air satellite digital transmission platform, FreeSat. However, the BBC (and the licence fee payer) should not carry the whole financial burden of this activity.

12. Additionally, the cost of funding digital access for vulnerable groups should not fall on the licence fee payer, but on central government where the responsibilities for vulnerable listeners and viewers properly lie.

13. The commercial networks should also contribute to digital conversion costs. It would be wholly inequitable for BBC licence fee revenue to be applied, at any point, to prop up commercial companies' profits and shareholder value.

THE CONSTITUTION OF THE BBC

Is a Royal Charter the best way to establish the BBC? Is 10 years the most appropriate period for the next Royal Charter to run? Is there a case for establishing the BBC on a statutory footing?

14. Yes, the Charter is the best way. Ten years is an appropriate period for effective planning and there should be no interim reviews of a constitutional or financial nature within that period.

15. VLV agrees with the Green Paper's dismissal of a statutory basis for the BBC. We consider that would constitute a threat to the Corporation's independence.

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GOVERNANCE AND REGULATION OF THE BBC

Is the proposal in the Green Paper to replace the BBC Governors with a BBC Trust and Executive Board the best way to address the issues of governance and regulation of the BBC?

16. Yes—it appears to be the best option available but needs considerable fleshing out.

17. Although VLV supports the fundamental spirit and thinking behind the Green Paper’s proposals to replace the BBC Governors with a BBC Trust, we have a number of serious reservations. Precisely because we endorse the concept of the BBC Trust as an empowered and accountable body, we are concerned about a number of areas that have not yet been fully clarified.

- (i) **BBC Trust and Ofcom:** We foresee negative effects from regulatory overlap or conflict between the BBC Trust and Ofcom, notably in the fields of production quotas, programme standards and competition regulation. In the first two of these fields, VLV is not convinced that giving relations between the two bodies “time to bed in” will be a satisfactory solution for licence payers. With regard to the third, we believe that the application of the EU and UK’s competition regimes by both OFT and Ofcom should take account of the particular responsibilities placed by Government on the BBC, in particular its obligation of universal service provision to all licence payers.
- (ii) **BBC Trust and BBC Executive Board:** Although we understand the thinking behind the proposal to introduce, following commercial practice, non-executive directors onto the BBC Executive Board, we have three worries. First, that the commercial model is inappropriate for the BBC. Second, we are concerned that adding a second tier of externality—non-executive directors as well as the BBC’s Trustees—could prove cumbersome or conflictual, or both. Third, the proposed appointment process for non-executive directors—with the Executive Board nominating its own members, in accordance with Nolan procedures, and subject to the approval of the BBC Trust—appears to be problematical. If the Trust is intended to represent the views of licence payers (the equivalent of shareholders in a private sector company), how will it consult them about the competence of the proposed nominees?
- (iii) **BBC Trust and the Licence Payers:** Notwithstanding the proposed principal functions of the BBC Trust (Green Paper Box 5.5, p. 72) VLV is not convinced that the proposed mechanisms will avert the twin dangers of either the BBC Trust failing to represent the views of the licence payers, or of the Trust’s regulatory powers being captured by the BBC’s Executive Board, as was perceived to have happened with the Board of Governors. This latter danger could be intensified since the presence of non-executive directors could give greater confidence and assertiveness to the BBC Executive Board.

THE BBC TRUST—MEMBERSHIP AND APPOINTMENTS

18. VLV suggests that the Trust should have no more than twelve members in order to give expression to an appropriate range of interests while remaining compact. BBC Trustees should not be appointed as spokespeople for any particular interest and should complement one another in their range of attitudes, skills and experiences. Moreover, each trustee should have a distinct area of responsibility and the relevant expertise to discharge it. The one exception should be the reflection of the needs of the four nations comprising the United Kingdom. It is essential that—despite the Trust’s duty to approve the commissioning and financing of programme services—it is so separated from the Executive Board that its role is not that of the publisher. Trustees must not be compromised by a formal legal responsibility for published output.

THE APPOINTMENT OF MEMBERS OF THE TRUST

19. VLV welcomes the fact that in recent years the system of appointing the members of the BBC Board of Governors has been more professional. However, because of the unique position of the BBC we believe that transparency in the appointment of its Trustees is absolutely essential. Whilst not wishing to be too prescriptive, therefore we believe that it is incumbent upon Parliament to establish a system which is open and transparent and which commands the respect of licence-fee payers. We believe this would be greatly enhanced if the selection were made not by the Government of the day alone, but if the members of the selection panel were more broadly based in Parliament, for instance by including the Shadow Secretary of State and the spokesperson for the third main party on the Appointments Committee.

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NON-EXECUTIVE DIRECTORS

20. The role of the non-executive directors on the Executive Board of the BBC is currently not clear. Their duties need to be clarified together with the details of how their responsibilities will complement those of the members of the Trust.

THE BBC'S INDEPENDENCE

Are the measures proposed in the Green Paper sufficient to protect the independence of the BBC from outside pressure and to ensure that BBC broadcasts are accurate and impartial?

21. VLV is not satisfied that the appointment procedure for BBC Trustees is entirely free from the possibility of political intervention. It recommends that this procedure is reconsidered and any procedural changes carefully assessed.

22. VLV does have more than twenty years experience in articulating how viewers and listeners feel about BBC programmes and performance. VLV is ready to work constructively with the BBC and other relevant public officials to make a success of the new arrangements for accountability and responsiveness. BBC governance advisers have indicated that they wished to consider our views.

THE HANDLING OF COMPLAINTS

How should the rights of licence fee payers be defined and protected? How should the BBC handle complaints?

23. The BBC Trust should be responsible for dealing with complaints only when a complainant is not satisfied with the BBC Executive Board's response, as publisher. When handling a complaint, the Trust should have a prime concern with issues of principle.

THE BBC AND THE NATIONAL AUDIT OFFICE

Are the current arrangements for the scrutiny of the BBC's spending by the National Audit Office adequate?

24. VLV believes that there needs to be clarity about audit procedures put in place by the BBC Trust—and the degree of involvement by the National Audit Office—in order to reassure licence-fee payers that there is proper independent scrutiny of how their money is spent.

25. The initiative for involving the National Audit Office, however, should remain with the BBC Trust. The initiative taken by the BBC Governors in commissioning the NAO to look into the efficiency of the BBC in launching Freeview provides a valuable precedent. Given the traditional duty of the NAO to report to the Parliamentary Public Accounts Committee, VLV considers that the best way to ensure the continued political independence of the BBC and non-interference in editorial matters by politicians, is to require the BBC Trust to ensure that licence-payers receive good value for money.

THE BBC AND OFCOM

26. VLV argues that the integrity of the BBC Trust implicit in the Green Paper must not be compromised by Ofcom's wider responsibilities

THE BBC'S IMPACT ON COMPETITION

Are the Green Paper's proposals to regulate the BBC's impact on competition adequate?

27. Yes—all the evidence to date, and the lack of contrary evidence in commercial submissions, indicate that very tight rules exist and are implemented in order to avoid unfair competitive advantage on the part of the BBC. The existing rules should continue to be applied as rigorously as before, with reinforcement from the Office of Fair Trading and the Competition Commission.

28. However, VLV does consider that, where the BBC is not fully exploiting secondary rights to its programmes, there is a case for the Trust requiring the Executive Board to offer them to third parties who wish to serve new markets.

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Should Ofcom be responsible for approving the BBC's internal rules governing their commercial businesses?

29. VLV considers that Ofcom's agreement to the relaxation and reduction of ITV's public service obligations indicates an unduly relaxed acceptance of claims by the commercial companies about increased competition in the sale of advertising. Moreover, we consider that Ofcom's suggested involvement in assessing the likely market impact of new BBC activities and services should be limited to advising the BBC Trust on the matter. The integrity of the Trust's public service duties (enunciated in the Green Paper [5.26]), must be safeguarded at all time and remain in the public domain.

30. VLV has no objection to joint market research being undertaken between the BBC Trust and Ofcom, provided that the results of such research are not mandatory or detrimental to the BBC's public service purposes and ultimately placed in the public domain.

THE FUTURE OF PUBLIC SERVICE BROADCASTING

Should there be a further review of alternatives to the licence fee and if so when?

31. The ground has been so thoroughly argued in recent years that there is no point in returning to the subject until well into the Charter period as preparation for a future renewal.

DIVERSITY AND CHOICE IN PUBLIC SERVICE BROADCASTING

How can the plurality of Public Service Broadcasting be safeguarded in the digital age?

32. VLV believes it is essential to retain a plurality of PSB broadcasters and that there should be vigorous competition to ensure sufficient viewer choice. Ofcom's analysis of the commercial pressures has already led it to reduce ITV's public service obligations and its contribution to public service programming. Channel 4, the major alternative provider of public service broadcasting, is reporting financial stresses. VLV believes that neither this nor any proposals for additional public service broadcasting activity—for example the Public Service Publisher (PSP) project—should be provided from licence fee revenue. We note that OFCOM, in its Review of Public Service Television, highlighted other sources of public financial support—including spectrum subsidy—for the commercially-funded public service broadcasters.

THE BBC AND PROGRAMME COMMISSIONING

What is the best way to ensure the BBC gives independent and external television and radio producers a fair chance to get their ideas commissioned? Should there be mandatory quotas for external commissioning?

33. VLV believes that that the BBC, as the major generator of training for the national broadcasting industry, should be sufficiently well-resourced to maintain that process at all times. There are implications that the BBC might become a content publisher as opposed to a content producer-provider. VLV is concerned that this could undermine the BBC's creative capacity. This BBC role needs constant sustenance and encouragement to assure a healthy broadcasting industry which sets standards in programme quality for broadcasters worldwide.

34. There are indications that the ownership of independent production companies is becoming increasingly concentrated and gearing itself to shareholder value rather than quality targets. VLV believes that independent producers have a significant role to play in the broadcasting landscape—deserving of respect and recognition from major players like the BBC. VLV does, however, consider that quotas above 25 per cent for television or 10 per cent for radio would not be constructive. It believes that it is important to counter-balance the emergence of a limited number of dominant companies by encouraging smaller companies—and even individuals—who are often the sources of creativity wherever they are to be found. The commissioning process must always allow creative talent to flourish and give scope for risk-taking as an essential feature of public service output. In short, the BBC should actively sponsor and promote creativity, not simply provide its venture capital.

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Voice of the Listener & Viewer (VLV) is an independent, non-profit-making association which has been working for quality, independence and diversity in broadcasting for over 20 years. VLV represents the citizen and consumer interests in broadcasting and is free from political, commercial or sectarian affiliations. VLV is concerned with the issues, structures, institutions and regulation that underpin the British broadcasting system, and supports the principles of public service in broadcasting. VLV does not handle complaints.

Memorandum by Public Voice

PURSUING THE NEW PURPOSES OF THE BBC

This submission represents the views of the Public Voice coalition, the leading voluntary sector body campaigning for citizens' interests in relation to communications.

As a "critical friend" of the BBC, Public Voice and its constituent groups have played a role in developing and improving the Mission of the BBC for the next Charter, through:

- Direct dialogue with the BBC.
- Contributions to Ofcom's review of public service television broadcasting.
- Submissions to government consultations on the BBC and to the various reviews of BBC services.
- Evidence to the Burns panel on Charter review.

Members of the committee may also be aware of the positive role played by Public Voice in supporting improvements to the Communications Act 2003 during its passage through parliament.

This submission therefore represents the outcome of several years' constructive campaigning on behalf of the UK's Third Sector to achieve communications reform that truly benefits citizens, as a balance to the commercial media and communications industries lobbies.

KEY POINTS

Mission and purposes

1. Public Voice urges the House of Lords select committee to recognise and acknowledge that the heart of the Government's Green Paper is the new Mission for the BBC. The BBC exists as a conscious and deliberate intervention in the market in the service of citizens. The new Mission, expressed through five "purposes", is the first attempt in any Charter document since the BBC's foundation to specify the social and cultural goals that the Corporation should pursue as it seeks to "inform, educate and entertain" the public. Previously it has been open to the BBC regime of the day to define the BBC's purpose to its own liking, without the transparency and accountability to the public that these purposes will institute.
2. Public Voice respectfully requests the committee to acknowledge that the issues of governance, accountability and regulation are secondary to this redefined Mission. That is, they are the mechanisms by which the new Mission will be delivered, but are not ends in themselves.
3. Public Voice urges the committee publicly to support the new "purposes". These will ensure that all BBC services are dedicated to serving clear social and cultural goals on behalf of citizens; with the governors (or Trustees) held accountable for their delivery; and with the Corporation having clear, transparent and targeted strategies to deliver them. In examining these purposes the committee should have in mind that the "ecology" of public service broadcasting that predated the Communications Act 2003 has now changed. As a result of that Act and of Ofcom's subsequent review, Channels 3 and 5 can no longer be relied upon to broadcast a range and depth of public service programming, but will only have obligations for news and for some production quotas. Hence citizens will be increasingly reliant upon the BBC, and Channel 4 (whose future is somewhat perilous), for access to the range and depth of unbiased, high quality information, education and entertainment that public service broadcasting can offer. In this new "ecology" of an aggressive commercial marketplace with powerful new entrants (for example from the telecommunications and computer-related industries) it is more important than ever for the BBC's social and cultural role to be clearly defined. The purposes in the Green Paper represent the best of BBC thinking, improved by dialogue with others, by scrutiny from the Burns panel, and finally by improved drafting from the dcms.

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4. Public Voice respectfully requests the committee to consider whether a further addition to the statement of Mission is desirable. In our view, the purposes should be part of a hierarchy under a single overarching “purpose” or “goal” which we suggest should be:

“The Mission of the BBC is to serve the communications needs and interests of citizens, through information, education and entertainment that contribute to the following core public purposes . . .”

This would have the advantage of linking the overarching Mission of the BBC and the overarching “principal duty” of Ofcom in Section 3 of the Communications Act 2003. The BBC would then be seen as working within the same public policy framework as the rest of the communications industries—but differentiated by its sole dedication to citizens’, rather than consumers’ interests. It would further legitimate the social and cultural role of the BBC in the face of market criticism.

Charter term and licence fee funding

5. Public Voice supports the Green Paper proposals to grant a 10-year Charter, to allow a BBC of requisite scale and scope to deliver the purposes, and to retain the licence fee.

6. Public Voice urges the committee to question the logic of the Green Paper proposal for a further review of the licence fee during the next Charter. Public Voice opposes such a review. The justification appears to be that “market developments” may necessitate a further review in that timescale. However, the arguments against alternative funding methods include objections on the grounds of principle, which are not likely to change as a result of market developments. Public Voice wishes the committee to note that the questions of the BBC’s funding base has already been subjected to massive scrutiny and consultation, and that the continuation of the licence fee was supported by:

- The January 2004 public consultation.
- Ofcom’s public opinion research.
- Ofcom’s own policy analysis.
- The DCMS’ own policy conclusions.

The Government should therefore have the courage to stick by all the evidence and by its own policy determinations and guarantee the licence fee for the lifetime of the next Charter.

Digital switchover

7. Public Voice backs the general proposal for the BBC to help lead the transition to digital television broadcasting, but to do so in common with other broadcasters. Public Voice has strong reservations about the BBC being made financially responsible for schemes to help vulnerable people switch to digital. This appears to us to be the responsibility of government rather than the BBC. It is part of the nation’s social and cultural policy rather than the responsibility of a single broadcaster. Not only will other broadcasters, including those with very limited public service obligations, benefit from such schemes; but it will also mean diverting licence fee income, contributed by citizens to run BBC services.

Governance

8. Public Voice retains reservations about the Green Paper proposals for the Trust and the executive Board of the BBC. Further clarification is required of their respective roles: for example, the responsibility for service licences should rest with the Trust, not the Board. This is a key mechanism for ensuring the delivery of the “purposes” across BBC services. We are concerned about the proposal for non-executives to join the Board. While the advantages are unclear—and appear to rest on certain assumptions about corporate governance which are derived from the private sector and may or may not be appropriate to a public institution—there are also potential disadvantages. The presence of non-executives will create a new dynamic which may undermine the unity of the Board as broadcasters in deciding how the purposes are to be delivered; and could potentially lead to decisions being taken “outside the boardroom”.

9. Public Voice urges the committee to address the question of how the Trust membership is composed. Given that the new “purposes” are at the heart of the next Charter, the key question is what experience, knowledge and skills are required for the Trustees effectively to oversee the delivery of those purposes. Public Voice will argue that the BBC should adopt a bespoke new strategy for each of the five new purposes. Each strategy should include a set of “SMART” objectives that enable genuine measurement of delivery. It will then be

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important that each of these strategies has an identified “champion” among the Trustees. That may or may not mean that a specific Trustee position is created in order to oversee the delivery of each purpose—although to an extent such a structure already potentially exists, for example with the international governor position and the international purpose. Furthermore, all of the proposed purposes inherently require the BBC to be closely and continuously engaged with citizens and civil society. It is therefore vital to have a sufficient number of individuals appointed who have a real engagement with and experience of civil society and community action, for example from a voluntary sector background; and not just to rely on “traditional” recruiting grounds among former public servants, financial experts and so on. The cultural change that is promised in the BBC’s “Building Public Value” should be reflected in cultural change within the governing body.

Plurality in public service broadcasting

10. Public Voice urges the committee to examine critically the Green Paper’s formulation on the reviews of plurality in public service broadcasting. The case for a plurality of public service broadcasters is indisputable, and was supported by parliament when a “plurality test” was inserted into the media merger regime in the Communications Act 2003. That case does not, therefore, need to be kept under review. It should be a clear and enduring part of public policy to seek to maintain such plurality. What needs to be kept under review is how that plurality can be achieved in the context of changing technology, changing market conditions, and developments in user behaviour and preferences.

11. With regard to specific proposals for maintaining plurality, Public Voice believes the priorities to ensure a system of communications that serves the interests of citizens are:

- To protect the long term future of Channel 4 as the only other public service television broadcaster able to compete for quality with the BBC across the range of programmes.
- To examine all potential sources of funding in any future reviews—we would reject any review that only looks at the redistribution of the licence fee.
- To raise the debate regarding the proposed Public Service Publisher to the level of a public policy debate—that is, for the Government to take lead responsibility away from Ofcom. This would ensure that full democratic discussion is possible, rather than the more limited terms of regulatory consultation; and that the debate starts from the paramount question of whether we need a new provider and if so, what public policy purposes it should serve, rather than starting, as Ofcom does, from a case based on economic- and competition-based analysis.

12. Finally, Public Voice urges the committee to support the case for the development of the community media sector to be fully integrated into all debates and reviews of plurality in public service broadcasting. We would like the committee to recommend that the Government should clearly state that:

- not-for-profit community media are considered to be part of the public service broadcasting “ecology”;
- that the emergence of a strong, independent and non-commercial community media sector is a policy goal; and
- that by “community media” is meant not only radio but also television and converged platforms, and that these may be at local, regional or national levels.

The full Public Voice response to the Green Paper on the BBC is available by request. Public Voice is currently organising a mailing to 3,100 voluntary organisations urging them to contribute to the consultation.

APPENDIX

About Public Voice

Public Voice was formed in early 2001 to campaign around the Communications Act 2003. It successfully influenced that Act and is now working on BBC Charter Review, and with Ofcom on regulatory policy and operations.

Public Voice seeks to represent voluntary sector views on citizens’ interests in relation to communications policy and regulation. Its steering group includes:

- the National Council for Voluntary Organisations—the umbrella organisation for the sector in England;
- the Association of Chief Executives of Voluntary Organisations;

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- the Community Media Association;
- the Media Trust;
- the Voice of the Listener and Viewer;
- 3WE;
- The Campaign for Quality Television;
- CSV Media; and
- Timebank.

Public Voice campaigns to ensure that the primary objective of communications regulation is to serve the communications needs, rights and interests of citizens.

We define “citizens’ interests” as follows:

“We are all citizens of the global information society with interests in a fair and just society in which fundamental human rights such as the right to freedom of expression and freedom of thought are recognised. We need access to a wide range of high quality information and knowledge, together with the means to participate in debate, in order to play a full part in this society, at local, national and international levels.”

Public Voice therefore campaigns:

- To maintain, develop and extend public service broadcasting and related communications services.
- To promote new and emerging forms of public service communications from the not-for-profit or “community” sector.
- To ensure that communications regulators uphold their duties to protect and further “citizens’ interests”.

We believe communications regulation should at all times seek to protect, maintain and strengthen the provision of public service broadcasting content. This should become the driver to extend citizens’ communication services across other platforms, enabling greater engagement, interaction and debate.

Regulation should enable access, not only to content produced by others, but also to the means to generate content, individually and collectively. It should seek continual innovation in public service offerings, especially in “true” converged services, at all levels from the very local to the national and international.

May 2005

Examination of Witnesses

Witnesses: Ms JOCELYN HAY MBE, Chairman, Voice of the Listener and Viewer, Ms CAROLINE DIEHL, Chief Executive, The Media Trust, and Ms DIANE REID, Director, Community Media Association, Public Voice, examined.

Q598 Chairman: Welcome. You know that we are looking into the whole issue of the Charter review of the BBC. We are taking a wide range of evidence and time is frankly not on our side because we have to produce our report certainly by the end of October and of course for much of that time the House will not be sitting. I think perhaps the first thing I would ask, if you are not necessarily talking as a group on all of the issues, is perhaps if you could introduce yourselves and say what your organisations are and whom they represent.

Ms Hay: We are here as members of the coalition of Public Voice, and Caroline will introduce that, but also I am here as Chairman of the Voice of the Listener and Viewer which is a membership organisation which represents listeners and viewers as citizens and consumers and as licence fee payers. It is an independent organisation which is concerned with the issues and structures and the institutions of

broadcasting. We do not have the resources to handle individual complaints.

Q599 Lord King of Bridgwater: How many members?

Ms Hay: We have just under 2,000 individual members, but we have over 20 university departments in academic membership which brings us in touch with a range of academics and students, and we have more than 20 voluntary organisations in membership, some of which represent specific groups, like the National Federation of the Blind, the RNIB, the National Society for the Prevention of Cruelty to Children, Age Concern, the Hansard Society, Community Service Volunteers, so a very wide range of more than 20 voluntary organisations, and the Townswomen’s Guild, for instance. We

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Ms Jocelyn Hay MBE, Ms Caroline Diehl and Ms Diane Reid

consult them and we involve them and the academics in our work.

Ms Diehl: Just a little bit about Public Voice first very briefly. It is the voluntary sector's coalition working with citizens' interest in communications. The NCVO is one of our members, the National Council of Voluntary Organisations, which has a huge membership of organisations which are based in England and work very closely with similar councils in the other three countries. There are also organisations, like the Association of Chief Executives in the Voluntary Sector which has a huge membership of chief execs, and then a lot of organisations, like The Media Trust and the Community Media Association, which have a specific interest in communications. Public Voice has been responding to all the recent debates in the last few years on communications and also involving the voluntary sector, both the larger organisations and the small community groups, of which there are 500,000 in this country, in debates around the response and the future of communications. The Media Trust is a founder member of Public Voice. We are a registered charity and our purpose is to support the communications needs of the voluntary and charitable sector in very practical ways, so we run a lot of training services for charities and we make films for charities, but we also launched the Community Channel three or four years ago which is the UK's first dedicated channel for the voluntary and the community sector to reach out to their target audiences amongst the public and that is now broadcasting free to air on all the digital platforms and is funded in part by the Home Office, so we have a particular interest in new forms of public service broadcasting coming out.

Ms Reid: I am Director of the Community Media Association. We are a membership and sector representative organisation for the community media sector. Our membership consists of 650 members and 350 of those are community media organisations, so they may be community radio stations, community television stations or community Internet projects. Some of them will be on the air, broadcasting now, and some of them are aspirant broadcasters and hoping to take advantage of the new community radio licences. As individual members, we do have academics and people with a personal interest and we also have associated federation members, groups of broadcasters and groups interested in broadcasting. The aim of the Community Media Association is to develop communications media for cultural and creative expression, community development and empowerment and also entertainment.

Q600 Chairman: Thank you very much. Let's start then with the questioning. Public Voice, in their evidence, say that the case for plurality of public

service broadcasters is indisputable, but how do you think that is going to be achieved in the context of changing technology and particularly of the transfer to digital which is going to take place? Do you think that that is still an aim or should be an aim?

Ms Diehl: As an organisation which I hope has added a little bit to the plurality of public service broadcasters, one is safeguarding the BBC and ensuring that the BBC itself acts as a catalyst for more plurality, so we have argued very strongly that the partnership emphasis that the BBC is already giving now, and is planning to do, should act as a catalyst for new forms of public service broadcasting, whether at the most local level through a partnership with the Community Media Association or new forms of national public service broadcasting, such as the partnership with the Community Channel. Secondly, we would hope that the requirements on the current public service broadcasters are not relaxed any further and that Ofcom's regulation of that public service broadcasting is held to as strongly as possible. We have serious concerns across the voluntary sector that some of the access for citizens to public service broadcasting content of the other PSBs is not being held to. Thirdly, the options that digital is offering for more plurality in public service broadcasting are extremely exciting and it would be a great shame if those opportunities are not maximised through both the BBC's strategy and the allocation of spectrum. We are particularly concerned that the commons(?) are not being ringfenced for public access, but that the commons are being given away to the commercial players, the new commons being band width, and we would like to see a lot more thought and concern going into how spectrum is allocated.

Q601 Chairman: But as the digital revolution takes place, organisations like ITV, for example, obviously are concerned that they are going to find it extremely difficult to provide the range of public service broadcasting that they do at the moment, the point being that there is a sort of subsidy or implied subsidy at any rate coming to them at the moment, but that will disappear with digital. Is that something which concerns you?

Ms Diehl: I think if ITV is going to be given the privileges which go with public service broadcaster status, they have got to challenge themselves to think of more imaginative and creative ways of delivering their public service broadcasting remit. There is a tendency to think that public service broadcasting content equals worthiness equals ratings going down. That is not the case and Jamie's Kitchen has proved that. We, in the voluntary and community sector, feel very strongly that the flair and the imagination in our communities, in our society and amongst our

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citizens, the interest that lies there in people and in stories is there to make the most rich content.

Q602 Chairman: So are you advocating that public subsidies in future should go to organisations, like ITV and other channels, to provide public service broadcasting?

Ms Diehl: If, by public subsidy, you include band width and other terms of subsidy and if they are regulated to the extent that the public service content is maintained and hopefully improved upon, then yes, I think that having a sense of competition in public service broadcasting and a variety and range is absolutely crucial.

Ms Reid: There is an irony here, and we may talk later about access to digital television for disadvantaged and vulnerable communities, for excluded communities. However, at the moment there is no mechanism for representation of those communities within the digital spectrum, so there may be programming, PSB programming from the BBC, and there may be some PSB responsibility from ITV broadcasters, but small community broadcasters, local broadcasters are not currently represented. Additionally, there is a gap when analogue switchover occurs in 2007. The small local television stations, and there are two not-for-profit stations, Solent and Northern Vision amongst them, will lose their licence with no immediate ability to apply for a digital licence, whereas the BBC will have guaranteed the continued Charter and be able to transmit PSB, so we are looking at broadcasting where you have BBC and you have Channel 4, but you should also have small-scale, local community broadcasters as well.

Q603 Baroness Bonham-Carter of Yarnbury: What is your attitude to, or feeling about, Ofcom's suggestion of a public service publisher and do you see this as a good idea or do you think it will potentially fracture resources?

Ms Hay: Well, I think there is potential there, but it needs to be fleshed out in very much more detail and, from our point of view, it needs much more work. How is it going to be funded, for instance? This brings back the question of public subsidy. In representing our members, Voice of the Listener and Viewer, we certainly would not support the idea of any top-slicing of the licence fee going to subsidise any commercial companies. We believe that the plurality of public service broadcasting is essential. It has been one of the beauties of the British system that the commercial broadcasters could compete with the BBC and it is absolutely essential, in our view, that Channel 4 continues to fulfil its remit, also that ITV and Channel 5 continue to provide public service broadcasting I am sure they can do so in more imaginative ways. The public service publisher idea

has some potential and possibly some of the money which is currently coming from ITV licences or spectrum sale or whatever could help to fund it, but it needs an awful lot more work.

Q604 Baroness Bonham-Carter of Yarnbury: But potentially it could fracture resources?

Ms Hay: It could, but it has not been fully thought through.

Q605 Lord Armstrong of Ilminster: We were interested that Public Voice has declared an opposition to an interim review of the licence fee as proposed by the Government during the next Charter period and urges the Government to guarantee the licence fee for the lifetime of the next Charter. When we received evidence from Lord McIntosh of Haringey before the Election, he made it clear to us that the Government was proposing that the licence fee should continue unchanged for the 10 years of the Charter review period so that any conclusions from the interim review would not take place or not come into effect until after 1 January 2017. Would that remove your objection to an interim review if you were satisfied that no conclusions would be put into effect until after that period?

Ms Hay: Yes, we feel that it is unnecessary to begin with and also it could be very destabilising if it comes just at the time that digital switchover is starting. That is a time when the BBC needs to plan ahead. It has been given the principal responsibility of steering through the switchover to digital and the BBC needs a certain amount of security in its funding to plan ahead for big projects, whether funding the Proms or high-quality dramas and documentaries which sometimes take five or six years to plan and put into being, the BBC needs some stability in its funding. There is the possibility in the Green Paper of two interim reviews on BBC funding between now and digital switchover in the next five years. Also the BBC has been asked to look at subscription funding, but that has been gone over time and time again, so what is the point of duplicating that process?

Ms Reid: We would support, however, an interim review into the economy of public service broadcasting as a whole which may then impact on the review of BBC services.

Q606 Baroness Howe of Idlicote: Just moving on to the service licences and the views that have been expressed there, you state in your evidence that the responsibility for service licences should rest with the BBC Trust and not the Board. There are two questions I would rather like to ask you about this. First of all, are you proposing that the Trust should be able to propose, rather than oppose or reject, new services, in other words, it is two-way traffic? The

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other thing is that when we had evidence, I think, from ITV, their view was that the proposal should come from the Executive Board to be looked at for commercial issues and then if there were any problems to go on to Ofcom. What are your views on those two issues, please?

Ms Hay: Coming back to the question of the Trust, it highlights some of the ambiguity at the moment in the Green Paper between the relationship of the Trust and the Executive Board and we have concerns about this relationship. A great deal more detail and thought needs to be put in because at the moment it is not clear who is responsible for what and who nowadays is actually the BBC. The Board of Governors used to claim that they were the BBC, but is the Trust now the BBC? or is it functioning more in the position of an external regulator with the Executive Board being the BBC? We believe that the Executive Board should be the publisher and, so far as we can see, that the Trust should be there in the form of an external check and final appeal so that when it comes down to issuing new licences reviewing existing licences or indeed if it is about proposing new services, it does not really matter whether the Executive Board or the Trust comes up with the idea, but that the Trust is responsible for examining the proposal and adjudicating; on that and for all the consultation and research that goes into deciding whether that new service is right or not. In our view, Ofcom the competition authority should only come in where there is a competition issue, as they do at the moment. But otherwise it should be the responsibility of the Trust to issue those service licences and to ensure that the Board actually delivers what is required of it.

Q607 Baroness Howe of Idlicote: But on your evidence too you seem to have quite a lot of concerns about there being a commercial structure rather than one which takes account of public good aspects, which of course is the public service broadcasting side of it.

Ms Hay: That is right. We have concerns about the structure and the idea of bringing non-executives on to the Executive Board and there are two or three reasons for that. First of all, that is a legitimate commercial company structure of which we do not think is suitable for a public corporation, it also brings in two sets of externality because the Trust is acting in one way as an external interest and the non-executives would be expected to do much the same. In a commercial company, I understand that non-executives sit on the audit board, but we see the Trust acting as that capacity, and also they normally sit on the remuneration committee, but again we see the Trust having that responsibility, so there is great potential for conflict, for overlap and for confusion.

Also it would appear that in some cases the non-executives and the Trust are doing the same job, so why pay two people to do the same thing, with that waste and duplication?

Q608 Baroness Howe of Idlicote: Well, the implication would be that you are really not as keen on that particular structure perhaps and certainly not with the non-executives.

Ms Hay: Not with the non-executives, no.

Q609 Baroness Howe of Idlicote: Given also that the Trust, as set out and also agreed by the BBC itself, should have a particular responsibility to the licence fee payer, how do you see that aspect being conducted?

Ms Hay: Well, we think that the Trust needs to be far more responsive, more consultative and to come up with new mechanisms for measuring public value and for accountability. It needs to be much more transparent in its working. We believe that the actual appointment system needs to be more transparent as well, and could involve leading political parties both in the UK as a whole, but also in the nations and regions—and I should have said that the Voice of the Listener and Viewer actually works in all the nations and regions and that we have Board members of each of the four nations of the UK. The trust should be consulting, they should be doing research, they should be including inquiries eg, special committees and advisory committees and so on. With new technology there are all kinds of ways that they can encourage feedback and be far more interactive, visible and involved with the public.

Ms Diehl: I think that Public Voice would feel very strongly as well that the Trust should focus a lot of its energy on the new five distinctive purposes that the BBC is proposing and the Green Paper is proposing, that that is where the accountability lies, the public value, and if that relationship and that sense of purpose of the BBC is promoted and the public are far more aware of what the purpose is and that the Trust is there to maintain, sustain and safeguard that relationship, then there will be a clearer delineation of responsibilities between the Trust and the actual Executive Board.

Ms Reid: We are not proposing a mechanical representation and quota representation on the Trust, but perhaps something closer to the concept of a champion where responsibilities for purposes were allocated there and people who would understand something of the concepts of building public value and would have experience of public accountability, citizenship and public experience.

Q610 Lord Holme of Cheltenham: I think the Committee is greatly in your debt because this is a subject we have been very exercised about, some

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clarification of the respective roles of the trustees and the Executive Board, and I do not think we are by any means there yet, but I think what you have just said is very helpful. I would like to press you still a little bit more on the issue of new services. When we took evidence from the BBC, there was some indication that they think they have been over-promiscuous in the new services they have launched in all directions, trying to cover every particular angle in the whole of the communications ecology and that they ought to stick to their knitting a bit more, so there is some sensitivity in the BBC about what new services they want. I think you are probably right in saying that one of the roles of the Trust is to see that the BBC stays within its remit in coming up with new services and as to whether it is consistent with the BBC's remit and its public purposes, but there is another set of issues which people have raised and those are the ones who might suffer from the wrong sort of BBC new offering from unfair competition or unnecessary and misplaced competition on the part of all other broadcasters. The point has been made to us that maybe it needs a body like Ofcom to do that commercial evaluation. Do you see that being done entirely by the trustees because within your argument the trustees' role is to say, "Is this consistent with the BBC's purposes?" and that is not the same question as, "What is its impact on the external players?"

Ms Hay: No, but the BBC is already subject, on competition grounds, to Ofcom and also to the competition authorities and European regulation as well, so there is a huge amount of checking of what the BBC does; there have been all kinds of inquiries into the BBC's commercial activities. In fact none of them has come out with very sound findings against the BBC. The BBC needs to be transparent and quite rightly so because of its powerful position, but it is constantly being examined and inquired into and, good gracious, in the last 10 years we have had an almost continuing inquiry of one form or another and none of them has really come out and said that the BBC has abused its position to any great extent. We do believe that the Trust should have the power to innovate and to suggest new forms of services, as I think it was Hugh Carlton Green who said that the BBC has a duty not simply to reflect public opinion, but also on occasions to lead it, and if it had not been for some imaginative leaps into new services and leaps into online and setting up the website, I do not think that the United Kingdom would actually be in the position that it is today. The BBC website has led in many directions and also its new digital services, so we believe that it should be the Trust, that should be the final auditor and that there is already sufficient external checking from the appropriate authorities.

Q611 Lord Holme of Cheltenham: So you would not, therefore, envisage any continuing role for the Secretary of State in making the final decision?

Ms Hay: On BBC new services?

Q612 Lord Holme of Cheltenham: Yes.

Ms Hay: If there were a dispute between the BBC and Ofcom, then perhaps that would be a role for the Secretary of State on appeal.

Q613 Lord Holme of Cheltenham: An adjudicating role?

Ms Hay: Yes, on appeal, but it would be incumbent on the BBC Trust before approving the service to carry out all the correct procedures of consultation, research and examination as to the impact there would be from the new service.

Q614 Lord Holme of Cheltenham: The other supplementary question is that whilst you are not at all keen on having independent directors on the BBC Executive Board, you are extremely keen on having the right sort of ones on the Trust?

Ms Hay: Yes.

Q615 Lord Holme of Cheltenham: And the right sort of ones are who—people like yourselves?

Ms Hay: No, not necessarily.

Q616 Lord Holme of Cheltenham: Your description of civil society and community action seemed to include very much the sort of people sitting here, but you have other people in mind?

Ms Hay: Well, Public Voice involves community action, but as far as Voice of the Listener and Viewer is concerned, we think that you need to appoint people with a wide range of experience, of expertise and of empathy, who have life experience of a number of different situations and can put themselves in the shoes of other people and empathise. People of integrity, high quality and independence and then, after you have appointed them, you should give them specific roles and areas of responsibility.

Ms Diehl: Yes, I would echo that. If the main mission of the BBC includes purposes like sustaining citizenship and civil society, stimulating creativity and cultural excellence, representing the UK, its nations, regions and communities, et cetera, et cetera, then it is vital that there is the breadth of experience, knowledge and understanding to be able to do that on that Trust.

Q617 Lord Holme of Cheltenham: You probably concede that it is important not to confuse those attributes with what you almost said which was representation. If these are independent directors, they should not really be representing in that sense, should they?

Ms Diehl: They have to have understanding in the sense that we, the public, have confidence in that understanding. I think that is extremely important.

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Q618 Lord Peston: What troubles me about what you say is that what you have described, I would have said when I was a young man, is that what you want is a group of fuddy-duddies.

Ms Hay: Not at all.

Q619 Lord Peston: Totally safe people who will make absolutely certain that nothing rather *outré* ever gets within a million miles of our public service broadcasting.

Ms Hay: Not at all.

Q620 Lord Peston: Well, let's just look at who have been the governors of the BBC over our lifetime. When do you really get, if you like, I do not mean extremists, but people who have a much broader view of what is going on in our society than you seem to be describing here? An enormous amount goes on in our society which, I tell you, I hate, but I really do think that the role of the public service broadcaster is to make sure that that too gets an airing, even though I personally cannot bear it, but I know I can switch off. What troubles me about this model is who will see that people like that get into the system who will even worry about it?

Ms Diehl: I think by having people on the Trust who have a wide knowledge, understanding and experience of our communities necessarily will reflect the whole range of action and opinion that is represented in those communities.

Q621 Lord Peston: But you know full well that those people never even get on to the shortlist.

Ms Diehl: Public Voice would be very happy to take an advisory role and help you to find those people. We are not short of ideas.

Chairman: I am going to move on because this might take the rest of the day! I want to move on to complaints against the BBC. Obviously a lot are made.

Q622 Bishop of Manchester: Can we explore two or three areas in this quite large aspect which concerns you and that is the area of complaints. As you are aware, the BBC has recently tried to reform its complaints system, so the first thing I want to explore with you is whether or not you are satisfied with that and how you feel it is working or is there still much room for improvement?

Ms Hay: On the question of complaints, as an organisation, we do not handle complaints because we do not feel we have the resources to do it properly and it would rely, in our case, on personal subjective opinion. The BBC does have the resources and it has improved the transparency and the responsiveness, I think, of its complaints-handling procedures. It has definitely improved. We do see that at the moment there is a division of responsibility between the BBC

and Ofcom and that does give potential for confusion amongst viewers and listeners as to where they should go.

Q623 Bishop of Manchester: Have you actually got evidence of that?

Ms Hay: Anecdotal, that is all. Ofcom is still unknown to most people in the country, sadly. It took long enough for the five former regulators to become fairly well known. Sadly, most people have not heard of Ofcom, but they will have to learn. On the question of complaints, we believe it is very much the role of the Executive Board, through the commissioning structure and through the editorial structure, to be the first point of contact for complaints and that the Trust should act as a court of appeal, if you like. There are areas where there is a further court of appeal which is the law of the land in cases of defamation or privacy or other legal issues which used to be handled by the old Broadcasting Complaints Commission and subsequently the Standards Commission, so there is an ultimate court of appeal there. But as far as the BBC is concerned on matters, for instance, of taste and decency, then we feel that in the first instance the complaint should go to the Executive Board and then on appeal to the Trust, if necessary.

Q624 Bishop of Manchester: Could you comment further on the ability to appeal beyond the BBC because you were referring to the law of the land, but are you satisfied that that is a sufficient—

Ms Hay: Complaints in those quasi-judicial areas, yes. As regards the more subjective areas, which are very difficult to deal with—everyone has a right, and is entitled, to complain. They have their own views and they should be able to make that complaint. Someone sometimes has the difficult job of adjudicating in the public good because views vary so much according to age and gender and so on, but someone has to do that, and we believe that the BBC Trust should be the ultimate arbiter there. If I may add on the question of the calibre of the people on the Trust, we think that is up to the Selection Committee and the Selection Board—it is up to them to get a wide range of people, apart from the four members who will represent the nations of the UK, that is a very specific need and understanding.

Q625 Lord Peston: Would you just clarify something which I thought you said and I thought I agreed with, which was the distinction between a specific complaint, “I didn't like that”, and the general question of standards. What you are saying is that your interests yourselves are not on the specific complaint, but you as a group and others like you would feel it was your duty to bring to the notice, say,

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of the BBC, but you have said it more broadly, things like, “Really your standards aren’t high enough”?

Ms Hay: Yes, exactly.

Ms Diehl: Particularly around issues like diversity, plurality and share of voice of communities across the UK.

Q626 Lord Peston: Yes, and truthfulness is a very good example.

Ms Diehl: International coverage as well. We are delighted that the issues around international coverage have been picked up in the Green Paper and genuinely by the BBC as well. We would be very concerned that that is monitored very carefully.

Q627 Lord Peston: But you regard that as within your remit, so if it is not being monitored, you will want someone saying, “Why aren’t you paying that more attention?” as opposed to the specific, “I didn’t like that programme”?

Ms Diehl: Yes.

Ms Hay: We are concerned about trends, if you like.

Q628 Bishop of Manchester: Do you find yourselves more concerned about the BBC or other channels? Are you reasonably satisfied with the standards of the BBC?

Ms Hay: In what way? What kinds of standards?

Q629 Bishop of Manchester: In terms of the general sort of complaints that you might make of taste and decency and that kind of area. Are you reasonably satisfied that the BBC is meeting the standards?

Ms Hay: As an organisation, we left that very much in former days to the Broadcasting Standards Commission and now to the BBC handling it itself, and to Ofcom in regard to the commercial sector. If you are going to handle subjective areas of taste and decency particularly, you do need to have the resources to do very wide research and this is something that the Broadcasting Standards Commission used to do very well. They did quantitative and qualitative research, they had focus groups, they had publications, they commissioned conferences and seminars and all sorts of things and they did, we feel, do a pretty good job on that.

Q630 Baroness Howe of Idlicote: Can I just follow up very briefly on some of the areas of concern, violence and bad language and so on. Again I come back to this point about the Trust having particular responsibility to the licence fee payer. Should they be taking the current view as to what is acceptable to the licence fee payer?

Ms Hay: Well, we think this is probably one of the differences between the former Board of Governors and the new Trust, that they (the new trust) should have their own research function and they should

have mechanisms for commissioning consultation and research and for getting more active feedback and being more interactive by using new forms of media. Also they should be going out to the public and speaking more. The former members of the Board of Governors were seldom seen in public.

Q631 Baroness O’Neill of Bengarve: You make it sound as though the difficulties are to know what the public want and yet you constantly stress the notions of public interest and need. I wonder if you can say a little bit about the gap there because if you found that there was great public acceptance of foul language, provided it was not at teatime, would you rest content with the rhetorical quality of what was there all evening because it was widely accepted?

Ms Diehl: I would like to say that I think there is a key role here for the BBC’s partnership with the voluntary sector, many of whose organisations are actually working around the results of violence in the media or children and their development or educational learning, and that the voluntary sector has been delighted in the last year or two to see an increase in the BBC’s partnership with a whole range of voluntary and community organisations which has been translated directly into more innovative and diverse programming and back-up. I think that this is one way for the BBC to be constantly monitoring feedback and the influence on public opinion through these organisations that are often highly representative.

Q632 Baroness Howe of Idlicote: I have to say, I think you are oscillating between talking about standards and talking about what goes in the community regardless of what standards are achieved. Maybe you want to say that this equivocation is essential or you go for both, but it is unclear.

Ms Diehl: You were asking about how the public opinion is represented through into the BBC? Is that right?

Q633 Baroness Howe of Idlicote: No, I am sorry; I must have put the question poorly. What I was asking was whether you are looking at standards which you think are important and sometimes it seems to us from what you have said that you are as you have emphasised plurality and diversity, for example, but do you emphasise accuracy and do you have standards with regard to, for example, violence permeating all areas of programming or violent language, and I do not wish to refer to conventional swear words, but violent language and is it, as it were, an ethical claim or a sociological claim you are making?

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Ms Diehl: This is a very in-depth conversation to be having! I think, first of all, that the Trust has absolutely got to lay down those standards, to review them and to check them all the time, constantly to look at them. I would reiterate that nothing stands still and I would say again that part of the methodology of constantly reviewing what those standards are, what those ethics are and what those ethical values are is to involve close liaison and co-operation with civil society organisations and that that mechanism needs to be built in so that that process of philosophical, if necessary, understanding of what those standards should be is built into that communication.

Q634 Baroness Gibson of Market Rasen: We heard yesterday from one of the witnesses that they felt that the BBC were very aggressive in their bidding for programmes. Are there any specific categories of programme that you think the BBC would not be justified in either bidding for or producing?

Ms Hay: We certainly think no, it is not a question of category or genre. The BBC now has purposes and objectives and its programmes should be distinctive and of high quality, yes, but the BBC is funded by a licence which is a universal licence on every household and, therefore, the BBC should be meeting the needs and should be seeking to serve all of those licence fee payers. It is not a question of genre at all. It is a question of the best of its kind and there are occasions, for instance, when even an imported film or something will bring together the whole nation, there are listed events and other events, whether they are sporting events or royal events, but there are programmes where the BBC particularly, can bring together the whole nation, as it does with Proms in the Park and so on, there are genres which we think should be excluded. Each programme should be looked at on its own merits for its particular purpose at that particular time and in the context of the wider situation of the audience, so we would not simply ban any categories as far as Voice of the Listener and Viewer is concerned.

Ms Reid: There is a concern with public service broadcasting, and I represent public service broadcasters, as to whether it is perceived as essentially worthy and that entertainment programmes, for example, would be excluded and we do not think that should be the case.

Ms Diehl: I would like to add that I think Public Voice feels very strongly that obviously that programming needs to reflect the proposed mission and purposes of the BBC which may necessarily exclude certain programmes.

Q635 Baroness Gibson of Market Rasen: Could I just ask you about one particular area, for example, soft

porn. Do you think the BBC should be bidding in that area?

Ms Diehl: I think it is unlikely that soft porn will meet the five proposed purposes of the BBC's mission. If in the future there is a way that it does, then perhaps it is worth considering, but what we are very pleased about with the BBC's proposed mission is that it gives a referral point, a guideline to come back to, though not enough of the detail and background behind that, but it gives a purpose that the public can understand as well and that the licence fee payer can understand and that the management can come back to again and again and again and that the complainant can come back to.

Chairman: Let's move on again to what will have to be the last series of questions on regional broadcasting.

Q636 Lord Maxton: At the moment the whole digital revolution, and I do not just include digital television, but the whole range of digital, allows your organisations much greater access to your client groups and to the wider public, or it ought to, and that is where there is a question. Do you think the BBC both locally and regionally ought to be playing a very much bigger role with organisations like yours in providing you with the expertise and maybe the technology which then allows you to contact, and be in touch with, your own client groups?

Ms Reid: It is interesting that the report of the Commons Select Committee recognised an important role for local and community broadcasters in strengthening, for example, the BBC's regional output, but that was not reflected in the Government's response to their recommendations. Community broadcasters have a fantastic reach into communities and that is something that the BBC is quite envious of and they have contacts, engagement and involvement which the BBC can only dream about. However, the BBC has a responsibility to these communities, so there is great potential there for community media organisations and local organisations to work in partnership with the BBC, particularly around regional broadcasting and ultra-local television which may be on broadband or it may be on other platforms, so there is potential there. However, the partnership is between a very large organisation and very small, poorly resourced organisations, so we welcome the partnership arrangements that are being discussed at the moment. However, the partnership needs to be on equal terms and this is where quite a lot of the members, for example, of the Community Media Association have experienced difficulties on a practical level. At the grassroots level, the reality of the partnership can sometimes be rewarding for both parties, but sometimes it can be very, very difficult and at the moment we are looking at a partnership

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agreement which will look at the rules of engagement between the two organisations. That partnership would need to recognise the richness that community media organisations would bring to the BBC and to its content and which would help it fulfil its purposes. The partnership would need to be resourced from the BBC and you mentioned earlier, for example, things like training and equipment and access. In practice, that has meant in the past rather a paternalistic, “We haven’t trained you. We have no acknowledgement that the BBC producers, for example, concerned have gained knowledge and an understanding of the communities which they would not have gained by any other means”, so the answer to your question is that there is enormous potential there in partnership with the BBC. However, the difficulties of scale make it very hard to achieve and also there is a danger that the BBC subsumes individuals and subsumes community media organisations and then, by coming together, you have lost the individuality which gave the relationship strength in the first place. There is also an issue around funding. At the moment the BBC competes for funding with community organisations around things like the Arts Council’s Roots Project or the Blast Project, and if community media organisations are not campaigning for top-slicing, then the BBC ought to take into consideration that it ought not to be competing for public funding in other areas.

Q637 Lord Maxton: How would you like to see the BBC maybe restructuring itself, not at Board and Trust level, but below that at the regional level and local level, restructuring itself to take that into account?

Ms Reid: At the moment there are some mechanisms for local accountabilities. However, there are points beyond which the BBC cannot go. I worked for the BBC for 22 years, so I have been a person working for the BBC trying to work with communities and now I work for a community organisation trying to work with the BBC, so I feel in some ways that I can see quite clearly the differences. The BBC is not allowed to abdicate editorial responsibility and that is its role.

If you are a BBC producer, however much you care, however much you want to represent, however much you are interested in the communities, you do have to take editorial responsibility yourself and you cannot abdicate it, whereas with community media organisations, the situation is rather different in that they are publicly owned, they are locally owned and locally accountable. However, the BBC should be able to facilitate that local accountability without compromising its own.

Q638 Lord Maxton: At the national level, meaning the national, Scottish and Welsh, do you see a role both for the Scottish Parliament and the Welsh Assembly in directly involving themselves in the BBC at that sort of level?

Ms Hay: Yes, I think there are ambiguities at the moment with devolution. One of our Board members for Scotland has just given evidence, for instance, to the Culture and Enterprise Committee of the Scottish Parliament. We do hold annual events and conferences in Scotland and Wales and we have had some in Belfast. Broadcasting, as you know, is a reserve of power to Westminster. There are for example overlaps with the Gaelic funding in Scotland, with culture and language and again in Wales, so it is an area of tension. Again I am sure it needs a lot more thought, but certainly in each of the conferences that we have had in the nations, we find that it is becoming an area of tension, particularly as the new Parliament and Assembly gather their own impetus and power, they are beginning to look at issues in different ways.

Q639 Chairman: Well, we will be in Cardiff actually next week, so we will be able to have a look at some of those tensions. I will have to bring this to an end. Thank you very, very much for coming and thank you for giving us your evidence and for your papers. Perhaps if we have got other points we wish to follow up, we could write to you and do it in that way. I am very grateful indeed. Thank you.

Ms Hay: We would certainly be very glad to answer any more questions and thank you very much for inviting us today.

Memorandum by the Digital TV Group (DTG)

RANGE OF INTERESTS REPRESENTED

The Digital TV Group is an independent body, representing over 100 organisations, facilitating the rapid roll-out of digital TV and convergence across the communications industry in the UK. This consultation response has been confined to its main area of expertise: A sixth public purpose—building digital Britain.

While every effort has been made to ensure accuracy and to provide a consensus view when required, it should not be assumed that all member organisations of the Digital TV Group support all aspects of this submission. The views expressed in this response are those of members who expressed an opinion and are not the collective view of DTG Council.

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CORE OF DTG RESPONSE

1. The DTG acknowledges that the switch from analogue to digital television is only one part of the digital transition and that new technologies such as HDTV, mobile, pod-casting and on-demand delivery over broadband are important, but also believes that continued innovation in broadcast technology is vital. The DTG urges further consideration to be given to the proposed restructuring and/or relocation which is jeopardising BBC R&D. A robust research function is paramount to the BBC achieving its goals and only an operation of critical mass can accomplish this.
2. Switchover communications should be started much earlier than is currently being suggested if a switchover date of 2012 is to be achieved.
3. The BBC must support the introduction of new consumer electronics products such as integrated digital televisions (IDTVs) and personal video recorders (PVRs) as these are critical in helping the most vulnerable to cope with switchover.

DTG RESPONSE TO KEY PROPOSALS AND QUESTIONS FOR CONSULTATION

Foundations of 21st century BBC

Questions 1–3

No DTG response.

A Sixth Public Purpose—Building Digital Britain

Question 4: Do you agree that the BBC should be at the forefront of developments in technology, including digital television?

DTG response

The DTG agrees that the BBC needs to play a leading role in building digital Britain by developing and promoting new technology. It believes that, in line with those characteristics suggested for content, the BBC should be the benchmark of innovation and creativity in engineering and technology.

BBC R&D and NHK in Japan are the last two world class research laboratories dedicated to the broadcast industry. Similar institutions have either closed or are of insufficient size to ensure adequate representation of broadcasting interests. The second phase of digital will see the delivery of content through one-to-one broadband services and these will coexist and interoperate with more cost effective one-to-many broadcast services.

A principal DTG activity is to ensure the efficient and effective delivery of content to the home. This considerable interoperability task is achieved through specialist groups that examine key issues of technical compatibility. These operate in the areas from the continuous improvement of existing systems to the implementation of emerging technology such as HDTV, Mobile, Metadata and IPTV. Much of this work is mission critical to both digital switchover and achieving the BBC's goal of digital universality in television by 2012.

The DTG believes that the BBC Research and Development Department has a critical part to play in building a digital Britain and therefore should be maintained with sufficient critical mass.

The DTG acknowledges that the switch from analogue to digital television is only one part of the digital transition and that new technologies such as HDTV, mobile, pod-casting and on-demand delivery over broadband are important, but also believes that continued innovation in broadcast technology is vital.

It is important to the industry that strives to support the BBC services that there is a first class research body to ensure compatibility between broadcasters, programme makers and the emerging technologies provided by manufacturers. This flow of innovative thinking is mutually beneficial and ensures that UK broadcasters are fully informed of technical developments. BBC research engineers are at the centre of key international developments and at the forefront of international standards setting. As an indication of their standing, they are in widespread demand as members of international expert groups, some are visiting university professors, others gain doctorates for their BBC work and numerous national and international awards come to Kingswood Warren regularly. The department numbers a Fellow of the Royal Society among its past heads. The department has a portfolio of more than 300 patents, 10 being added last year. It comprises 150

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professional engineers and additional support staff. Together with the Japanese NHK lab, it is one of just two world class broadcasting labs dedicated to supporting this major technology-based industry.

The DTG believes that a robust research function is paramount to the BBC achieving its goals and only an operation of critical mass can accomplish this. The DTG urges further consideration to be given to the proposed restructuring and/or relocation of BBC R&D which is jeopardising this vital resource.

Switchover

The DTG supports the proposal for the BBC to take a leading role in planning, preparing and implementing of the switchover process. The DTG believes that this must begin as early as possible in order to meet a switchover date of 2012 in line with the views of Ofcom, the BBC and the European Commission.

The DTG urges the BBC to ensure that consumer communication is started at the earliest possible date and, unlike the BBC Digital marketing campaigns, on air communications should include information on easy-to-use consumer electronics products and services such as integrated digital televisions (iDTVs) and Personal Video Recorders (PVRs), critical in helping the most vulnerable to cope with switchover. Many DTG members are concerned at suggestions that any significant communication is unlikely to start before 2007.

Replicating the analogue terrestrial coverage in digital

The DTG believes that close to universal availability of digital on terrestrial will be important at switchover.

Developing alternative reception options

The DTG encourages the development of services across all platforms.

Coordinating role

The DTG believes that it is important for the BBC to support the coordinating role of SwitchCo.

Information on switchover

It is vital switchover is supported by an early and significant communication campaign, at national and regional levels from the BBC. This campaign should include information on the range of products (set top boxes, integrated digital TVs, personal video recorders) and platforms (DTT, DSAT, DCAB, Broadband) options available.

Helping the Most Vulnerable to Cope with Switchover

A mechanism for the support of the most vulnerable in society is critical for switchover and the BBC should work with others to ensure a mechanism is implemented.

The BBC's Constitution

Questions 5–8

No DTG response.

Accountability

Questions 9–11

No DTG response.

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Question 12: What skills and expertise do you think they (the BBC Trust) needs?:

The DTG believes that it would be beneficial for the Trust to include at least one member who is an expert in the technical development of broadcasting and media distribution.

Question 13

No DTG response.

More Detailed Issues of Scale and Scope

Questions 14 and 15

No DTG response.

Scope of Publicly-funded Services

Question 16: Do you agree that the BBC should be able to propose changes to its range of services over the course of the next 10 years?

The DTG agrees with this proposal.

Question 17: Do you agree with our proposals for handling new services?

The DTG agrees with the proposals for the introduction of enhanced public value and market impact tests.

Questions 18 and 19

No DTG response.

Beyond the BBC

The wider system of public services broadcasting (PSB)

Question 20

No DTG response.

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Examination of Witnesses

Witnesses: MR DAVID YOULTON, Chairman, Digital Television Group, MR MARCUS COLEMAN, Director-General, Digital Television Group, Ms LISA OPIE, Managing Director, Flextech-Telewest, MR SIMON DUFFY, Chief Executive Officer, NTL, and MR ROGER LYNCH, Chairman and Chief Executive Officer, Video Networks Ltd, examined.

Q640 Chairman: As you know, we are looking at the Charter review as far as the BBC is concerned. We hope to bring out our report, and indeed we need to have our report finished, by the end of October, so we have not got a great deal of time given that the House will be in recess again for quite a long period. Obviously all the evidence that we have had so far indicates and points to the importance of the area that we are now going to talk about and I wonder if the best thing just to begin with is if everyone would like to introduce themselves and say who their companies or organisations are.

Mr Lynch: I am Roger Lynch, Chairman and Chief Executive Officer of Video Networks. We offer a service in London called HomeChoice which is a broadband Internet, digital TV, video on demand and telephony service. It is a sort of new range of technologies that the service is using, digital subscriber line technologies, so we actually go into BT telephone exchanges, install equipment, connect that by fibre-optics into our service centres and then, by doing that, we are able to deliver over-the-phone-line television just like Sky or NTL would do and also video on demand and other services like that. It is a

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new entrant in this field because the technology to deliver these kinds of services has only really come to fruition, at least on a cost-effectiveness basis, over the last several years and the service was launched commercially last summer after many years of development.

Mr Duffy: Good morning. I am Simon Duffy, the Chief Executive of NTL, the cable company. As I think you may know, there are, broadly speaking, two cable companies in the UK, ourselves and Telewest. We have networked about a third of the homes in the UK and we have a product line-up rather similar to the one that Roger talks about with telephony, where I think we are number two after BT, broadband, where we are actually number one and ahead of BT, I am very proud to say, and then TV, paid TV, where obviously the main competition are the people you interviewed yesterday, Sky. We deliver that over our own network to currently around three million customers out of the seven or eight that we could possibly deliver it to. Like Roger, we also deliver video on demand, a relatively new technology which we launched starting in Scotland and then in Wales earlier this year and we are rolling it out across the whole country and we will be moving on to other technologies, like HDTV and so on, during the course of this year and next.

Mr Youlton: I am David Youlton, Chairman of the Digital Television Group, and also Chairman of the Digital Stakeholders' Group. The Digital Television Group, as you may or may not know, is a collection of 100 organisations represented here and beyond, being all broadcasters, manufacturers, retailers, Microsoft, everybody that is really interested in digital television. We have been underpinning digital television for the last 10 years by acting as a clearing house for the technology. All the commercial interests are left outside and the technology where there is mutual self-interest is developed through the work that we do.

Mr Coleman: I am Director-General of the same organisation and have been working with the Department of Trade and Industry and the DCMS in helping them plan for switchover over the last three years and am now running operationally the Digital TV Group.

Ms Opie: I am Lisa Opie and I am the Managing Director of Flextech Television. Flextech Television is wholly owned by Telewest, a content division of Telewest Communications, and we have five wholly owned channels, Bravo, Living, Trouble and Challenge in the multi-channel marketplace, and we also have a fifty-fifty joint venture with the BBC for 10 UK TV channels. Between us that is 15 channels, the largest provider of multi-channel basic channels into the marketplace and in multi-channel homes our portfolio of channels accounts for over 20 per cent of viewing.

Q641 Chairman: Thank you very much. Can I start with a general question, which is obviously the question that the public would be most interested in, and that is to do with the importance of the switchover to digital and the impact that that is going to have. Obviously that is a vast subject. In a few words, how would you all describe its importance?

Mr Duffy: Obviously it is of enormous significance both in the impact it is going to have on people's day-to-day lives and the way that they consume entertainment and communications products but also in the process they are going to have to go through in learning how to do it. I think in many respects the dialogue around switchover has been too limited and constrained because I think there is a school of thought out there which says that if the whole country can watch *Eastenders*, for example, on 1 January 2013 that would be success and I do not think it would, I think it would be something very far short of success. It would give somebody the technical right to shout "goal" and put balls in the back of the net but it would not really be there. What digital switchover ought to mean is the ability of everybody in the country, or as many as possible, to consume private and public sector services, to interact through a powerful two-way network, for the government to achieve its objectives of bridging the digital divide, creating digital growth in Britain, being more efficient and effective, more modernized in terms of the delivery of public services and the consumption of public services, and in the consumption of private services. Everyone having a digital television or a digital set-top box or whatever does not deliver that. I think what we need to ensure is that the debate around digital switchover is broad enough to capture the full service maximization, which was the government's original aim for the thing in the first place.

Mr Lynch: If you look at the progression that is happening right now, we started with five channels or even one channel before that, but when you get into digital you end up with potentially hundreds of channels which obviously offer consumers more choice. The point that Simon is making about the powerful two-way activity enables exponential growth of choice beyond that. Our services now provide over 7,000 hours of content which you could watch at any time; you do not have to wait for a programmer to schedule it, it is available now. That is the type of choice that digital technology should be bringing rather than just a few more channels. It should bring interactivity, it should bring community based television, regional programming and user produced programming. I think that is what will be transformational rather than just the ability to see a few more BBC channels on the television.

Mr Youlton: I think if we were Greeks we would go back to the Greeks and we would say that the "d" in democracy stood for digital and that as a result of

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digital coming in all its forms, across all its platforms, all media, it is going to give such a wide range of choice, access and communications. Progress will be the law of the future just as the past and digital is an absolutely essential part of that. We should also consider that through the voice and through the voice activated equipment that will come with this the keyboard and all those interface pieces of equipment will stop blocking the average person from being able to enjoy the technology and the benefits of the technology. It cannot happen without digital.

Ms Opie: I would say that the move towards a totally digital environment is a real and genuine positive for consumers because it does, without a shadow of a doubt, open up a diversity of choice and a breadth of quality and content that can only be good for viewers. I think from a broadcasting perspective it will force us to re-think our relationship with viewers. I think the old world in which broadcasting institutions have pushed content at viewers is set to change and that deeper relationships between viewer and viewed will evolve in the years to come as we build, as Roger said, deep and more community driven relationships with viewers, one that is driven by interactivity and a sense of affinity between channels and consumers.

Q642 Chairman: We are all agreed on the fundamental importance of it. The Green Paper itself has proposed a sixth public purpose for the BBC of “building digital Britain...” and BSkyB has suggested that this could be interpreted as sanctioning an extension of the BBC’s activities into almost any area using digital technology. Is this a concern that you share, and is it a potential danger in this area?

Mr Lynch: That is what an American would call a softball question! We feel that it is absolutely a blank cheque. We have a lot of concern about it. The BBC is quite good at what they do with the resources that they have. I think the level at which that could be interpreted; to include services that some of us cannot even imagine today, could have a very chilling effect. One of my biggest concerns about it is the crowding out of private capital and private investment. It is not so much the fact that there are services today that we can imagine that we need to protect against but rather the services that we cannot imagine where we need to make sure that there is incentive for private investment to go into these because otherwise you will have everything being funded through the BBC as there will be no incentive for new providers to come in and invest in digital services. Let us face it, everything will be a digital service, there will be no analogue services to invest in. If there is concern that the remit of the BBC is so wide that it could step in

and take over that innovation and outspend you then your business plan is worthless.

Q643 Chairman: So you do accept that there is a role for the BBC. What you are saying is it is a limited role.

Mr Lynch: The role that I see for the BBC is, first and foremost, as a content provider, to support new digital services and they do that now. We have a replay service that we do with the BBC which currently is 50 hours of programming and you can access it on demand through the linear channels. I can hit the menu button on my remote control and bring up a list of public service broadcasting for the last seven days and access those programmes. To me that is a perfect example of how the partnership should work. The BBC is doing what they do best, which is content production and making it available to the licence fee payer across platforms that are willing to invest in the infrastructure necessary to deliver that.

Mr Duffy: We share the same concerns as Video Networks and so on. I think it is probably futile for us to protest that the BBC should not be in this area. I think the issue arises around how it is managed and what the role of the Trust is. I suppose our view on it would be that the BBC is inevitably going to become involved in activities which do impinge upon our commercial activities and we will be working in the same areas as the BBC and that is a bit like sleeping in the same bed as an elephant, but if it rolls over in the middle of the night you might get badly hurt. We would like to have someone controlling the rate at which it rolls and where it rolls and that is the role of the Trust. Although we share some of Sky’s concerns about the Trust, we believe it can be made to work, but you have got to put quite a lot of effort in to ensuring that it does work properly, which means that it has a proper balance on the Trust of people who do not just have broadcasting and content experience but who have good commercial and technical platform experience so they are not wandering around in the dark and bumping into things that they do not understand. There needs to be a degree of expertise on the Trust. Its remit must be to look not just at the content and broadcast side of the BBC’s activities but truly over its ventures into technologies like the IMP and so on, and it needs to be able to look at not just future BBC activities but past ones as well. It might be appropriate at a certain stage in development for the BBC to part break something a bit but then to withdraw if they have been there to correct a market failure. The next point we would make around the Trust would be that it must be open to scrutiny, its workings must be consultative and people who are impacted by that must be included in the process. Finally, if it is a

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factual error then it must be capable of being challenged. If all those things are built into the Trust and into the workings of the Trust then we think that it is possible to get a good balance between public benefit and public value and the BBC pursuing those purposes, including the sixth one, just as long as there are those constraints around it.

Q644 Chairman: I have had the benefit of seeing your evidence. You say that the BBC retains an important role in providing the public with a minimum level of high quality programming and the kind of programming the market would probably not provide if left to its own devices. On the face of it that sounds a fairly restrictive definition of what the BBC should provide.

Mr Duffy: It was not meant to be that way. I speak both as a citizen as well as a business in this. I am very happy to pay the licence fee and see the BBC do what it does but not if it is simply going to pursue and lead to a commercial strategy with ITV or various other content programme producers. We all take pride in what the BBC is and has achieved but there is something to be said about distinctiveness and being different. I am not trying to pigeonhole the BBC into some sort of narrow thing, but I do think that its *raison d'être* to an extent is to be distinctive, different, high quality, all those sorts of things, but that does not keep it out of the mass market.

Q645 Lord Kalms: I was intrigued by one of the introductory comments you made, which was that you are expressing the views of only those members who responded and they are not the collective views of the DTG Council. Presumably you would have a fairly broad range of views there. Simon Duffy spoke very strongly about the Trust, although you have quite deliberately stated in your written answer that you did not want to make any comments on the constitution and on accountability. Do I detect that there is a diversity of views amongst your 100 members?

Mr Youlton: There is and I disagree with most of them. It is walking on thin ice for me to claim to represent their views. Without treading on anybody's toes, I could answer that by agreeing with my friend here that competitive pressures and competitive equality are important. I would like to remind everybody a little of Hegel's dictum, "The only thing man learns from history is that man never learns from history". Let us look at history. The BBC has been a dominant player of British broadcasting since the dawn of television. What has happened in that period? All of these other organisations have been able to emerge in this environment where the BBC has had a dominant role, for example Sky and all the other organisations that have emerged. I am not

making a statement, only an observation. If I was in your position rather than in mine I would take the view that the BBC has allowed a huge amount of expression competition to evolve. The BBC is a dominant and important player and very successful, it is surrounded by competitors, politicians, people in the City who do not necessarily benefit too much from selling bits off all the time and so there will be a lot of criticism. If we go back to Greece, sophistry is a great thing and you could make a very sophisticated argument by single focusing on something. If you look at the BBC as an integrated business, it is very important for it to have enough left to be an integrated business. I would hope that none of my colleagues would want the BBC to cease to be there.

Q646 Lord Kalms: We now know why you are the Chairman! You are highly critical of the research function of the BBC. That is very important to us because (a) they are driving the digital era and (b) we are reviewing the future of the BBC. Twice in your report you are critical of the research resource available to the BBC. Have I misread you?

Mr Youlton: I have been on record for the last 15 years as being one of the major supporters of the BBC research department. In somewhat of a unique role, I have been Chairman and Chief Executive until 2000 of probably the fastest growing broadcast electronics company, a multi-national and I have been working very closely with the BBC research department, so I have a personal and very deep knowledge of the BBC research department. I also know that, apart from NHK in Japan, it is the only major research facility left in the world and without it the BBC would be massively impacted. The sadness is that—and this is my biggest criticism of the BBC at a personal level as well as at a collective level—during this whole period of digital television the BBC has not had a broadcast chief engineer on its board of management as it got rid of that role maybe 10 or 12 years ago. For any organisation that is well run not to have had somebody of calibre, who really understands the art of the moving image in real time and across all platforms, is incomprehensible and I cannot imagine why they have done it or how it happened.

Q647 Chairman: Have you put this to the BBC?

Mr Youlton: Many times.

Q648 Chairman: What is the reply?

Mr Youlton: They really believe that if they bring in people from outside who understand software and other types of technology then that is what they need to have advice about. By the way, the research department is having its Open Day today and tomorrow. I would recommend you go and see it because it is extraordinary. Many years ago I tried to

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organise with Rod Lynch, when he ran the resources and the research department, to set it up on a proper basis so it was no longer seen as a cost centre for the BBC and they could have short-term views about its funding and it should be there. It is like the UK's NASA, it underpins so much of what goes on in Britain, in the technology of images, production technology as well as transmission technology, and without it it would just not be the BBC and it would not be possible for us to do the things we need to. I am talking now as an economist. We are at what economists call a "chron datae" (?) of long wave which is a 55 year business cycle fueled by radical technical change. We are in the first 10 years of that 55 year cycle. Digital television is just a tiny part of that process. The integration of all these technologies across all these platforms and media is what it is about, and the BBC Research Department has got the collective memory and the largest knowledge base in the world of people who understand this. We should collectively own it. We should have an independent board that actually helps to commercialize and generalize what they are doing across all the companies and other broadcasters in the UK so that they maintain their competitive lead. They are currently talking about selling it to venture capitalists. If they did that it would be a disaster.

Q649 Lord Kalms: In your memorandum you say that you are concerned about the proposed restructuring and reallocation which is jeopardizing the BBC R&D.

Mr Youlton: The BBC are reducing the headcount and moving it to Manchester and they will lose the BBC research department by doing that. People are being headhunted already. They are feeling insecure and thinking of leaving and if that continues then that great knowledge base is going to be lost.

Q650 Lord Maxton: I agree with much of what you are saying about the BBC's research and development. I have been pushing it for some time, in fact since I was in the other place. How on earth do you and the BBC give access to everybody to their enormous archive, which is one of the great treasures of this country? In many ways it is a bigger treasure than the British Museum or the National Portrait Gallery or wherever. How do we get access to it? I think you could do it if you were given the ability, Mr Lynch. Presumably the cable companies can too. Your audience is of more limited potential than yours could be. Am I right?

Mr Lynch: Just like a cable company, we have to build up our network but it does not require digging up the streets. We do have the capability of building up a broader network more quickly than if we had to dig up the streets ourselves. The technology exists

today to do that and in fact we do it. We license quite a bit of content from BBC Worldwide on a commercial basis which we then use to populate the on-demand services that we have. Our real interest in that archive is just that, it is making as much of it available on the platform as possible. Obviously from a commercial standpoint we want to get our platform out to as many people as we can. We do not charge for the content, the content is made available free just like the replay service that I mentioned earlier. The technology to have massive amounts of content available on demand exists today. We are doing it, NTL is starting to do it with their video on demand and so very shortly it is going to be right across the UK. My point about the BBC is that that is what they should be embracing. They should be embracing companies that are developing the technology and infrastructure.

Q651 Lord Maxton: In theory it is 95 per cent of the population who are capable of having access to a BT telephone line or do you work with other telephone companies as well?

Mr Lynch: We just work with the BT lines.

Q652 Lord Maxton: In a sense your technology actually makes the whole question of a digital switchover irrelevant.

Mr Lynch: A lot of the conversations we have been having with DCMS and the BBC are about that point, which is that the DSL technology that we deploy can be a key instrument in digital switchover. Let me go through the issues to do with digital switchover. Obviously there is the "at risk" group of the population that may not have the money to buy a new television set or a set-top box and things like that. The biggest issue seems to be how we get it into all of the multi-dwelling units because many of these do not have integrated aerial systems, they may have restrictions against a satellite dish and Cable may not be covering it. They all have telephone lines and so they are all wired already. All that is required is for us to put our kit into that exchange and then we could enable everyone connected to that exchange to have digital television.

Q653 Lord Maxton: Is that a role the current exchanges are capable of doing? They are not all capable of doing BT broadband.

Mr Lynch: We have done this in 137 exchanges in London only. We are planning to roll it out across other areas in the UK. BT has about 5,800 telephone exchanges. Many of them will serve a village that has 50 homes. It is not commercially sensible for us to invest £50,000, £60,000 or £70,000 of capital to go into that telephone exchange and put in the equipment. We will do it where the exchanges are of

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sufficient size that we can expect to get enough customers to justify it, but that does not mean there is not a model for us to help do it, it is just a different model. It is one where we are not taking the commercial risk of saying we will have to ensure that we can get 100 per cent of the homes that are there connected to that telephone exchange. These are all things we are exploring because it is a technology that can help roll out digital very rapidly.

Q654 Lord Maxton: That is what BT itself has been saying, that they have to have a certain number of subscribers before they will do an upgrade. I have a house on the Isle of Aaron and we are getting BT broadband in July. Can you not be in the same area or does it cost you considerably more than it costs them?

Mr Lynch: No, it does not. The difference is that just because BT has enabled it for broadband does not mean our services can be delivered because their network cannot do what we do. They would have to build a bespoke network to do this. We could go into that exchange and then enable it but we would have to put up the capital to do it.

Q655 Lord Maxton: And you would have to have enough subscribers to make it worth your while.

Mr Lynch: That is right.

Q656 Lord Peston: I would like to try and lower the level of the discussion because I have not understood a word of what I have heard so far. I still do not understand what we are talking about when we talk about digital. When we go to whatever digital turns out to be will there be no scarcity of the ability in the sense that wave bands will be scarce in ordinary broadcasting? Is the point of digital that that kind of scarcity totally disappears or is there still scarcity?

Mr Youlton: Yes. It is always going to be a scarce resource; it is finite.

Q657 Lord Peston: In the sense that there is no scarcity in the ability of anybody to set up a web site, this is not the same. In other words, by using my broadband I can get into thousands of universities and into enormous numbers of archives free and I thought digital meant the same sort of thing.

Mr Lynch: You had the analogue spectrum which enabled this. The digital spectrum enables massive amounts more, but the two-way interactivity enables infinite amounts. There are billions of pages available on the internet you can access from many computers in this building today. You have unrestricted access.

Q658 Lord Peston: I do that all day long when I am bored stiff with Parliament!

Mr Lynch: That is what digital should deliver, not just a little more spectrum.

Q659 Lord Peston: So technically it could do that?

Mr Lynch: Two-way interactive systems can do that. Digital terrestrial, Freeview, is more spectrum, a few more channels, but it is still a relatively small pipe in which to deliver content.

Q660 Lord Peston: In terms of what we might call broadcasters, is the analogy with the web site the same? If I want to be a broadcaster, as long as I am willing to do all the work required at my end I could set up the equivalent of a web site and then as long as people know I am there they can get into it. Is that a fair description of what might be possible? In a sense the monopolies that now exist could gradually disappear, could they not?

Mr Lynch: Yes.

Q661 Lord Peston: One could take something that the BBC does and say "I could do that better" and I could pinch their bit and put it on my thing. I have still got to go through the business of downloading it but I could do it.

Ms Opie: Except that you have a critical issue as to how you would fund that. The dominance of the terrestrials within our broadcasting market is still very much there and likely to continue for the foreseeable future. The expansion of ITV and BBC into the digital arena and the multi-channel marketplace has been significant and it has protected ITV's revenues going forward.

Q662 Lord Peston: Let us take a great American university with a great drama department. I could put on the works of Shakespeare bit by bit and they would be forming a public service role which everybody could access as long as they had access to your bit. I would be the equivalent of a broadcaster, would I not, and I could put on the lectures of my staff and do other public service things?

Ms Opie: You asked a question earlier about the BBC archive and full accessibility to the BBC archive. There is no doubt that it is a hugely valuable archive to tap into. There is the possible scenario where our environment is so rich in content that the ability to navigate your way through it becomes almost impossible and as the industry we can genuinely cheapen and undermine the value of our content. Let us not forget that 50 per cent of the broadcasting industry is funded commercially. The BBC has the luxury of creating content without having to worry about shareholder value. UKTV, where clearly we have a relationship with the BBC, is an excellent example of a way of opening up the BBC archive into a very important marketplace. Over 50 per cent of the

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population has chosen to pay for access to content. We have established that as something that is genuinely valid to consumers and they are willing to pay for it. The UKTV joint venture is a really good example of how you can have a commercial relationship with a public service broadcaster that delivers value back to the licence fee payer and refunds new content moving forward.

Q663 Lord Armstrong of Iliminster: Do you think that the BBC is giving enough emphasis and effort to educating and informing the public about digital programming and switchover? It is all going to come in in 2007.

Ms Opie: They have done a fantastic job in promoting digital terrestrial television. I think that going forward it is important that their message around digital is platform agnostic. I think that the benefits that cable can bring in terms of greater degrees of interactivity, a richer technological platform, is very valuable to consumers and I would like to see the BBC continue to promote all platforms for digital. Pay, Sky and Cable provides a greater range of choice than Freeview does and therefore the message should be equally spread.

Q664 Lord Armstrong of Iliminster: So the BBC should bear the whole cost of spreading it?

Ms Opie: No!

Q665 Baroness Howe of Idlicote: Given that there are benefits to companies such as yours, should you not be contributing to the whole cost of switchover and educating the public about switchover, particularly perhaps those who are the disadvantaged group and those who, for a variety of reasons, not least perhaps age, are unable to understand the various bits of equipment? What have you got to say about that? There are so many different switches that you have to do in different ways. When are we going to have a series of what I would call British standards which do not just rely on you competing with one another to make certain we buy your products rather than keep the one we have got?

Mr Youlton: That is exactly what the Digital Television Group has been doing for 10 years. It would be much worse if we had not had that. It is an environment where competitors come together to agree common standards and the proper implementation of international standards. That is happening. You will always get the competitive situation where people see a competitive advantage in having a different widget. I think those companies eventually will have difficulties. I think we are looking to a future where the voice can control to get

rid of the interface and that will help hugely, but this is maybe five or six years away.

Q666 Lord Kalms: Is BSkyB part of your group?

Mr Youlton: Yes. It is the grit in the oyster!

Q667 Lord Kalms: Would you agree that they are in fact, in technology terms, ahead in some areas of the BBC? They introduced the whole of the satellite area and are further advanced than the BBC in HDTV.

Mr Youlton: It is easy for them because basically they have got a vertical market and so they have a direct relationship with their supply base and with their customer base. The BBC has to work through organisations like ours and between us to get a common agreement on everything, and trying to get everybody to agree anything in double quick time is an enormously hard and inefficient way. The most efficient neural network is a single brain and Sky is a single brain. The BBC has to work without having that. That is the reason Sky can get ahead in these things. There is plenty of content but spectrum is scarce. When one begins to divvy up the spectrum it is very important that a balance is struck between the BBC's requirements for high definition in order to compete with Sky and with all the other players having a share. That is going to be your biggest challenge in the years ahead.

Q668 Lord Kalms: Let us take HDTV for a start. Sky is leading in this area. Do you think they are pulling the BBC along or do you think the BBC recognises that there is a role for a form of high definition?

Mr Youlton: We have been working with the BBC on high definition technology and products for 15 years. The BBC was there long before Sky took an interest. Technology gradually matures and the technology has matured to a point now where it is relatively cheap through the great multinationals, and Sky have now decided that it will give them a competitive advantage to put on specialist and premium channels in high definition because the terrestrial broadcasters cannot compete because they do not have the spectrum and that is a legitimate thing for Sky to do and I have no objection to that. In terms of production, because Hollywood is driving a lot of this everybody will increasingly make programmes in high definition and the reason they will do that is because they will be able to archive the content for resale for generations to come if they do that and if they do not they will not. The costs of digitizing and restoring the archives are enormous. The access problem is one issue but restoring them and making them digitally friendly and available is quite another.

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Q669 Bishop of Manchester: You have mentioned Freeview on a couple of occasions during the course of the morning. Have you got any particular views about how you see Freeview over the next few years? In what sense might there be room for expansion? Would it be utterly contradictory to see some kind of pay system coming in within Freeview?

Mr Duffy: Cable's view on Freeview is roughly as follows. We recognise the role that it has played in driving digital take-up and so on, but it is an inherently limited technology. It is great as a path breaker and it is great at getting people to accept and put the equipment in place. Even if you took it up to a pay level, it is still a one-way distribution channel, it does not have the interactivity, it does not have the return path and it is going to be limited as a spectrum. You are not going to be able to have the high definition of programming and content over Freeview that you will have over a fixed line network such as Roger's or ours. By the way, we can cover the whole country using the same technology as Roger and we are. I think the problem around Freeview is that it is being held up as a goal in itself and it is not. It is a useful technology to progress a digital penetration but it needs to be replaced and supplanted in due course by something which is interactive and two-way and has much more capacity and flexibility. You can do it through a satellite network but it is difficult. It really requires a fixed line or a white line capability and that is going to be provided either by the kind of DSL technologies that Roger is operating and we operate as well or through the cable technology that we and Telewest provide, or through a Y5 or Ymax broadband link, but there is a lot of work to be done in that area first. I think Freeview is inherently limited and we need to recognise those limitations. Should it move into pay? A bit of it is already with this thing called top-up TV but that is not part of Freeview as a service, it is a service on top. I think there is a serious commercial question for people like us and Sky and others if Freeview is rolled out and to some extent is subsidised by the licence agreement and then converts itself post hoc into a competitor. That will have a material impact on our investment decision and growth plan. I would discourage the development of paid television because it will simply discourage us from investing in the technology of HDTV and so on that we need to do.

Q670 Bishop of Manchester: Is that a view that everybody would share?

Mr Youlton: Not entirely.

Ms Opie: I would agree very much with Simon that Freeview offers an opportunity to introduce people to the genuine value of multi-channel television and expand their viewing repertoire and I think that it

gives a natural upgrade path into paying. I think it is very easy to under-estimate the quality and diversity of content available in pay television. There have been various comments this morning around the BBC archive and its unique position as a public service provider, but I do think there are genuine examples in multi-channel television where UK production is increasing year in, year out and where some of those more difficult to reach demographics are having their needs met from a community and a public service broadcasting approach. There is a great deal of value there that we should continue to exploit. One of the things that I am very aware of is that about 24 per cent of all 16 to 24 viewings to the BBC are driven by three programmes, two of which are *Eastenders* and *Neighbours*. There are an awful lot of difficult to reach demographics that view within paid TV. Freeview offers that opportunity to drive an upgrade into greater choice and I think that is a positive thing.

Mr Youlton: The most important thing is that there is competition in paid television. If it is not being provided elsewhere then if Freeview can join with commercial partners to provide it that may be one way, but it is only a stepping stone. Perhaps it could be provided in another way. I think we are looking for the plurality of competition.

Q671 Lord King of Bridgwater: The passionate speech you made about the BBC R&D, is that following your public spirited attitude to better performance of the BBC or because you see their R&D as a public service in itself, which is a public service for the whole industry?

Mr Youlton: I think it is a public service in itself for the whole industry. The cost centre of the BBC is being constrained and it is not being exploited in the interests of the nation in the way it could be. There are models that I have discussed with the BBC that if implemented would achieve all of those objectives. It is a bit like the archives. How do you make it available to a wider audience and a wider group of people who can benefit from it? If you lose it, believe me, you will never create that again, it is something so unique. Like the BBC itself, it is sacred. It would be absolutely sacrilege to destroy it or allow it to be destroyed.

Chairman: We have got your point on that. I think we will want to take that one further in examination. Thank you for that.

Q672 Lord Maxton: Do you think that 10 or 15 years ago in this country we made a major error of judgment by concentrating on digital television rather than re-cabling our whole network so that we could provide high interactivity cable, which they have done in other countries like Japan and South

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Korea and they are talking 25 or 50 megabyte broadband? Would that not have been the right way to go?

Mr Duffy: Arguably, yes. Speaking for cable, we will deliver 25 plus, 50 plus megabytes to the home. We have already done it. In Dolphin Square we have it up and running and we have done it in field trials. Unfortunately, Telewest and ourselves only cover 52 per cent of the country, but there is a cable network which is capable today of delivering 25 megabytes to the home and it will be capable of delivering 50-100 megabytes in due course.

Q673 Lord Maxton: But DSL will not do that.

Mr Duffy: In the near term DSL will not get into those kinds of speeds, but it will get a lot better than it is today.

Mr Lynch: In some of these countries that you mentioned it is DSL that is delivering these services. ADSL/2plus, which is just about to be introduced in the UK, will deliver speeds of up to 20 megabytes and then there is VDSL and pair bonding. There are all sorts of new technologies around. I do not think that the UK got it wrong in that because the underlying infrastructure technology to deliver all this interactivity was not cost effective 10 years ago. Digital TV has enabled a greater amount of choice for British consumers.

Q674 Lord Peston: I would like to take us back to the whole question of paying. Is there not an incredible degree of irrationality involved in people's view of paying for anything in this area? It takes us back to Freeview. When I go to the cinema I pay, but I would not dream of buying a film on Sky because I regard that as just wrong. That is completely crackers if you think about it and that seems to be true of the whole problem of developing the area of access. Clearly there would have to be a marginal cost that needs to be met and yet I would have guessed a large number of people in this country would say that it must not happen. There is a real deep irrationality about paying as far as I am concerned. Maybe your experience has been different.

Ms Opie: Fifty per cent of the population do pay for television content in a subscription fee of one kind or another. I think you are absolutely right, as we move away from the linear broadcast stream into non-linear delivery of content establishing how you pay for watching one episode or 10 episodes of *Desperate Housewives* will require a great deal of thought and persuasion and it is a new relationship with consumers that we do not have at the moment and it is uncharted territory for us going forward.

Mr Youlton: I think technology is going to answer your question because what one is looking for is the television experience in the home. With the new flat

screens, with high definition where you can look through the glass and see three-dimensional space, with sound coming in, you will have that sound and image in your home, then it is a different proposition to ask people to pay.

Q675 Lord Peston: I would pay £50 for an extra ticket at Highbury and that does not bother me at all. I buy the package for Sky football, but if Sky were to announce from now on I was going to have to pay per match I would stop it. Do you regard it as part of your job to try and move the public forward to thinking about their attitude to this? Is that something you are really going to do more of?

Mr Duffy: Absolutely. That is the essence of video on demand, you are giving people the right to choose to consume what they want, at what time of day they want and lots of additional functionality with it and that costs us and people pay for it. People do pay to watch a football match or a movie.

Q676 Lord Peston: Very few do.

Mr Duffy: That is partly because the technology has only been available fairly recently. We now have 250,000 people. We only started in January. We have 40,000 who are paying regularly to consume products on demand, soccer, movies or whatever, last night's *Eastenders*. We are finding they are taking it up very keenly and aggressively. I do not think there is a problem in getting people to pay.

Ms Opie: There is no doubt that if you have paid a subscription fee in the past then making that leap to saying "I am going to pay more for greater functionality" is a logical progression to make.

Q677 Baroness O'Neill of Bengarve: How do you see the timetable for rolling digital out and for switching analogue off or changing it in the light of these technological wonders that you have told us about? Would you like to do it faster or slower?

Mr Lynch: It is going to come down to a policy issue, which is what you do when you get down to the last four or 5 per cent who have not switched. The commercial sector, with what the BBC is doing with Freeview, is going to drive out digital television, it will get up into the 80/90 per cent range and you will have the last bit remaining and then it will be a policy issue and that will determine the time-frame for switchover.

Mr Youlton: It is a great tragedy. We have been working on digital television since the mid-Nineties. We could have given Britain a massive competitive advantage by freeing up spectrum and trialing and adopting many new forms of communication through that spectrum and we have missed that opportunity because government has prevaricated so extraordinarily about announcing time. Hanging

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concentrates the mind wonderfully. If we were being invaded and we needed the masts up and everything done because we would otherwise be overrun, we would have them up tomorrow. All these arguments are serious, but it could have been done significantly quicker and if it needed to be done it could be done quicker. It would be a tragedy if half of Europe was to switch to digital before we did.

Q678 Chairman: What is the reply to Lady O'Neill's point?

Mr Youlton: The question was could we do it quicker and the answer is yes. It would involve a lot more effort from some people, but it really does start with government saying, "We're going to do it. We're going to switch off these regions in this timescale." If you were to put the pressure on industry then industry would definitely respond. I am saying this as an ex-industrialist and not somebody currently in harness by the way.

Mr Coleman: This policy issue is going to loom in 2008 when the first region has to switch off. The policy decision that will have to be made then is whether you proceed with the switch off and be brutal with consumers or you give them more space. The message that goes out in 2008 could very well accelerate the process through to 2012 or delay it.

Q679 Baroness Howe of Idlicote: What is your bet, knowing all the problems and knowing how long it takes politicians and others to decide, for the switchover?

Mr Duffy: Until recently we owned one of the big tower transmission businesses. The current plan is something called the NTL Plan. Do not underestimate the very considerable logistical and operational things involved in switch off. It is true, if we were fighting for the survival of the nation in a war perhaps we would do things differently, but we are not. The economic political reality is there are other demands on resources and time and priorities and so

on. I think 2012 will be a very hard thing to achieve. I think everyone will move heaven and earth to do it. The idea of bringing it forward, if someone were to do a business plan around that, would not be very bankable.

Q680 Chairman: So by 2012 we could do it?

Mr Duffy: Yes, with a lot of perspiration.

Mr Youlton: When we started in 1996 we were told we could do it easily by 2006 and we have missed a lot of opportunities.

Q681 Chairman: We are starting where we are starting.

Mr Duffy: Given where we are, it is a six or seven year programme.

Mr Youlton: It will definitely be done by 2012 as long as government makes the decision this year. There is a law of physics about equal and opposite courses. There is an equal law in society and in industry which is that you cannot have freedom without order. In this bigger picture I see the BBC as the order at the centre around which all of the freedom can happen. If we think about it strategically like that, the BBC should not be protected at any cost. It should be making partnerships, it should be entering into all the things we have talked about, but if one does not support and protect that core order then it will be much harder for the market to get where it needs to get to.

Q682 Chairman: I picked up from the nodding of heads that there is not necessarily unanimity on that point.

Mr Youlton: I am soon to be impeached as Chairman and I will probably have to stand down.

Chairman: We are immensely grateful. It has been a very valuable meeting. There are points within it which we will want to come back to, so perhaps we could come back to you individually or collectively on some of the evidence that has been given and take it a bit further. Thank you very much indeed.

MONDAY 13 JUNE 2005

Present	Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Gibson of Market Rasen, B Howe of Idlicote, B Kalms, L	King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Examination of Witnesses

Witnesses: MR PAT LOUGHREY, Director of BBC Nations & Regions, MR ANDREW WILSON, Head of Regional & Local Programmes, BBC West, and Ms CAROLINE THOMSON, Director Policy, Strategy, Legal & Distribution, examined in Bristol.

Q683 Chairman: Welcome. I think you know only too well what we are about: we are looking at the whole BBC Charter Review and the aim is to provide something in time, certainly initially, that the Government can take into account before going from the Green Paper to the White Paper. Thank you very much for coming. Thank you very much also, if I may say so at this stage, for the presentations that you gave this afternoon. We all found them very, very interesting indeed and very impressive. Mr Loughrey, would you like to introduce yourself and then you colleagues very briefly.

Mr Loughrey: Certainly. On my right is my colleague Caroline Thomson, whom I think all of you will know because of her work in Parliament and her responsibility for BBC Policy and now Strategy and Distribution as well in her rather large portfolio. On my left, is the Head of Regional and Local Programmes for this region, Andrew Wilson. I myself am Pat Loughrey and I am responsible, as the Director for Nations & Regions, for the 40-odd local radio stations across England and then those in the nations: all local and network output produced in the nations and regions of the UK. As an extra responsibility in the past year I have been responsible for this "Out of London" strategy—which has come up occasionally in our conversation today so far—at the heart of which is the thought of creating a new broadcast centre and hub for the North of England in Manchester but within which also lies the evolution and development of broadcasting in centres like this here in Bristol and also Birmingham.

Q684 Chairman: Looking at the two biographies of Andrew Wilson and yourself, would it be fair to say that within the BBC those who are working on the regional side tend to go up on the regional side, or is that an inaccurate impression?

Mr Loughrey: I came from educational broadcasting, but it is almost entirely true historically that there was a hierarchy within regional broadcasting, because the core of what we do, I guess, is journalism and we stayed within the journalism family. But I must say that of late there have been some very notable

exceptions to that pattern. My predecessor in this role, for example, was one Mark Thompson—of whom you might have heard!—and before him was the guy who is now his deputy as Director General, Mark Byford, so I do not think it is a professional *cul-de-sac*, if that is the implication, in the way that it perhaps once was.

Q685 Chairman: I would not dream of saying it was a *cul-de-sac*, having chaired not one but two regional newspaper groups! We have taken evidence from a lot of people. We took evidence from ITV and ITV claim that they are the leading public service broadcaster as far as the regions are concerned. Would that be a claim you would accept?

Mr Loughrey: I am not comfortable with that claim. Would that it were true; would that we had more competition from ITV across the whole UK; but, as I think you heard earlier, there is a trend in the opposite direction in ITV. Firstly in terms of assessing the BBC's contribution, it is, I think, unfair and misleading to think in terms of television only. In terms of my own remit and Andrew's, I referred to the very large scale of radio responsibility, and I should have mentioned of course that every one of those radio centres and more is matched now by one of the fastest growing websites in the whole BBC portfolio, the *Where I Live* sites, adding a whole new dimension of local service across the UK. The BBC's spend outside of London, if that is the yardstick, already exceeds that of ITV. Historically of course, on the map of the UK in television—to move on simply to television, which is where that claim is founded—ITV have a rich heritage of production right across the UK at a time when the BBC was much more exclusively London-centric. Sadly, from my point of view, in the past decade or five years there seems to have been a rapid collapse into London and away from that heritage. That is something that I regret because, like every other broadcaster, I think we benefit from competition at local level: it is good for the industry, it is good for the creative sector and, frankly, it is good for the BBC. I am pleased to hear and I read with interest the things that Charles Allen

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said to you in evidence. I think they are encouraging. If that represents some degree of change of heart or a reaffirmation of ITV's roots, that is a good thing and we welcome it and we are keen to work in partnership with ITV as with other broadcasters to strengthen the industry across the UK because that is democratically, socially and culturally critical. There is one other aspect of the BBC's commitment to which I would like to draw your attention, Chairman, and that is that our commitment is not just to one or two centres, as I fear ITV's increasingly is. ITV's "stronger" statistic, as quoted, represents broadcasting from Manchester, to a lesser extent from Leeds, and very, very little any longer from Cardiff, Glasgow or from Belfast, from the nations or indeed from the smaller regions of the UK; whereas for the nations, for example, the BBC's commitment just five years ago was about four or five per cent of network output produced in television in the three nations. Now that is closer to 12 or 13 per cent and we have set a target in *Building Public Value* to move to 17 per cent, at a time when ITV's total commitment seems to be one or two per cent. I think that plurality of provision across the UK and maintaining significant production bases is very important to the fabric of the United Kingdom.

Q686 Chairman: Your fear, if anything, is that here in Bristol ITV's presence is not what it once was.

Mr Loughrey: No. It is certainly not as pluralistic as it once was. The Anglias, the Borders, the Grampians are a shadow of their former selves.

Q687 Bishop of Manchester: Do you feel there is an onus on the BBC to have a defined commitment to take over those areas of non-news regional broadcasting that ITV has now moved out of?

Mr Loughrey: I am wary of that. I am happy that Nations & Regions broadcasting is now, for the first time in the Green Paper, a core purpose of the BBC. Often an after thought, often an appendix to statements of BBC purpose in the past, it is now, both in *Building Public Value* and happily—more happily, even—in the Green Paper, seen as a core purpose. I am absolutely clear that it is a primary purpose of the BBC, and the BBC, I guess, has increasingly primary responsibility to nurture the diversity of this industry and the talent that goes with it. However, to replace like-for-like the old ITV commitment might be inheriting a failed model. I am not sure that producing large volume, low cost television output, often scheduled against the most popular programmes in television, like popular drama, is the best way to express the cultural and creative and industrial life of the UK. In *Building Public Value* we have come up with some other models, some different ways—and you have heard some of them this afternoon already.

Mr Wilson: I wonder, Chairman, if I could give a few examples. I would agree with Pat, perhaps not surprisingly, that it is not our job simply to replicate what ITV used to be doing but to think of what we should be doing that we genuinely believe builds public value. I was scribbling down some examples as I was listening there. *Natural History of the British Isles*, for example, on television, the web and local radio, from all the feedback we received was a real example of the value we can add. When we look at *Picture of Britain*—which at the moment is getting five million viewers on BBC1 for a primetime arts programme, in effect—we did a very imaginative picture of Bristol to complement that. It is that type of locally rooted programming: what we have done in terms of *Family History* and *Fat Nation*; in the weekend of the hunting ban, the type of programming we did to make sense of a big story to a region; what we did around Concorde; what we did around the heart scandal at Bristol Hospital. We really believe it is our job to make locally rooted, valuable programmes to which people will want to return to research and use in that sense.

Q688 Chairman: We have spent a great deal of time understandably talking about non-news programmes. On the regional news programmes themselves at the BBC, this figure is correct, is it not, that the BBC's 6.30 regional news attracts the highest audience of any television news programme in the country?

Mr Loughrey: Yes. I note with interest the surprise in your voice, Chairman. I must say that not only are you surprised but so it would seem is every media journalist in the UK, because, a bit like the story of local newspapers, with which you are also very familiar, they may not have the prestige, they are seldom written about in the *MediaGuardian* or *Broadcast* magazines, there is little gossip about our presenters or what they are paid or what they wear or who they are going out with, but, in terms of the fidelity, the interest, the engagement of audience they surpass everything. They have a consistently loyal following—which is admittedly in the upper end of the age spectrum, but by no means exclusively so—increasingly engaging, especially with the *Where I Live* sites, and cross-fertilising. It is a very interesting story. I guess 10 years ago, 20 years ago, those of us who were interested in this thing in the semi-academic world were predicting the globalisation or Marshall McLuhan world that would exclude local identity, but what has actually happened, here as elsewhere in the western world, is—an awful word coming—"glocalisation": we have become global and more passionately local simultaneously, and they are by no means mutually exclusive. Oddly, it is part of one's universal virtual citizenship to be also very firmly rooted in local communities. It is not only local

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news but local current affairs. We recently launched, in the last three years, a series entitled *Inside Out*—which kind of speaks for itself—brought from the walled garden of BBC2 into the competitive heat of BBC1. It is already delivering higher audiences than any other British current affairs tract—including *Tonight with Trevor McDonald*, which enjoys a rather richer budget and a more prominent slot. The engagement, the commitment, the reflection of issues that matter and—a word which is, I think, increasingly critical in local broadcasting: “relevance”—the obvious relevance to audience is a currency that the media industry neglects and the media journalists tend to neglect and the press, but which the audience seems really to value.

Q689 Chairman: As you say, it is a picture of the press as well. In a sense, the regional newspapers are also finding that same thing.

Mr Loughrey: Absolutely true. At the same time as the national newspapers seem to be in steady decline, the regional and local newspapers are in equally steady rise. A very similar phenomenon.

Q690 Lord Maxton: That leads me to what I would like to say. I jokingly said at the end of the presentation—which I thought was wonderful—“It is all about Bristol. What do Bath and Gloucester think about it?” In Scotland, that is even truer. I know we are not really dealing with the nations today, but if you take the Borders in Scotland or the Highlands in Scotland, particularly the Western Highlands, there is not really local or even regional coverage by anybody—although the BBC probably do more than anybody else. What is the next step in this? Where do we go on to make news, sport, whatever it might be, down to the levels of the local community.

Mr Wilson: I think, Lord Maxton, you ask a very good question really. People are demanding more and more locality rather than regionality and members of the Committee will be very aware that one of our most ambitious proposals is on-demand local television. In this region it will be for Bristol, Somerset, Gloucestershire and Wiltshire. The *Where I Live* sites to an extent have begun to celebrate very local, very granular activity. In this region, to be specific, we have plans at long last. If it is one thing I want to achieve, I am passionate about giving the people of Somerset their own BBC local radio station. If you live in Yeovil or Bridgwater, it is crazy to be served by Bristol, and not right. It is an urgent thing that we certainly, providing we pass the public value and the market test, want to achieve.

Q691 Lord King of Bridgwater: Did you say radio or television?

Mr Wilson: Radio, Lord King.

Q692 Lord King of Bridgwater: What about Somerset Sound?

Mr Wilson: To give Somerset Sound proper county-wide FM coverage, but also to invest in new programmes and, importantly—and this partly follows Lord Maxton’s question—to make those programmes in a much more rooted way, using new technology. For example, in Somerset, rather than to invest in buildings and bricks and mortar, our plan is to have a broadcast-capable bus that will enable us, Lady Howe, to make programmes with local schoolchildren within schools, to make programmes from within schools and to make the programmes from the closure of a cellophane factory in Bridgwater, or wherever, so actually to take programmes out. The other thing which is being discussed with our staff in regional television tomorrow is new technology. People being able to edit and use cameras themselves should mean that, rather than journalists coming into a centre like Bristol every day, we should be using mobile technology to make reports from the big communities and to send them back. We are aiming in a few months time to increase greatly, as a pilot project, our people on the ground in Wiltshire and particularly in Swindon, which is the beginning of getting people out of newsrooms and actually into communities. It is a very big and important challenge for us.

Mr Loughrey: Lord Maxton is absolutely right and I think you are on to a real weakness in our heritage. I spent my entire 20 year career in the BBC railing against London-centricity, but the truth is it is every bit as bad in each of the three nations: Belfast, Cardiff and Glasgow dominate to far too great an extent the fledgling media economy there and what is reflected on air. We cannot allow that to be the case. We cannot allow Dumfries and Enniskillen to be excluded from the grid of experience of the modern media. That is why we have pledged for the first time, given a favourable licence fee settlement, that we will create regional infrastructures in each of the three nations and have the same kind of online provision, the same kind of *Where I Live* provision, but, more importantly, the same local television offer in the nations as we propose in England. That is a big cultural change.

Q693 Lord Maxton: Sport is a very important part of television and to some extent radio. This area—and I will come back to this area, though I think it is equally true, say, in the Borders of Scotland—rugby is probably more important than football. Should your coverage of sport in the area not reflect that, so that you are not just getting local people watching football but they can watch any of the three great teams that come under this area or other teams playing games.

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Mr Wilson: We had a historic moment—a very historic moment—at the BBC six months ago when Gloucester drew Bristol in the Powergen Cup. When Bristol were put in because another team were disqualified, BBC Network decided not to show the Gloucester game, and for the first time ever we said, “The BBC has the rights, the BBC will be sending an OB crew and cameras there.” We should be able to opt out within specific regions to show moments of real celebration and real passion—which is what we did—and we hope that is the beginning of things to come. The *Where I Live* sites, Lord Maxton, are absolutely passionate about following local teams—football and rugby as well. Bristol has the largest amateur football league, we believe, in the UK and we are doing a lot of what we would call user-generated content around community sport, as well as every single one of our *Where I Live* sites now each having a formal partnership with the FA over junior football. These are small beginnings, but, you are quite right, there is real passion and the embers are already coming alive, so it is something we tend to carry on doing.

Q694 Lord King of Bridgwater: You are BBC West. You are not co-terminus with the regions in terms of Government ideas or regions because Plymouth then comes into the South West.

Mr Wilson: Yes.

Q695 Lord King of Bridgwater: How many regions do you have in relation to what we look on as the Government break-up of the country?

Mr Wilson: Twelve.

Mr Loughrey: Twelve regions in England.

Q696 Lord King of Bridgwater: I am not sure how many RDAs there are.

Mr Wilson: I believe there are nine.

Mr Loughrey: We have created a couple of smaller regions recently because we were so keen to provide particular targeted services that made sense to audiences. We had an enormous region in the South-East. Regional broadcasting applies to London as well. London has its own regional issues.

Q697 Lord King of Bridgwater: The new technology makes it much cheaper to set up a small local radio.

Mr Loughrey: Yes.

Q698 Lord King of Bridgwater: I got the impression about four or five years ago—you have Radio Bridgwater and you have Quaywest—that Somerset fragmented into a whole lot of different areas.

Mr Wilson: Yes.

Q699 Lord King of Bridgwater: Whereas you have Radio Bristol and the Somerset Sound as a satellite. I get the impression you have stopped that a bit and you are pulling back. Is that right?

Mr Loughrey: There are issues around this in terms of how the commercial sector feel about the BBC’s expansion. I know they have made their views clear to you and there is a degree of apprehension about the BBC expanding unduly and becoming very, very granular across the entire UK. In *Building Public Value* we have nominated four centres: Bradford, Cheshire, Somerset and Dorset, places where we historically have been under-served by the BBC. We had an ambition to create a service there and for a variety of reasons—most of them budgetary—we did not deliver on that ambition. That is the extent of our plans in that area. Where our market is well met by the existing BBC local service, we do not intend to create new stations just for the sake of it. But if we feel, as in Somerset, that it is asking too much of Radio Bristol to cover geography of that breadth, then we propose to create a new service.

Q700 Baroness Howe of Idlicote: A lot of what you have said is fairly relevant to these questions about the governance, the new Trust, as it were. The BBC stated very firmly that only the nations should be specifically represented and no other forms of representation. If we look particularly at your sort of interest, how are, as it were, the other English regions, indeed the different community groups, going to feel they are properly represented on the Trust itself?

Mr Loughrey: I think in our response to the Green Paper we said that England should have equal representation for the first time. We have this odd anomaly, speaking entirely subjectively, that where the nations have broadcasting councils and a dedicated national governor, England, for some reason—assuming, I guess, that all the governors as exist would predominantly be from there—does not have that. We think that is wrong. We have a very elaborate network of advisory bodies, some 500 people who regularly give advice through local radio advisory councils and regional advisory councils to Andrew and all of his colleagues across England. We think that the English National Forum, which exists as the overall body from those groups, should be seen as a broadcasting council or a trust group in future, and that the chair of that group or certainly a governor should have equal prestige and responsibility to his equivalent or her equivalent from the nations.

Ms Thomson: That certainly is the case in what we have said in our response to the Green Paper, but it might also be worthwhile saying that I think we feel quite strongly that people who are currently governors or people who are in future trustees should

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be there to represent the licence fee payers as a whole and should be there to work in the interests of the BBC, and that it would be a mistake to go down a route which essentially divided up the whole of the body into someone who represents Scotland, Wales and Northern Ireland, someone who represents English regions, someone who represents the disabled and so on, because actually you want a body that will work in the interests of the BBC.

Q701 Baroness Howe of Idlicote: If we carry that on, one of the qualifications that has been set out is the ability to represent different people in different parts of the country. That could be not the only criteria but one of the criteria. How can you measure that ability?

Ms Thomson: Obviously the appointment of trustees is principally a matter for the Government, in that they will be appointed, as we understand it, on Nolan principles, in ways they are now. I would expect the Government to look for a geographic spread in the way that they appointed people. But beyond that, I think the absolutely crucial thing from our point of view is that the new trustees will be there as the representatives of the licence fee payer and the structures that we are able to put in place to enable them to fill that properly. For example, one of the things we are doing, coming up in July, is for the first time an AGM for the BBC, where we are having someone in the English regions but we are also having AGMs in Cardiff and Belfast and Glasgow, all linked into a virtual AGM with London. There are ways in which we can operate which will ensure that the Trust is in constant contact with licence fee payers wherever they are.

Mr Wilson: As Pat mentioned, we have an amazingly rooted network of local councils for every local radio station area. We then have regional councils. We make sure that each of those councils represent every area both demographically and geographically. For me, the key point is that when that feedback gets to the English National Forum that has the status and is heard by the Trust, and I think probably in England we have felt for some time that there needs to be more power to that voice.

Q702 Baroness Howe of Idlicote: It is reassuring to hear that, but, having said that—Nolan principles—is this really strong enough? You are trying to build up a much more independent Trust. Should they be here rather more independent of Government and Government appointees?—because there have been criticisms in the past that they are good establishment figures and so on. Do you have any views on that?

Ms Thomson: The Government has asked for ideas and we are very interested in the ideas people will come up with on how to appoint trustees. We have scepticism, or “concern” might perhaps be a better word, about the Government’s suggestion that they

might be elected, because we are very concerned about the possibilities of capture, about issues of turnout and so on. That may be superficially attractive but we feel at worst could end up with a politicisation of the governors or turning it into more of a representative body, which we feel would be a mistake. Having said that, if there are other ways, through joint committees of the House or something which other people are feeling would be attractive—and obviously in the end it is a matter for Government how the trustees are appointed—providing they can guarantee greater independence than the current system, obviously they would be a welcome suggestion.

Mr Loughrey: With my background and voice, you can imagine that elections would cause me one or two concerns! But it would not be for us, I guess, to suggest to Government how we ourselves would be governed. We are happy to be part of the dialogue, but . . .

Q703 Baroness Howe of Idlicote: But a rather more independent process than choosing the Chairman of the BBC.

Ms Thomson: Yes. I mean, I would not like to give the impression that the appointment of the Chairman of the BBC, particularly this time, was not a very independent process. Clearly it had the scrutiny of the Public Appointments Commissioner at every stage, and, indeed, that might be something you would want to do for the whole of the Trust. I think Michael Grade would feel that his appointment was as independent as anyone’s could be.

Chairman: Let us move on to the issue of production in the regions and outside and regulation.

Q704 Baroness O’Neill of Bengarve: Governance of course is one way in which one could do something to entrench regional and local and national voices, but there are other ways. I think the BBC have said that they think quotas would be a blunt instrument, and of course relocating people is another instrument that is being used, but the “second home” syndrome and the “brass plate” syndrome are both ways in which relocation could be more apparent than real. Do you have ideas about things that could be, as it were, real ways of securing regional and local input? Earlier today I think you suggested percentage spent and I was thinking, “Yes, but how accurate is that if some of the companies with whom it is spent, some of the independent producers, might be, as it were, counted as regional because they have an office in a certain place?” How would you really look to entrench that?

Mr Loughrey: There are a number of very wide points there, but, on the specific on which you ended, the measures for qualification for regional independent production are a good deal stricter now than they were historically. Ofcom has been quite helpful in

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establishing yardsticks by which we and the rest of the industry determine it. I think brass plates were tolerable, just about, as a transitional stage as the industry moved from its historic lopsidedness to embrace the rest of the UK. I do not think we can sustain that for any meaningful period because actually it is meaningless. It is titular, in the definition of the word, and therefore the yardsticks of determining the commitment to and the existence of a lasting development and presence in an area—the spend of the resources on the production and the post-production (not shooting in one area and then simply making all the post-production in London, which has happened in the past)—there are a set of industry benchmarks which are gaining strength which I think will evade the worst of the problems of the past. In terms of yardstick, I think we are proposing, for example with the North of England—which has been alluded to but maybe not described—to use Bristol as a model, just as Lady Howe suggested in our informal session earlier. We have there a core specialism in natural history which, alongside documentaries, forms a really solid hub on which other things grow. But you kind of need that returning business, you need the core presence on which to build other things. I think a simple sentence which has many ramifications in the plan for Manchester, its audiences and services of the future. To move the core of the BBC Children’s production to Manchester is the equivalent of that very solid foundation and with it New Media and those different relationships with new audiences. It is, by its nature, a young and transient production base. With another spread of five years before the building is created, people have a very civilised opportunity to make life decisions about whether they want to remain in that department or move or remain in London or make the big shift north. I think on that solid foundation, with Radio 5 Live and BBC sport, we have the makings of a very solid base to change not just the BBC but to change the industry.

Q705 *Bishop of Manchester:* How dependent is the BBC on getting this right in terms of the Manchester move? You have spoken quite strongly about this. Is it really going to happen? If it does happen, how successful will it be? Although this afternoon we have had a very impressive demonstration of the Natural History Unit here in Bristol being a kind of flagship of the BBC, there is also evidence from within Manchester as it is at the moment that there are those who feel themselves to be at a disadvantage away from what you might call the corridors of power in London.

Mr Loughrey: The corridors of power are about where decisions are made. John Birt, in his time as Director General, to his credit made the first attempt to correct this imbalance. But, in retrospect, as one of

the key players in that move made the point, he moved applicants: he moved departments all of which had to come to London for the life’s blood of commissioning and budget—not powerful, not influential, and it is not surprising that some at least of them wilted—and the heresy of commuting more often than being in any one place: more time on the train than in any office.

Q706 *Chairman:* Just to make the case.

Mr Loughrey: Indeed. Well, what is different about the departments I mentioned is that they are self-commissioning. They are supplicant to no-one. Children’s production commission and run their own air time; so does Five Live; so does Sport; so does New Media. They are relatively independent within the BBC ecology. When we move decision-makers, I think you have a whole different prism for the business. Obviously this is—and I am responsible for it, so I am acutely aware of it—a very high-risk strategy. The BBC is, I think we all believe, something of huge value to British public life and indeed to the worldwide industry. None of us who love it wish to run risks with its welfare. I and many of us—and, more happily, Mark Thompson and Michael Grade—are convinced that we can make this move over time without damage and actually with huge benefit. Will we do it? Yes, I personally believe we will do it. The governors bought the proposition; they accepted the proposition we brought to them but they made one, I think wise, condition, and that was: given a favourable licence fee settlement. I am confident that will happen and that favourable does not mean excessive but that we will have the resources to create a kind of democratic and cultural entitlement in the broadcast industry that has never existed in the BBC and that could be very powerful for the future of this country.

Q707 *Baroness Bonham-Carter of Yarnbury:* Everything you say makes sense but the area that really worries me is what is happening to you here, which is having a commissioning editor based here to commission factual programmes and documentaries which we know come from all around the country. For instance, in the paper we were given there is a lot of mention of *A Year at Kew*, which was produced out of Wales, I accept. Why was that produced out of Wales? It must have meant that people were spending their time going backwards and forwards to London. I am worried. I completely understand about Natural History and Children’s television and so on but the idea that Bristol could have factual relocated to it seems to me to be of concern, that you are not totally serious about relocation.

Mr Loughrey: I do not think that is fair, but I will try to explain why. There are two reasons why we build network production centres in nations. For example,

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to take the Wales example, one is to reflect the unique heritage, voice, experience, industry in that place, and the other is to build the industry, the core skills of production. *Year at Kew* and *Dr Who* are manifestations of the second motive.

Q708 Baroness Bonham-Carter of Yarnbury: I did not see *Dr Who*.

Mr Loughrey: The *Year at Kew* was produced in the most innovative low-cost fashion by video journalists who shot and edited their own content. I think the cost of their overnight accommodation was a fraction of the budget. They came up with a very good and powerful idea which happily met audience taste completely. They have in BBC Wales a distinguished factual department and I would hate to see them corralled into only making programmes about Wales. That is not how you make a mature industry. Just as, when I ran Northern Ireland, I was determined that we had a broad view, and we produced programmes about deep vein thrombosis and trans-Atlantic flights for *Panorama*—nothing particularly Irish about it but engaging programming, giving career opportunities to young people and development that would not otherwise have happened. As for factual in Bristol, I think it is a logical development of excellence over a very long time. I think it will be harder to explain why all factual and all other commissioning would be exclusively in London or Manchester. We have to create some plurality of decision making and it is of its nature a developmental thought. I am convinced that it will change the texture of network factual television and make it distinctive from Channel 5, Channel 4, ITV, all of which are commissioned in a different place: London.

Q709 Baroness O'Neill of Bengarve: To come back on whether the Bristol model is generalisable across the regions—and, Mr Wilson, since you have spent some time in Cambridge, you will sense what I am coming out of—what distinctive feature do you think a region—which, I have to say, does not absolutely grab us by the quality of its television from any source at present—should have? Or maybe there are even harder cases, because, in having the natural history programmes, Bristol has a splendidly popular area which can be innovative, high-tech and all the rest. I look around me and I see very mediocre television and I sometimes feel that all local journalism is competing downwards with the freebies, with human interest stories which maybe are nice but are not everything. Even in Cambridgeshire there are politics but unreported.

Mr Wilson: First of all, on the positive, there is no doubt at all that the privilege—and I do see it as a privilege—of being a regional head in a centre where there is a world-class operation has brought

enormous benefits to our local and regional operation, both in terms of what we do regionally but also in terms of my staff being able to work alongside very different types of programme. I think it is good for all of us in life to have our horizons lifted and changed by that type of experience. I would say slightly defensively of my former colleagues in Cambridge that I think the nature of our journalism in the BBC Nations & Regions is going through quite an interesting metamorphosis. I hinted at this earlier on. We are giving journalists the tools to spend time within a story, rather than hit and run and back to edit with somebody else, actually really to understand some of the extraordinary stories of ordinary people and to spend more time, as I said earlier on, out rather than in. It is quite an interesting transition, because in a sense we are running one type of production line at the moment and we are trying to move to another one, and we all know the difficulties about going through the transition. So I think there are some truly remarkable examples of what regional newsrooms are doing—truly remarkable and groundbreaking. I have to admit that the pressure of daily news on pretty tight budgets means you will still get your fair share of human interest, first-thought journalism, but I think that is done with the quality that the BBC demands of it.

Mr Loughrey: I should say that human interest is not a problem in itself, from my point of view. If it is something voyeuristic, self-indulgent, it is a problem.

Q710 Baroness O'Neill of Bengarve: My problem is that a neat diet of car crashes, trials, people driving their cars off the roads into the ditches in the fens—and these are fascinating events—is a bit monochrome.

Mr Loughrey: I completely sympathise with that point of view. Probably my biggest brief in much of the task I have is to broaden the horizons. In *Building Public Value* and elsewhere we talk about a more open BBC, where people will be invited into the BBC. Actually a far more telling challenge is an open BBC out of which BBC staff come to engage with the public. Andrew Marr's book is very interesting about this in his days in print, long before his BBC time, where he said that the cult of celebrity and all that goes with it is a function not of public interest, in the original sense of that word, but of journalistic practice. People spend inordinate amounts of time in rooms—air-conditioned journalism—working together, speaking only to each other, and traditional journalism on the ground, connecting with and engaging with people and relating major events of the day to daily lives seldom happens. I am afraid that is true in print and it is also true in the electronic media. It is inexcusable today because the technology is incredibly cheap and dextrous. We are trying hard to change it. I must say, it is not an easy transition.

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Mr Wilson: Chairman, that is an issue that we are facing up to and something we are working on. The whole thrust of what we are trying to achieve over the next four or five years, as I have said, is to get people living within stories, working from within communities, rather than being desk-based, because I think we all know that the press-release culture, the political culture of political parties or organisations or whatever, is not where true stories are. If I may give you one example: a couple of weeks ago we met five of the seven new MPs in this region from all the main parties—it was a remarkable experience—all of whom have absolute passion about their sense of public purpose. They were telling us amazing stories that had already come across in surgeries, stories that would resonate and produce remarkable television, and I looked them all in the eye and said, “We would make every single one of those stories. If you like, we will give you the tools to make those stories.” We really want to push the boundaries and we do not want the sort of press releases: “Ex-MP gives their view on Namibia.” We want and are absolutely in the market for getting that, but the only way to do it, as Pat said, is to get out there, talk to people, meet people and work with people. It is a challenge we are facing up to.

Lord Maxton: That is a very dangerous concept.

Chairman: If we may move on, Lord Kalms on digital switchover.

Lord Kalms: The BBC has made an obligation to ensure that coverage of digital will be 98.5 per cent by 2012. I do not know what the penalty will be if you do not quite reach that; I suspect that is a bit of a fudge. I have a couple of negative thoughts and I would like your reaction to them. I do not know where you are at this present moment on the chance of achieving the change to digital, and it is early days to panic, but we are going into a recession and I think this will have a marked impact on people changing television sets because they are expensive.

Chairman: It is your view we are going into a recession.

Lord Kalms: Of course it is my view: everything I say is my view. Some people have noticed a recession, and certainly television sets, although they are coming down in price, are expensive things to change. I think it is a factor in looking at changeover. The second area on which I would like to know whether you agree or not is: Do you think you have done a sufficiently good job yet or is there a long way to go so that people should be aware of what digital is about? I think that digital does not have any serious awareness amongst a vast number of people—the older, the worse, but, even then, if you looked at a large percentage of our population—and, as a retailer, I can tell you—digital is not in the imagination at all. So you have a lot of work to do (a) to achieve that target, (b) to get people aware of what

digital is, and (c) there is a recession in the wind which could put things back, a recession which I may say—and it is also my opinion—will last two years.

Q711 Chairman: Where to begin?

Mr Loughrey: I am pleased to say that Caroline has responsibility for distribution.

Ms Thomson: I am now responsible for digital switchover along with the Charter Review. Just to update you, before your recession started hitting, we reached the tipping point that over 50 per cent of the population now has access to digital and a key part of that has been obviously the success of Freeview, which we are proud to have played an important role in. Interestingly, as an aside, I noticed over the weekend the statistics showing that Sky have launched and not done much marketing for a free satellite package but that has itself now more than 400,000 people taking it up. So, equally, free satellite seems to be making some progress. In terms of transmission, the digital terrestrial transmission for Freeview, 75 per cent of the population can now get, but we are at the limit of what we can do until we get to switchover. We now have to agree with the Government a programme for switchover—and when I say “we” I mean all broadcasters have to agree with the Government a timetable for switchover. We think we are looking at a timetable which will start towards the end of 2008 with the Border region switching first and we think that is perfectly doable. But the Government has yet finally to decide whether they are going to ask us to do it. On your point about people understanding digital, I would agree with you entirely. Speaking personally, even I find sometimes that one of the problems is not just in understanding it but the complexity of some of the equipment and all the remote controls and so on. We have a number of tasks. Manufacturers and, dare I say it, even the retailers and the broadcasters have a task in making it simpler for people, trying to make the technology simpler. We also have a task—and this is principally the broadcasters—in explaining the benefits of it and making that clearer. One of the things we have just done with the other broadcasters charged with a role in switchover is to set up an organisation called Switch-Co in which we are all partners and shareholders. Its key task will be marketing and we will be explaining to people both the process of switchover but also the benefits to try to get them to switch as much as possible before we come to switching off the analogue signal.

Q712 Baroness Gibson of Market Rasen: You are scheduled to be the first region to switch off. How confident are you that in 2008, as you have mentioned, you will be ready? Apart from what you have just told us about letting people know

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about switch-off, what other problems have you encountered particularly in this region?

Ms Thomson: I should first of all correct what has been a misunderstanding, which is that the West, the region we are in now, is not the first region to switch over; indeed, it is in the middle of the switchover. Border is the first region to switch over, to be followed by—

Q713 Baroness Gibson of Market Rasen: That is 2008.

Ms Thomson: That is the end of 2008, to be followed by West Country and then HTV Wales—it is done by ITV regions, for reasons which are—

Q714 Baroness Gibson of Market Rasen: When will West go?

Ms Thomson: Probably the end of 2009 or 2010, pretty well in the middle of the sequence. I will live to regret saying this, I am sure, but at the moment my colleagues tell me we do not expect any particular complications in this particular region: there is one very big transmitter which covers a lot of it. We hope it will be relatively straightforward. Crucially, there are no international clearance issues. The West Country has some overlap issues with French transmission. Having said that, switchover is a very complicated process and it will require very careful coordination and a lot of explanation for people to make it work. While we are committed, to go back to Lord Kalms's earlier point, to replicating the coverage of analogue, we cannot be absolutely sure that home-for-home there will be like-for-like coverage; in other words, some homes which currently have difficulty getting the analogue signal will probably get the digital and some which are getting the analogue signal will not get the digital, and we will have to do a mix of relays and boosters and things in different areas, with probably some community masts as well to make sure we get the coverage right.

Q715 Chairman: It sounds pretty complicated.

Ms Thomson: It is complicated.

Mr Loughrey: Very, very complicated.

Q716 Chairman: And also the kind of thing which MPs are liable to get particularly animated about.

Mr Loughrey: Yes.

Ms Thomson: That is right. The first tranche is coming in around about 2009, perhaps around the next election.

Q717 Lord Maxton: Last week we had before us Telewest—but leave that aside—and we had Homechoice, who of course deal with BT. Telephone coverage is 95 or 96 per cent of the country. Why does the BBC not do a similar deal with BT to provide

television down the telephone wire rather than worrying about terrestrial digital, which, to be honest, is technology which will die in a fairly short period of time.

Ms Thomson: The short answer is we are in discussion with BT and with other phone providers about developing particularly on-demand television services. But the Government is requiring—and I think they are right to, myself—that 95 per cent of the population is not sufficient; you need to get to analogue coverage, which is 98 per cent, and also of course you need to be able to get to all television sets in the household.

Q718 Lord Maxton: It is much cheaper to put in a telephone wire.

Ms Thomson: The interesting issue you raise is the question of quite what is digital switchover. The figure I usually quote to people is that mobile phone penetration is phenomenally high, much higher than digital television penetration at the moment. I think 85 per cent of the population have mobile phones and you can receive television on your mobile phone. I think the question of which receiver and how people receive things is an interesting debate to have about switchover.

Q719 Lord King of Bridgwater: When this switchover comes, you say there are going to be winners and losers. Were you suggesting that it may not be possible to predict in advance of it happening who the winners and losers are and that then there will be a frightful catch-up process?

Ms Thomson: In not quite macro terms but in fairly micro terms we can predict about which communities will be covered and which will be winners and losers, but we cannot be absolutely sure about some individual households; for example, because the position of trees and so on may mean the signals are less robust.

Q720 Lord King of Bridgwater: Remote villages. You have identified each village, have you?

Ms Thomson: I could write to you with more detail, but we will be able to identify which communities there will be issues about, because obviously it is to do with hills and things.

Q721 Lord King of Bridgwater: Does it have the potential for all hell breaking loose when switchover comes and suddenly all sorts of odd people rushing in and saying—

Ms Thomson: I would not want to give the Committee the impression that there were going to be mass problems with people not being able to receive signals at all or unpredictably. I was not meaning to imply that. I was meaning that absolutely at the margin there will be some people who will be pleasantly

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surprised and get better reception than they currently get but there will be some people for whom it is a problem and we will not be able to predict all of them absolutely accurately.

Mr Loughrey: I think there is consolation in the phased approach. It is not trying to convert the entire United Kingdom simultaneously. The start with the Border region will be a great learning opportunity for all of us.

Q722 Chairman: Would it be reassuring if I were living in the Border region?

Ms Thomson: It may reassure you if you were to know I live in the Border region.

Chairman: You do not have to answer that.

Q723 Lord Peston: I am a bit lost on some of what you are saying. I understand the point obviously about local radio and local television covering low-cost things but the bigger question, if I may say so—and you might call it the Bristol question—is: Where you are considering making national programmes, where should they be made? To take the natural history stuff, Bristol has a concentration of expertise here and it makes perfectly good sense for you to go on doing that. On the partnership question, it is a commonplace in economics that if you have the expertise here then your competitors also ought to come here and get into the expertise, either competitively or in partnerships. I do not understand the more general BBC question. I can see why things should not be done in London. If I were to ask myself what absolutely had to be done in London, apart from the *Today* programme—and that is because politicians will not go out of London in order to appear—I can think of very little that actually has to be made in London. Therefore the central question is a pretty well straightforward economic question: Where can it be done most cheaply and/or where can it be done most productively or effectively? I cannot see any argument—and I am not blaming you personally—coming from the BBC that tells me that this ought to be in Manchester. I would like to believe that studies have been done about this type of programme and Manchester is better than Bradford. I would like to believe it but I have to tell you I do not. I am trying to reach generally how you are setting about taking that kind of decision. My only connection with radio and television is as a listener and viewer, I have no other connection at all, and I really do not care whether the thing is made here or there but I care about what I see coming out of my set. My introductory question, my basic question, is: Can you give me any guidance at all on your thinking?

Mr Loughrey: Let me make a point about Manchester. If this plan succeeds in Manchester only, then it will be a failure. Manchester is the hub

for the North of England. For only in Britain would we describe the North West of England as a region. Six and a half million people live in the North—that is larger than many European countries within the market—and they are, as we speak, seriously underserved by network output from any broadcaster. Manchester gives us a centre of expertise, a hub for a wheel of broadcasting where we can collaborate with ITV where there is still a relatively rigorous production base, where there are universities of real distinction and innovation in the old UMIST and the University of Manchester, where there is a kind of expertise and post-graduate study with which we can connect to build a centre. There are the kind of independent production companies and support agencies and like-minded bodies with which we can create partnerships to build for the future. We are confident—and based on quite a rigorous set of research plans that we brought to the governors—that it is easier and more reliable and more secure to build one large centre around which the satellites will orbit rather than a number of isolated sites. The isolated site model spreads the benefit across half a dozen sites in the North or Midlands of England. We have found—and we have explored this possibility—that it is very difficult to sustain. It is very hard to have the kind of scenic design construction, make-up, post-production graphics industry—not employed by the BBC at all but those support groups, those commercial bodies, that make our industry possible. It is more likely to create a viable base in one very large centre than to try to spread the dividend across half a dozen. We believe that Manchester, for the reasons I indicated and because of the very vibrant youth-based population that is there, suits culturally and socially the specialisms that we hope to build there. And it is not starting from scratch. In Manchester, both in the BBC and in ITV, there are very vigorous production bases on which we can build with a fair degree of hope. I hope that begins to answer your question.

Q724 Lord Peston: It just about starts to. My question you have not quite addressed. I have no argument with the hub argument, but I thought you said earlier that children's programmes would be going.

Mr Loughrey: Yes.

Q725 Lord Peston: I am a great admirer of Manchester University, it is one of our great universities, but the notion that you would say, "We have to get Children's programmes near to Manchester University," seems absolutely ridiculous to me. That could go on for a great number of departments. Drama, for all I know, could also be centred in Manchester or somewhere. I do not get the step from saying, "Let's have a hub"—which seems

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to be entirely correct thinking—and “Let’s have partnerships and look at ITV, the great universities, and schools as well”—following on from Lady Howe—“or local authorities” . . . I can see all that argument but I still do not see how you get from general concepts to the specific movement of a particular programme.

Mr Loughrey: Let us go through a few of the criteria for departments that might move. One of the key criteria was that these were self-commissioning, relatively independent departments for the reasons we discussed. Children’s, with two dedicated channels, is one of the strongest examples of a self-commissioning, vigorous, independent structure. Secondly, the kind of people who work on and develop Children’s, tend, by the nature of the output, to be young people moving rapidly through career. Children’s also offers, by its nature, documentary, features, studio-based and drama. It gives you a firm footing in all the key genres of television. If Children’s is there, it gives you a very firm base. Lastly, the new controller of Children’s is very committed to building an on-line interactive relationship with audiences, stronger than we have at the moment—which fits very well with the technological innovation concept that is very strong in the universities in Manchester, hence the reference there—and to develop those young people of real innovation and expertise whom we can recruit and bring in at competitive rates to work in that experience.

Ms Thomson: We are also looking at moving the New Media Division to Manchester and our Research & Development Function. Because on-line is so important to Children’s already and it will be more important in the future, you can start by moving two or three bits. You then do get both the critical mass and the hub but also the key links with people like UMIST.

Mr Loughrey: There is one bit of BBC housekeeping that I might share with you. Currently in London, Children’s two new channels were built on relatively inadequate premises and studio resource. By whatever measure, we would have to invest many millions of pounds for the years ahead to make them secure for the future. At a time when we must correct the balance in the overall BBC spend, I guess it makes sense—I think it makes sense—to make that investment in an area where there is a real opportunity to build something new rather than to add to the problem in London.

Q726 Baroness Bonham-Carter of Yarnbury: You are talking about creating these hubs. Are you saying that this means that smaller regional little hubs, or whatever you want to call them, are inevitably being closed down?

Mr Loughrey: There is no zero sum gain in this. I was keen to reassure colleagues and Committee members earlier that the growth of Manchester poses absolutely no threat to what is happening in Bristol or Birmingham or at the smaller centres in Norwich and Nottingham.

Q727 Baroness Bonham-Carter of Yarnbury: Norwich is one I was coming on to—because there are rumours, are there not, about BBC Norwich being closed?

Mr Loughrey: We have one of the most splendid bases in Norwich that I know in the organisation.

Q728 Baroness Bonham-Carter of Yarnbury: Quite and a lot of people are employed there.

Mr Loughrey: To be at the heart of that community in the new Forum building . . . If you have not had an opportunity to visit the Forum in Norwich, please, please do so, because it is inspiring. Over time, it will speak of the change that Baroness O’Neill was seeking in how we are. Rather than sitting in a converted Victorian doctor’s surgery, as we were, on the edge of town, with radio on one side of the road and television on another, we are now incredibly centred, right at the core of that community, right beside the covered market, in the wonderful new library building, visible and accessible to the people who pay for us every day. I think it speaks of a vigorous presence that we for sure in no way want to diminish. I guess the point I am perhaps laboriously trying to make is that to go from the original production centres into being strong, vibrant, network competitors is quite a long journey on which we cannot take too many centres simultaneously, and therefore we have to take that journey with three major centres in England rather than nine.

Q729 Bishop of Manchester: Charles Allen spoke very enthusiastically about Salford proposed media centre with the BBC there and ITV and indeed other companies. Do you see that as a viable option? Would you also see it as maybe modelling a way of partnership between the BBC and other broadcasters in other centres?

Mr Loughrey: Yes on both counts. I was rally impressed by what Charles Allen had to say to you in his evidence. I think the opportunity for us to work together to support the fledgling industry across the whole North of England is critical. As I said in my previous response, the strength of ITV in Manchester is one of the reasons we have opted for Manchester as the centre of our North of England proposals. We must be less obsessed with competing with each other and look at the public value—to coin a phrase—of what we can do together. I think we could far more easily formalise that cooperation in a new centre rather than with the echoes of the past. I am

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encouraged that ITV is as keen as we are to go on that journey and I think we can look to innovative thoughtful ways, not all of which are even in the pipeline yet, of how that might come around. All broadcasters depend on a vigorous independent sector. That is, as we speak, as London dominated as the broadcasters. We badly need to work together to nurture and to strengthen the independent sector across the whole UK. We can create opportunities for that, for working with independents in a way that has been well established in Glasgow with something called the Research Centre, where Channel 4 has taken the lead. I give credit to them for their work and we latterly have cooperated with that. I think that incubator for emerging independents, giving them their first footing in the industry, is something that will be really beneficial for the plurality of the industry across the whole country, for example.

Q730 Chairman: Would you advocate pilot projects, in effect—which I think Charles Allen has said—in the North West in terms of cooperation? Is that the way to proceed?

Mr Loughrey: I think Manchester will be an opportunity for us to develop that partnership in a way that history makes it awkward in London, for example. Although in London also I think there are very clear common interests. Building strong British content at a time when the industry is awash with content from all over the world, these are values we share. We also share the talent, the writers, the performers, the people who make good television and radio. The freelance sector, often at the high end of delivery, is where freelance creatives who move freely from ITV to the BBC to the independent sector are critical to the future of the business. My interest is that not all of them become completely entrapped by the great magnet that is West London.

Chairman: Moving to the last question, because we are running out of time, I think Lord King was going to raise the issue of regional and local radio.

Q731 Lord King of Bridgwater: You gave an answer a little earlier which gave the impression that you had a very satisfactory network everywhere and there were a couple of places where you needed infilling. We got on to talking about Somerset. What is the policy about radio nationally over the whole lot? Sometimes you turn up in competition with commercial radio, sometimes you do not. You do not have an overall pattern do you of BBC local radio in the UK.

Mr Loughrey: I do not believe we compete with commercial radio in any meaningful sense at all myself. I think that what we offer, sadly, is increasingly unique in the marketplace, which is speech-based news for output aimed at 55-year olds

and over. I do not see much of the commercial sector pointing in that direction and I do not think that what we do in any way inhibits their aspirations or their market share. But obviously in areas like Somerset and Bradford, where we have plans to increase our service—to fill out the map, as you describe it—there will be a market impact survey to see whether or not my supposition is accurate. But at the heart of what BBC local radio offers are robust speech-news and information services at the core shoulders of the day: breakfast, lunchtime, evening. Sadly, that level of local news and information provision seldom exists for the commercial sector.

Q732 Lord King of Bridgwater: That was not the point I was trying to make. Is your objective to have complete coverage of the UK with BBC local radio?

Mr Loughrey: No. I think our objective in England is to meet the needs of defined audiences, rural and urban, where our local advisory bodies are our guide to our ambitions. In what we have published in *Building Public Value* are, as I see it, speaking subjectively, and having listened to the regional advisory councils and to the local advisory bodies, those four areas are serious absences in the BBC map. I am not aware of strong needs or interests asking us to create further local radio stations in other centres. I guess that, like any other provider, we have to respond to audience demand.

Mr Wilson: Could I partly answer Lord King's question. It is perhaps a confusing history but a point of information is that classically English local radio was set up around a county structure and around very large centres of conurbation like Leeds or Bristol. Commercial radio, in its first tier, as the Committee probably know, was around slightly smaller areas; for example, there is one around Bristol, one around Bath, and one around Taunton, in the case of Orchard. Now we have another layer, set obviously in legislation, for access radio with different funding streams. Some of the stations you referred to earlier on are in that smaller community bracket. The BBC is realistic, in my view and picking up on past points, that we cannot really replicate that type of absolute localness in every part of England, but, where there are clear and obvious demonstrations that we are not serving an area well enough, we intend to use *Building Public Value* and hopefully a new charter to put that right. You finished being an MP as soon as I arrived, but, speaking to all of your successors from every party, it is clear as anything to me that Somerset MPs say that it is not good enough that we are not getting that core proposition from the BBC in Somerset. But I must say my postbag has never said that we want a BBC Taunton, a BBC Yeovil, a BBC . . . So our strategy is that we are realistic about the areas of those gaps and

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how we fill them but our mission then is the type of programming and the way we work with communities in those areas. I hope that makes some sense. I thought that was partly what you were grappling with.

Q733 Lord King of Bridgwater: We will have a word afterwards.

Mr Wilson: Yes.

Chairman: Thank you very much indeed. That is very clear evidence. We are very grateful.

TUESDAY 14 JUNE 2005

Present	Fowler, L (Chairman) Gibson of Market Rasen, B Howe of Idlicote, B King of Bridgwater, L	Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Memorandum by S4C

1. BACKGROUND

1.1 As might be expected, we intend to focus our response on the issue of the relationship between S4C and the BBC as highlighted on pages 41 and 42 of the Green Paper.

1.2 Like the Government, S4C accepts the Laughton Report's conclusion that "A revised settlement with the BBC for the digital age is a target worth achieving and a priority for all who care about the ecology of public service broadcasting in Wales". Laughton recommends "that the BBC and S4C be invited to agree a new formula for the supply of programmes and other services by the BBC to S4C, appropriate for the current needs of Welsh language public service broadcasting".

1.3 This formula needs to address the four questions that the Green Paper has identified as needing further consideration in the context of the Charter Review.

1.4 These are:

1. The level of the BBC's contribution.
2. Whether it should be expressed in monetary terms rather than in hours of programming.
3. How best to ensure that its value is maintained over time.
4. Where responsibility should rest for decisions on content.

1.5 In recent months there has been an exchange of correspondence between the Chair of the BBC's Governors and the Chair of the S4C Authority; there has been a meeting between the BBC's Director General and Controller Wales and the Chief Executive of S4C and Secretary to the S4C Authority; there have been exploratory meetings between senior executives and members of the Management Teams of S4C and BBC Wales. Ofcom has published Phase 3 of its Public Service Broadcasting Review with a specific section on S4C and comments regarding the relationship between S4C and the BBC. There have been numerous public seminars and the responses of S4C and the BBC to Ofcom Phase 3 have been made available publicly.

1.6 Key issues have been identified; certain proposals have been made which point to the possibility of agreement on some of these; in other areas there remains a distance between what appears to be acceptable to both organisations.

1.7 This response will put forward proposals which S4C believes offer reasonable solutions to the issues in question.

1.8 In all that follows, we shall seek to avoid repeating the arguments which have already been made in our earlier submission in respect of Charter Review. Some of the points we make here, however, build on our response to Ofcom Phase 3.

2. A THREE-TIERED AGREEMENT

2.1 In our response to Ofcom, we said that we wished to see a modernised relationship with the BBC based on three levels of agreement (referred to here as A, B, C):

2.2 (A) The BBC Charter (or, more correctly, the new Agreement between Government and the BBC)

2.2.1 The BBC Charter/Agreement should define the nature of a new benchmark; it should confirm the Authority's right of approval of the nature of the BBC's contribution; it should provide for financial transparency and accountability; and it should provide a mechanism for monitoring by the Authority of the BBC's contribution to the service as a whole, as measured against S4C's published Programme Policy.

2.2.2 It is our understanding that the new Agreement is intended to be ready in November. It will be necessary therefore for all top-level issues relating to S4C to be resolved by then.

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2.3 (B) *Agreement/Licence*

2.3.1 The Charter's provisions should be supplemented by formal documentation between the BBC and the S4C Authority. One possibility is that there should be two parallel documents extending over a period which might be three or five years in duration. On the one hand there would be an agreement between the BBC Trust and the S4C Authority and on the other an agreement or licence between the BBC Trust and BBC Wales.

2.3.2 These documents should describe the nature of the BBC's contribution to the S4C service and relate it to S4C's Programme Policy and to the BBC's Strategies. They should describe a process and a timetable for reaching agreement on content annually and should describe a process of review. They should specify the resources to be made available and relate these to the benchmark.

2.4 (C) *Annual Planning Cycle*

2.4.1 The Annual Planning Cycle is the mechanism by which detailed agreement would be reached in respect of programme content to be provided for the following year. It should operate in parallel with and with reference to S4C's Terms of Trade and processes of editorial approval with independent producers so as to ensure an integrated service. Programme proposals consequently agreed with the BBC should be based on a full, agreed editorial brief allowing for subsequent monitoring and discussion.

3. ANSWERING THE FOUR QUESTIONS

This is how we think each tier should address the Green Paper's four questions:

3.1 *Q1 The level of the BBC's contribution.*

3.1.1 (A) In line with the Laughton Report, we wish to see the top level Agreement make a commitment to restore the financial value of the BBC contribution to 1996–97 levels, as the basis of the first three or five-year licence and agreement and for that base to be increased during the subsequent years of that licence in line with any increase in the licence fee. The Charter Agreement should also describe the process by which agreement between S4C and the BBC is reached on the sum to be allocated to each subsequent licence, including providing a formal opportunity for the S4C Authority to comment on the extent to which any proposal meets the Authority's reasonable requirements.

3.1.2 (B) Each licence/agreement should include reference to the agreed funding to be made available, linking the base figure of the first year to licence fee increases in subsequent years.

3.1.3 (C) Each annual planning cycle should be based on the sum defined by the licence/agreement.

3.1.4 This combination would provide the S4C Authority with the assurance it seeks regarding commitment by the BBC to raising and restoring the value of its contribution.

3.1.5 The BBC is already making specific financial commitments in other areas so this does not in itself set a precedent. It falls short of asking the BBC to commit itself indefinitely to a financial ringfence. Any efficiencies which can be identified in the provision of programmes and services for S4C will be of mutual advantage but knowing that the product of such efficiencies will be allocated to the benefit of the S4C service will ensure a constructive joint approach.

3.2 *Q2 Monetary Value or Hours*

3.2.1 (A) We believe the top level Agreement, as noted above, should make explicit reference to monetary value but should indicate a willingness for increased hours to be provided if, as a result of discussions on the content of the licence, that were agreed by both organisations. The 10 hours a week will remain a statutory base line in any case, but it will be valuable to have an indication that this is seen as a minimum not as a maximum. It is also important at this juncture, given that switchover is likely to happen in Wales prior to new primary legislation, for the Agreement to enshrine a specific commitment to contribute to S4C Digidol rather than the current situation, whereby the commitment is only to the analogue service.

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3.2.2 (B) As described in 4 below, in the time-limited licence and agreement there should be more specific reference to hours as well as monetary value to reflect agreements reached on priorities and value for money during prior discussions.

3.2.3 (C) The annual plan should bring together monetary value, hours of programmes and editorial briefs in the form of a detailed, agreed portfolio of costed programmes and programme strands.

3.3 Q3 *Ensure maintained value*

3.3.1 Our proposal in 3.1.1 above does not in itself ensure maintained value. This is designed to meet the BBC's wish for there to be the possibility of review of the value of the contribution from time to time. This is reasonable, provided the S4C Authority has the formal opportunity to comment on any proposal for change and to have the opportunity of appeal to the Secretary of State in the event of failure to agree. In doing so, its expectation will be that the level of any proposed adjustment mirrors that of the relevant licence fee settlement.

3.4 Q4 *Editorial Accountability*

3.4.1 We strongly agree with the Green Paper that there needs to be clarity regarding where responsibility for editorial matters lies. Furthermore, in respect of those aspects of the service for which Ofcom has regulatory powers, S4C, as the broadcaster, must be the accountable body.

3.4.2 The term "editorial control" has proved contentious and it has been suggested that it is unthinkable for the BBC not to have full editorial control over any content which is funded from the licence fee.

3.4.3 We believe that this is not an absolute principle; that the situation which pertains in respect of the relationship between S4C and the BBC is sufficiently unique as to justify a unique process of editorial accountability; and that this does not necessarily mean editorial interference on a day to day basis with the professional editorial judgement of those employed by the BBC to uphold the Corporation's high standards.

3.4.4 However, regardless of whether or not content is produced by the BBC or by an independent producer, the S4C Authority, as the broadcaster, is ultimately accountable for that content. This is one reason why editorial direction (as indicated above) is so important. In addition this accountability places legal and moral obligations on S4C but currently, in respect of programmes supplied by the BBC, S4C has little or no control and no ready redress.

3.4.5 For example, S4C is accountable for its content: to the Regulator (who may impose a fine for contravention of the codes); to harmed individuals (who may bring an action against S4C relating to a programme produced by BBC); and, more generally, to viewers who may want to complain about a particular programme. In respect of all other suppliers S4C has rights and a system of redress. It is reasonable that it should have the same level of comfort and redress against the BBC as it does against all other suppliers (as set out in the Terms of Trade but, in brief, reflecting approval rights, warranties on content and right of redress). This could be provided for in the formal documentation referred to in 2.3 above.

3.4.6 We wish now to focus on the detail of how a revised editorial relationship would work. As for the other issues, we propose that the relationship be referred to within each of the three proposed levels of agreement. Since, however, it is at the third, or most detailed level, that this relationship will need, above all, to work, we start by outlining how we think (C) the annual process of planning and agreeing the BBC's contribution to the S4C service, should work, and then work backwards through tier (B) to tier (A). We believe the following to be a realistic, necessary and practical framework:

THE PROGRAMME STRATEGY

3.4.7 S4C has published, in June 2004, a five-year Programme Strategy designed to underpin programming and scheduling for the channel's output from all sources, up to the point of digital switchover. The strategy identifies priorities and opportunities. It is both aspirational and grounded in a perception of the industry's ability to deliver.

3.4.8 The Authority will monitor performance against the Strategy's objectives annually and approve an annual revision.

3.4.9 The next revision will be in July 2005.

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3.4.10 This revised version of the programme strategy provides the framework for commissions and programme supply for the 2007 calendar year (which is also S4C's financial year). It is also the basis of the Programme Policy for that year which is published at its beginning.

(C) Annual Planning Cycle

3.4.11 July–December 2005—Exploration of different possibilities for BBC contribution to S4C Programme Strategy, involving internal BBC discussions as well as dialogue with S4C's Director of Programmes and other executives.

January 2006—BBC makes initial proposal of programme portfolio to S4C including broadbrush pricing of individual strands.

February 2006–April 2006—S4C considers BBC proposals and responds in light of the following criteria:

- How attractive?
- How relevant to the Strategy?
- Pros and cons of other possible options (including options offered by BBC).
- Perception of value for money of individual strands and of portfolio as a whole.

It would be a basic principle that a detailed editorial brief (see S4C's Terms of Trade with Independent Producers) be created and agreed in respect of each individual programme or programme series.

May 2006—the costed programme portfolio, agreed by BBC and S4C executives, to be presented for approval by S4C Authority.

June 2006—if approved, presentation to BBC Trust.

July 2006— formal documentation concluded.

(B) A Licence/Agreement

3.4.12 The above would be an annual process. It would take place, however, within the context of a three-or five-year Licence and Agreement, the Agreement being the formal documentation between the S4C Authority and the BBC Trust, the Licence being the parallel documentation between the BBC Trust and the BBC (or BBC Wales) executive. In practice, the discussions regarding the content of the licence would happen in parallel with discussions and agreement on the portfolio for the first year of the licence. The detailed plans for the first year would naturally be consistent with the broader themes described in the licence, but the process of agreeing the detail of the first year would usefully inform the contents of the three- or five-year licence.

3.4.13 Thus, if the licence/agreement covered the 2007–09 calendar years, the relevant deadlines would be exactly as above and concluding with:

May 2006—approval by S4C Authority;

June 2006—approval by BBC Trust;

July 2006—signing of agreement between S4C Authority and BBC Trust and approval of licence granted by BBC Trust to BBC Wales.

3.4.14 The licence/agreement would contain firm financial commitments, a sufficiently detailed description of the agreed programming contribution, including editorial brief for any programme strands which were envisaged as continuing throughout the licence period, to allow meaningful monitoring and review. The licence/agreement would also refer to any additional services which it was agreed should be provided by the BBC or to any services which it was agreed should be jointly tendered by the BBC and S4C.

MONITORING AND REVIEW

3.4.15 The central issue here is the need for both the S4C Authority and the BBC Trust to satisfy themselves that the terms of the licence and of the agreement have been fulfilled to their respective satisfactions.

3.4.16 The S4C Authority would review performance annually and over the whole period simultaneously with its statutory Programme Policy Review. It would pass on the results of its review to the BBC Trust and would note its view in its Annual Report to the Secretary of State for Culture, Media and Sport.

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3.4.17 It would seek the ability to review every aspect of the BBC contribution from time to time including the ability to market test different methods of provision where it appeared there were strong arguments for considering alternatives.

3.4.18 The Authority's annual and other periodic reviews would draw on reports made by S4C executives in respect of delivery of the Programme Strategy by all contributors and against common performance indicators, together with any specific form of review commissioned.

3.4.19 We would expect a parallel process of review to take place within the BBC, reporting to the BBC Trust. Both processes should be facilitated and informed by regular meetings between S4C's Chief Executive and Controller, BBC Wales with a specific brief to consider and comment on reviews of content and other issues provided by their staffs.

MATTERS WHICH THE AUTHORITY WILL WISH TO CONSIDER

3.4.20 The authority is eager to align the process by which programmes are supplied by the BBC for the S4C service, with that by which programmes are acquired from the independent sector. The key issues are:

- timing of the process;
- clarity regarding editorial brief;
- understanding of value offered; and
- clearance of rights on a parallel basis (as detailed in S4C's Terms of Trade for suppliers)

3.4.21 The Authority's ability to review and question assumptions about the nature of the provision must be real. However, the ability to implement change must also be based on a realistic planning process.

3.4.22 The BBC has frequently referred to an assumption that 90 per cent or 95 per cent of its output for S4C remains constant from year to year. The Authority will wish to question such assumptions from time to time. Even if this were, with Authority approval, to remain the case, 10 per cent of 520 hours (52 hours) represents, potentially, two peak-time high-quality series per week. The need for such a substantial contribution to be fully in line with the requirements of the Programme Strategy is clear.

3.4.23 Furthermore, any increase in the quantity of the BBC contribution should be on the basis of that increase being designed to contribute to S4C's Programme Strategy.

3.4.24 One difficulty is that the BBC's financial year is April–March, whereas S4C's is January–December. Ofcom requires S4C to provide an Annual Statement of Programme Policy and an annual review of that policy. The BBC's contribution to the service needs to be clearly defined and revised in that context.

3.4.25 The relationship in respect of both *Pobol y Cwm* and sport is complicated by the current arrangements by which additional commissioned programmes are made alongside licence-fee funded programmes in both categories. This system of joint funding is opposed by the independent sector which believes it contrary to fair competition, as long as production remains in-house in the BBC. The possibility of a change in these arrangements needs to be taken fully into account, at a sufficiently early date, to avoid unnecessary disruption to the preferred programme schedule.

3.4.26 Several substantial programme strands which come within the BBC portfolio, eg *Maniffesto*, *Yr Wythnos*, *Ffeil*, as well as schools programmes, sit outside peak hours. The Authority will wish to question the assumptions underlying such contributions, given that S4C's statutory remit emphasises the importance of peak hours. Of the 520 hours a week funded by the licence fee, 25 per cent are broadcast on S4C outside peak hours.

3.4.27 Concerns have been expressed about the dominance of the media in Wales, and particularly of Welsh language news and current affairs media, by the BBC, including suggestions to the effect that S4C should consider whether there are alternative methods of providing its news and current affairs. The Authority needs to be able to undertake an appropriate process of review.

3.4.28 There should therefore be agreement on the timeframe in which such reviews can take place so that the practical implications can be provided for—eg there should be an agreed period of notice in respect of any proposed change to a major programme strand (as in fact is the case in respect of *Pobol y Cwm*, where a two year period of notice is required to change the nature of the agreement).

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(A) *Charter Review/New BBC Agreement*

3.4.29 S4C would wish to reach a documented agreement with the BBC in the short term in respect of a revised process of editorial accountability, as outlined above, so that the new BBC Agreement can make reference to and give approval to it as embodying new agreed principles of editorial accountability, alongside the references to the other three questions.

4. CO-OPERATION IN OTHER AREAS

4.1 We agree that modernisation of the relationship between S4C and the BBC should include the possibility of co-operation in respect of additional services and support services together with strategic co-operation in the development of Welsh language provision on new platforms.

4.2 Where such opportunities are identified, our preference will be to investigate whether competitive tendering of any such agreed service is possible, so as not to preclude opportunities which might be offered to independent suppliers.

4.3 We believe that there may well be scope for a greater sharing of research which relates to our respective functions as funders and providers of Welsh language media content and we wish to explore mechanisms by which duplication of effort can be avoided and relevant research shared, on an equitable basis. Since these matters are also of relevance and interest to other organisations, including our independent suppliers, the Welsh Language Board and other cultural organisations, we need simultaneously to consider how best to allow them also to benefit appropriately, in the public interest, from the valuable research resources in which both S4C and the BBC have invested.

4.4 We are in discussion with the BBC on these matters.

5. CONCLUSION

5.1 These are the key issues for S4C and we believe our three-tier approach offers a constructive means of identifying the extent to which the four key questions outlined in the Green Paper have, or have not, been addressed.

31 May 2005

Examination of Witnesses

Witnesses: MS ELAN CLOSS-STEPHENS, Chairman, and MR HUW JONES, Chief Executive, S4C, examined in Cardiff.

Q734 Chairman: Welcome. As you know, we are looking at the Charter process, the renewal of the Charter for the BBC, and we are paying a number of visits around this country and overseas taking evidence, with the hope that we will have a report ready by the end of October for consideration by the Department of Culture in direct response to the Green Paper. So we have very, very little time. We have had an adventurous time, inasmuch as elections have got in the way and we are coming up soon, I fear, to the summer recess, but that is our problem. Thank you very much for coming. We are very grateful. I wonder if we might start in a general way. Could you perhaps explain briefly to the Committee the sort of history of S4C and in a general way how you think it has worked or is working?

Ms Closs-Stephens: First of all, may I thank you very much for taking the time to come down to Cardiff to listen to this evidence. In relation to the BBC's Charter renewal, I think we are minnows: in the £20 million league, out of £3.5 billion. But in our

terms, of course, that £20 million is of the utmost importance and the way that it is spent is of the utmost importance. We are very grateful to you for including us in this discussion. As you know, S4C began its life in 1982, after a decade of unrest about a lack of a Welsh channel leading to some civil disobedience and leading also to two very different parties actually wanting this channel, one being the people who wanted their children to have children's programming in Welsh and who felt that the Welsh language was a living language that should be part of the 20th century and that meant television, and another quite substantial group of people who were quite opposed to the fact that Welsh language programming was being put on BBC1 and ITV1 and therefore disrupting their own viewing patterns. These two areas happily came together and, finally, under the then Conservative Government of William Whitelaw, the decision was made to start S4C. At that time we were given within the Act ten hours per week from the BBC. Obviously at that time the BBC

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was the only substantial public service provider in Wales—or the only—not substantial but the only and substantial public service provider in Wales—and it made sense that this little enterprise should have the ballast of this big organisation behind it so as to wish it well and to make certain that its service was of quality and so on. We were left with ten hours a week out of a mooted 22 within the Act as a minimum. That is a very substantial proportion. By now, with digital switchover looming in Wales within possibly the next three years, we are faced with a very different situation. We no longer have to co-host Channel 4 programming, which was the deal on the old analogue service because there was not the capacity to have both Channel 4 and S4C, so suddenly, we are allowed the space to be our own channel. This is a magnificent thing for the people of Wales and I think it chimes very well with the Welsh Assembly Government's position for the development of the language and the sustaining of the language. But within that now 80 hours a week, the ten hours seem small as a proportion: their value has over time decreased since 1996 and we question the whole idea that ten hours is a meaningful measure in days when things like repeats and using extracts and so on are part of this digital world: "new opportunities to view" I think it is called; in essence an essential part of this rolling wallpaper we have of television on a multi-channelled world. We have come to a point where we asked the DCMS for a review. I think it was quite a brave decision, because it was the only time we have been reviewed properly in the 20 years or so of the service and this was a voluntary decision and, we had a very thorough review by Professor Roger Laughton from the University of Bournemouth, previously of the BBC, and chief executive for the broadcast arm of Lord Hollick's United News & Media, so a man of great experience within this world. He concluded that the S4C service was absolutely value for money, in the sense that our overheads were 4.6 per cent—which I think is a very low percentage; in fact the lowest percentage of broadcasters in Britain as far as I can ascertain—and that we were doing everything possible to self help. For example, we have just sold a part of SDN, which we held in part with United News & Media and NTL for £137 million, making us a pot of £34 million from which we are able to draw over time so much per year. So all of these things have been efforts to maintain the service, but it will make a substantial difference to us if the BBC's contribution was also upped to meet the 21st century challenge of this new digital world. Probably Huw might like to say how that might be achieved.

Chairman: I was going to ask exactly that question.

Q735 Lord King of Bridgwater: Could you repeat the figures.

Ms Closs-Stephens: We entered into an enterprise with the United News & Media and NTL following the 1996 Communications Act which gave us more powers of self-help; that is to develop a commercial arm. Despite the very fraught times through which the collapse of On-digital led us, we have come out the other side and we have sold this multiplex for £137 million, making profits for the three co-signatories, after all costs, of £34 million.

Q736 Lord King of Bridgwater: What share did you get?

Ms Closs-Stephens: £34 million. There is a profit of that for all three.

Q737 Lord King of Bridgwater: Shared with all three?

Ms Closs-Stephens: No. Therefore, we hope to put it into a trust and to bring every year a sum of money into the service which will, I hope, make up in some part for the disappearance of the Channel 4 advertising which we will suffer once digital switchover is completed.

Q738 Chairman: You have the £34 million, if you like, as a resource of your own, but the Channel 4 advertising is going to go—you are going to set yourself free, if I can put it that way from Channel 4—but you would like a bigger contribution as far as the BBC is concerned. Would that be in guaranteed number of hours or in a financial budget of some kind?

Mr Jones: I think that question is enlightened by consideration of where the benchmark of ten hours arose. As the Chair has said, it was considered in the context of a service which was meant to deliver 22 or 25 hours back in 1982. That was a reasonable proportion of what was clearly meant to be a peak hours' service, and this was at the time when daytime television was only just starting—I am not even sure whether daytime television existed at that time. So there was a context and there was a benchmark which was appropriate. We are looking for another benchmark which is in today's terms, which is relevant, which is reasonable in terms of its quantity and which is bankable. The ten hours is in legislation, and, at the end of the day, when the BBC and ourselves sit down to discuss what their programming contribution will be for the next year it will not be less than ten hours a week come what may, and that is very valuable. We have failed to come up with a better benchmark than a financial one. Because hours of television are infinitely definable in all sorts of ways—they can be defined in terms of repeats, extended daytime hours and so forth—it is a very difficult concept now to say that you understand what it means in the same way as in the past. We propose that it should be a financial benchmark with

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freedom then to discuss how that should be implemented from time to time.

Q739 Chairman: That would be of what order?

Mr Jones: Since the analysis of BBC figures indicates that the value of the contribution—and they do publish figures retrospectively about the value—has gone down since 1996, we believe it should be restored to 1996 levels and that that should form the baseline for the first year of any three-year or five-year agreement which might exist between the Authority and the BBC Trust.

Q740 Chairman: Give us an idea of what that amount would be.

Mr Jones: You are talking in the region of about £5 million more than it is at current levels.

Q741 Chairman: The current levels—

Mr Jones: It depends how you account and the BBC did actually change the accounting method last time around—nothing necessarily suspect in that, but as long as you are measuring like for like that would raise it from about £20 million to about £25 million.

Q742 Lord King of Bridgwater: How much was the Channel 4 advertising worth that you gave up?

Ms Closs-Stephens: I am sorry, I do not think we had the choice of giving them up. In the digital era, Channel 4 quite rightly want their own space and want to broadcast in Wales. I think about £4 million a year.

Mr Jones: The value of all the S4C advertising is reducing. We reckon that at the point of switchover, at which we lose all Channel 4 programmes, the reduction will be of the nature of £2.5 million to £3 million.

Q743 Lord King of Bridgwater: Per year?

Mr Jones: Yes.

Q744 Baroness O'Neill of Bengarve: I wanted to ask you about the philosophy of broadcasting in a bilingual society, because one of the things looking ahead to digital switchover is that, as you say, you would be set free, but equally there is a danger of being ghettoised. Given that many people are bilingual, this presents such choices. I think there are a number of models within bilingual and multilingual societies in Europe of, as it were, extending the passive reach of a language out beyond the core speakers, and of course this sometimes goes for societies where English is increasingly a functional second language, like Norway, but if I think of RTE as a nearer model, in RTE we have a great deal of casual use of Irish within broadcasting that is English. What is the underlying picture that you have of the way in which S4C will protect Welsh language

for partial speakers or less competent speakers as well as fully native speakers and fully bilingual people?

Ms Closs-Stephens: That is a very large and interesting question with which we grapple almost every day and certainly within Authority meetings on a monthly basis. It is the very essence of our service really: How do we define ourselves for our new audiences? There is a big challenge. There is a core ageing group of traditional Welsh speakers, sometimes in rural areas, and a very new and growing audience of younger people, the 16-pluses, who are coming through the schooling system with very little of the traditional assumptions or background. The real challenge for us is how to maintain the quality of the service for those people who are of another generation and still be able to engage this new moving audience. You quite rightly say there are very, very grey areas. It is not as simple as saying there are Welsh speakers and non-Welsh speakers. There are people with varying amounts of the language; there are people whose grandparents spoke it who have a sense of distress that they do not speak it but who know a few words. There is an enormous loyalty but not perhaps a practical usage and to tap into that is to tap into a well of emotional goodwill about the channel. I think if you take our research, that goodwill has been maintained. The desire for S4C to succeed as one of the little Welsh flagships is there in a very real way and that can be measured in such a lot of research. With our 888 we have tried to translate almost everything on the channel which we can, and with 889 to provide quite an innovative service, which is to provide you with the difficult words, so that if you are a learner who does not want subtitles you can go up a step and listen with the more difficult words having been explained to you. The big challenge is what we do with the red button. When the new technology starts, is it possible for us to have two streams of commentary? Where will that leave our relationship with the BBC? Does the BBC see itself as the English language provider in Wales? This kind of institutionalised discussion has to be addressed for the good of the audience somewhere, and quite soon, because this new technology can be very beneficial. You say that it is beneficial for us to be in this new world: yes, it is, but it is a very, very competitive world. It is a multi-channel world. In the way that S4C has benefited from being one of four, now it is alone in this world of 200 or 400 channels. Our ability not to be just the wallpaper for people who desire the language, but to provide landmark opportunities for others to come in and join us, whether that is a concert by Bryn Terfel or the Royal Welsh Agricultural Show, all these big events which people want to watch we have gone for as our programme policy.

Q745 Baroness Howe of Idlicote: Before I move on to my specific question, I have been intrigued by the conversation so far, particularly the financial

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measurement that you are looking at for updating, as it were, your relationship with the BBC. What to your mind would be the ideal structure for your relationship with the BBC to develop?

Ms Closs-Stephens: If I may address that at the level of the Charter and the Trust and then perhaps Huw would not mind filling in the detail in terms of how this would be managed. We would like the Charter to incorporate some of the new opportunities; that is that we define a new benchmark for ourselves of financial transparency, and that we have the right to approve the service in general. I am not saying that we should look at every item of every programme but a general strategic view of what is to be delivered the following year and then to be able to monitor and assess whether that has worked. That seems to me to be a basic requirement of any self-respecting channel that wants to present a branded—

Q746 Baroness Howe of Idlicote: You are really describing a proper partnership and presumably saying that does not exist at the moment.

Ms Closs-Stephens: It is an interesting one because in the Act it does say ten hours to the reasonable requirements of the S4C Authority but what exactly that means has never really been teased out. At the moment we receive very good quality programming obviously from the BBC but it is on the basis of: “We’re going to offer you this next year.” We would like, in a proper and more equal partnership, to be able to say well before the beginning of the year, “We have gaps here and there, and we would be very grateful if you could consider doing X and Y.” That would seem to me to be a very reasonable way of working.

Q747 Baroness Howe of Idlicote: I am sure others will pick this up, but I wanted also to ask you a very practical question on the educational value and the value of the hours that you work with the BBC. How many of those hours should be dedicated to the use within Welsh schools and also should the Welsh Authority perhaps not play a rather greater role in funding this aspect of the work which is clearly so important in a country which is rediscovering its first language?

Mr Jones: The question of schools’ programmes is an interesting one and of course it is not a static issue because all the broadcasters who are involved in schools’ programmes, whether making them or transmitting them, are now considering whether linear television is the most appropriate means of distribution. We, if you like, inherited from the BBC its traditional commitment to making schools’ programmes in Welsh and we have agreed that that should count as part of the BBC’s contribution to the S4C service. But if in the future schools’ programmes are not essentially delivered by television but on-line

or whatever, the question then of how you make multi-purpose use of content becomes the issue, and that in itself is a sub-set of these issues: What the relationship is between the BBC and ourselves? What is the relationship between us and our independent producers who now hold the rights to exploit the programmes that they make for us on all other platforms? The other thing is that our contribution to education in Wales is not just in schools’ programmes. We would like to think the whole service is essentially a resource which supports language learning and acquisition and development, and, particularly in some areas, programmes for pre-school children, for example, which often include a direct educational element but which are there essentially to entertain and to draw people in. Programmes for learners are other examples.

Q748 Chairman: Is there any evidence that there is a spin-off from children learning Welsh into learning other foreign languages? Has any research been done to show that that happens?

Mr Jones: I think there has been.

Ms Closs-Stephens: A subsidiary of ours, which is now a fully fledged company, Acen, started out as a company to explore the effective ways of teaching language, including immersion, including daily practice and fun. That has been a very successful model and they have now moved into other languages and I think they have a grant from the European Union to subsidise this. Also they have been helping the Somali community in Cardiff to learn English, so that is another crossover from the work that is done on the language.

Mr Jones: It is generally considered, I would say, that the acquisition of a second language facilitates the process of acquiring a third and fourth.

Q749 Baroness Gibson of Market Rasen: Going back to the partnership, I think I am right in saying that this has not really been reviewed since 1982, which is quite a long time for something to be static in that way. Do you see what you are talking about now as the partnership, as the end product, or have you ideas about the future in relation to funding of the Welsh language programmes. I am mindful here of what Ofcom have said very recently about alternative funding models for Welsh broadcasting based on contestability. Obviously you are trying to get a better partnership at the moment, but is there something else in the future?

Ms Closs-Stephens: I wonder if I could start by asking Huw to tease out a little bit more of the model that we would want first and then to move on to the contestability issue. What is on offer at the moment is this partnership. It seems to me that a contestability issue, although on the table, may be a little bit further down the line.

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Mr Jones: If I may give a little detail on how we would see it working, assuming present funding arrangements continue as they are. We propose a three tier set of agreements, if you like, the highest tier being what we would like to see expressed by the BBC in its new agreement with Government in the timeframe of Charter renewal, possibly supported by an exchange of letters or whatever between the Chair of the BBC Trust and the Chair of the S4C authority, expressing, "This is the commitment. In the same way that ten hours was the commitment back in 1982, this is the agreed nature of the new commitment," and also referring to a process by which S4C is given the right to approve the programming contribution and also has the right to review and to hold to account. The second layer would be a licence or agreement for a time-limited period, probably three years, possibly five years; on the one hand an agreement between the S4C Authority and the BBC Trust, on the other a licence given by the BBC Trust to BBC Wales. That would spell out in some detail what the nature of the contribution is intended to be for that period of time and the funding that will be made available to support it. The third layer is the detailed annual provision by which agreement is reached on the programmes and the services for the following year. In those last two layers, there would be a defined process of editorial review, of monitoring and review by the authority. The authority would make its comments at the end of each period as to how the arrangement has worked, and pass those comments on to the BBC Trust and to DCMS in the annual report and we would expect a parallel process to happen within the BBC. That is broadly how we would like to see it work.

Ms Closs-Stephens: In terms of contestability, if this partnership broke down, if it did not work, if there was not goodwill on both sides and, more than goodwill, actually a structured way of working, then I think we would have to ask for this money to be carved out and to be used by S4C. That is the bottom line. I do not think we have reached that. I think there is goodwill and a desire for a strategic partnership. On the other hand, if we were to go down that road—I suspect what you are getting at is the further funding models which the Burns Committee brought to light—that is a very intriguing idea, and I can see that the Ofcom model actually has a lot to be said for it intellectually. It is an intellectually tidy solution. Places like the Gaelic Service, Channel 4's Chair, all these public service issues, could be under that sort of public service trust and the more commercial arm would be dealt with by perhaps a more fleet-of-foot commercial Ofcom. I think we all have to weigh up—and I am sorry that I am sharing thoughts with you here rather than providing any answers—to what extent the public would feel the same loyalty towards the public service licence as they do to a BBC licence

which is clearly defined. I think that is an answer that has not been achieved. How will people behave after digital switchover? Will they be more inclined to pay for everything through subscription? Will it be easier to do so because your telephone line will tell everybody what you are watching? My own feeling is that in five or six years' time, at the breakpoint of the current Charter, there will be quite an exciting opportunity to look at all these. I have the feeling that the tide is against doing it drastically at this moment, but I may be wrong and the White Paper may be something entirely different to the Green Paper.

Q750 Chairman: You would rather favour an interim review, would you, on the Charter? If the Charter was going for ten years, after five years having a look at it again?

Ms Closs-Stephens: The whole public service broadcasting is reviewed by Ofcom at the end of every five years—there is a quinquennial review—and I think it would be beneficial if the two were brought into line, as they are at the moment, so that there is cross-referencing, cross-discussion, which can only be fruitful. In fact it opens up the whole debate. Rather than it being channelled into just a defence of the BBC or a defence of ITV, it opens the field of public service broadcasting in a way that . . .

Q751 Lord Maxton: The licence fee is not to provide public service broadcasting.

Ms Closs-Stephens: No, it is not.

Q752 Lord Maxton: It provides a whole range of programmes. Radio 1—most of it anyway—can hardly be termed as being public service broadcasting; *Eastenders* can hardly be classified as public service broadcasting. Some of us take the view that the licence is to provide public broadcasting, not to provide public service broadcasting.

Ms Closs-Stephens: I agree with you, and I think that is why there should be a chiming or a bringing together of the quinquennial Ofcom review and the halfway stage of Charter renewal, because, whereas Ofcom have just looked at public service broadcasting elements, there is an opportunity then under the Charter to make a wider expression about the value of quality programming, indigenous programming, the traditions of the English language. I mean, American programming is not the English tradition being maintained, if that is something that is of interest to people, and therefore there is the opportunity then for those two points of view to be held in balance.

Q753 Chairman: What are your relations like with the BBC? We have skirted round this, but what are they like?

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Ms Closs-Stephens: On a day-to-day basis, there is enormous goodwill on the whole to make things happen. The structure so far, in that you have a broadcaster who is given the sum of ten hours without any real strategic control over it, makes for tensions, one has to be honest. It is inevitable. It is in the nature of the structure; it is not in the nature of the people to want to impede things.

Mr Jones: My perception would be that the relationship formally is a unique one. Here we have one broadcaster who is being expected statutorily to support another with which it is partly in competition and partly in collaboration, as is natural. However, the way it works in practice, the way the BBC's Wales' officers are meant to work, is within the structures of the BBC vertically, all their business plans and planning schedules and all the rest of it. So they are meant to deliver something which is absolutely unique but within the context of working alongside a whole host of other things which are not unique. We want to extrapolate that uniqueness and give it a little bit of substance.

Q754 Chairman: Sort it out. I mean, sort it out in a modern world, in other words, and to sort out the structure.

Mr Jones: Yes. And to recognise the uniqueness.

Q755 Chairman: And it is totally unique. There is nothing like it.

Ms Closs-Stephens: I do not think there is.

Q756 Baroness Howe of Idlicote: To follow it up, I wondered to what extent you feel, not least given the BBC's changing attitudes towards partnerships, that they are sympathetic to some of the ideas that you put forward. Have they moved in that?

Ms Closs-Stephens: They are immensely sympathetic. I was asked by Michael Grade to go up to have a discussion with him, where he offered a strategic partnership, and I have no hesitation in thinking that at the highest level there is a real desire to make this a new kind of partnership. I have to be careful here. I am trying to tease out, when people talk to me about "Strategic Partnership"—big 'S', big 'P'—what exactly it means and how it is going to work in reality. That is what we are trying to unravel at the moment, so that it goes from the bottom up in a sensible way.

Q757 Chairman: I think we all understand what you mean when you say that.

Ms Closs-Stephens: Within *Creating Public Value* there is a wonderful concept of 60 local televisions. I have no idea whether this cuts across local entrepreneurship or not but that has been stated as an objective. We are constantly being told, "This will be a good thing. You can have three of these local televisions," but I want to ask—and I am sorry to

sound so ungrateful—"Is this a strategic priority for us? Did we say that this was the biggest thing that we would do with a sum of money? If not, at what time can we discuss this, so that it is not always top down?" That is my frustration really. It is that, with the best will in the world, I do not think they always understand that to be given something without the ability to discuss it is a favour.

Mr Jones: Our feeling is that there is a considerable acknowledgment of the virtues of that particular point. I think maybe the distance which remains between us is on this question of upfront financial commitment to be made now as opposed to being made on an annual basis.

Q758 Chairman: To be clear about the upfront financial commitment, that financial commitment would simply come out of the resources available to the BBC.

Ms Closs-Stephens: We would hope that the licence fee agreement would reflect it.

Q759 Lord Maxton: Obviously now you have a Welsh Assembly. There are several points. What is your relationship with the Assembly? Presumably they do not have any powers over you at all, do they?

Ms Closs-Stephens: On a formal basis, I think there is a letter of understanding between the Department of Culture, Media and Sport and the Assembly, so that when the Chair is appointed or when members of the authority are appointed, the Welsh Assembly Government has a representative on that panel. So there is an ongoing relationship in terms of appointments. We are very conscious of strategic documents, such as the one that relates to the language and to the Minister Jane Davidson's Early Years' Strategy and so on, and we would hope to be able to incorporate some of these ambitions within our programming. On the other hand, we are mindful of the kind of arm's length principle of broadcasting, so that we have to put these as a context for ourselves.

Q760 Lord Maxton: I know in Scotland there was a big argument as to whether or not broadcasting should be a devolved issue. I know the powers of Welsh Assembly are very different from those of the Scottish Parliament, but would you at some time maybe like to see the Welsh Assembly taking over broadcasting in Wales? Or do you think that would compartmentalise it too much and make you a ghetto?

Ms Closs-Stephens: I think I would be afraid that S4C would be devolved by itself and thus taken out of the wider picture of British broadcasting. If the BBC were to federalise itself, in the sense that there was a separate budget for Wales, then it would make more sense for us all to be in this discussion together. Of course we do live in a very non-frontier world by now:

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Sky is beaming into Wales—Sky actually provided a Welsh language commentary on a football match recently. Channel 4 is part of our make-up; some of our independents work for it, some have been taken up as companies to be monitored and advanced by Channel 4. It is a complex mix and we are part of this mix. I would not wish for us to be outside this sophisticated debate that is happening and taken in by ourselves, but if somehow there could be some sort of devolved overview of everybody. But it is very difficult. How do you have a devolved view of Carlton or Granada, for example? They are commercial enterprises. It is a difficult one to handle.

Q761 Lord King of Bridgwater: Are you appointed by the Secretary of State?

Ms Closs-Stephens: I am appointed by the Secretary of State for the Department of Culture, Media and Sport.

Q762 Lord King of Bridgwater: Does the board of S4C appoint Mr Jones?

Ms Closs-Stephens: Yes.

Q763 Lord Maxton: At a more mundane level, can I ask this: You mentioned Sky doing a commentary in Wales, but if the BBC cover—as I know they do sometimes—a Welsh rugby match and the commentary is in Welsh, does that count towards the ten hours?

Mr Jones: These are complex areas. By agreement with the BBC, we hold the rights to Welsh club rugby, for example, with them jointly, and we have an alternating agreement: they broadcast a match on a Friday night and we broadcast one on a Saturday night. On international days, the two channels broadcast the match simultaneously, one broadcasting the commentary in English and the other commentary in Welsh. However, when matches are not broadcast simultaneously, there is now the technical ability to broadcast two language tracks and the BBC has in the past broadcast its Radio Cymru language commentary as a Welsh language alternative when it broadcasts on its own channels. So these are quite complex areas which we will all need to address in future in one way or another.

Q764 Chairman: Do you get into these demarcation disputes about what is the ten hours?

Mr Jones: Yes.

Ms Closs-Stephens: Oh, yes. Let me just add—I am warming to the subject—I have looked at the figures for the last seven years—and on the whole they work out at about 524/527 at an average. It is ten hours a week plus a little bit extra. When we require a repeat of the omnibus edition of the soap *Pobol y Cwm* on a Sunday afternoon, as happens with other soaps on all

television, we pay for that. If we wanted an extra run in August, so as not to be taken off air in August, we pay for that. If we wanted an extended programming from the Royal Welsh Show, we pay for it. Currently, we pay the BBC—not including now sports rights, which we hold in common, for which we pay also—a sum of £5 million a year for the repeats over and above the ten hours. That £5 million could be available to the independent sector. It could drive a real economic growth within the independent sector if that £5 million was available to us.

Q765 Chairman: All that £5 million is going to repeats, is it?

Mr Jones: Not entirely.

Q766 Chairman: Overwhelmingly.

Mr Jones: Not entirely. One of the main components is our commissioning of six weeks in the summer of the soap. There is also some extended programming from a location such as the Eisteddfod where the BBC is already transmitting a core set of programmes.

Chairman: It might be that at this point we bring in funding methods.

Q767 Lord Peston: Yes. As a preliminary to that, I have still been trying to follow how much free money you have. You will remember you were talking to Lord King about £20/£25 million. How much free money do you have to spend as you like every year?

Mr Jones: Primary funding is the funding which comes from the DCMS, which is £87 million this year. On top of that, we have the right to sell advertising and to engage in commercial ventures. That delivers at the moment a return of something like £5 million a year on top of that. Then there is the value of the BBC programming.

Q768 Lord Peston: The first two numbers added up to £92 million per annum.

Mr Jones: Yes.

Q769 Lord Peston: Where does Lord King's £20/£25 million come in?

Ms Closs-Stephens: I think that is the fund which we have created in order to make up for this £5 million deficit which will occur every year after digital switch on.

Q770 Lord Peston: Is that to be added to the £92 million?

Ms Closs-Stephens: No.

Q771 Lord Peston: It is completely separate as a concept?

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Ms Closs-Stephens: No, if I may explain. £87 has a £5 million commercial input. We have judged that the £5 million commercial activity that we now enjoy will diminish rapidly once Channel 4 is available fully in Wales; therefore we are back to the £87 million. The way in which we are trying to make up for this through our own efforts is to have created this fund which will in part make up for the loss.

Q772 Lord Peston: Easy numbers for me, let's call it £90 million that we are talking about. That is money you decide—just you—how you want to spend it. Is that right?

Mr Jones: Yes.

Q773 Lord Peston: Then the ten hours has a value. How much is it worth?

Mr Jones: The BBC reports in its annual report that it is currently worth £20 million.

Q774 Lord Peston: But how much is it worth to you? Supposing you were offered ten hours or £20 million, which would you take?

Ms Closs-Stephens: Because there is no absolute transparency of funding, we do not know what things cost.

Q775 Lord Peston: No, but it is still a straightforward question. Supposing I offer you the alternative, “Do you want ten hours or the £20 million?”—the latter being that you decide what to do with the £20 million—which would you choose?

Mr Jones: In financial terms, we would assume that that is correct value for ten hours.

Q776 Lord Peston: That is what their correct value is on their accounting. I want to know what it is worth to you.

Mr Jones: We have not had the opportunity so far to market test, for example, something like the value of the news service, which is a substantial proportion of that ten hours. We believe, for example, that the cost of the soap opera is consistent with what we would need to pay in the market, so that there would not necessarily be a saving if we were to acquire it all ourselves. But clearly any organisation offered the choice, if you can buy in the market the equivalent amount of programming and you do not have to go through the hassle of dealing with another organisation, is likely to say, “Yes, we would prefer that.” But the nature of the relationship is complex and we are currently working to a different solution which is to improve the current situation.

Q777 Lord Peston: I understand that, but one benefit if you had the £20 million is you would simply decide what you wanted. Is that not important to you?

Ms Closs-Stephens: Yes, it is. We are trying to achieve through this strategic partnership that has been offered that the £20 million would be earmarked or ring-fenced and that there would be at least a strategic editorial input. I find it a little disappointing that, in the expenditure of the £20 million, the BBC's Welsh language output last year only gave ten hours of that 520 hours to independents. That is quite a serious economic issue really, which is larger than us. It is actually about growth.

Mr Jones: The issue of accounting transparency is also important here, because you are asking a question which we could only answer if we had that transparency and knew the £20 million was the real cost. At times, the BBC will say that actually it is worth more than £20 million, but we do not report the full value.

Q778 Lord Peston: Speaking as an economist, I could make the number come out at any number you wanted. That is the business one is in when one discusses these matters.

Mr Jones: That is what economists do, you mean.

Q779 Lord Peston: But that is another matter. All this leads on to the central point, to which, listening to you, it sounds to me as if you are very sensitive, which is that, if you get grant-in-aid of any form, people giving you the money are not going just to give it to you in the sense of: “Spend it in the way you think it should be spent.” There must be some pressure on you to say, “Spend it in the way we want it spent.” Am I being unfair here?

Ms Closs-Stephens: I think certainly the Department of Culture, Media and Sport have been absolutely pure in their dealings in arm's length content terms. Just to tackle this business of grant-in-aid, although it is a grant-in-aid it is not a grant-in-aid that is disputed on the floor of the House in every budgetary cycle. It is actually in the Act that this should be a sum of money with RPI. Therefore, that mechanism takes us out of the kind of budgetary pressures, political pressures, and possibly our own inadvertent desire to please, in order to enhance whatever grant-in-aid has been given. The same is true of the mechanism of licence fee, that it is another sort of device, but I am not certain that the licence fee either is a completely pure device, because that has to be adjusted—and that is a debate for politicians to have quite rightly. The mechanism at some point has to be in place for a sufficient length of time to enable the broadcasters to feel a sense of freedom about the way it deals with its news and current affairs, but how you achieve that, whether it is through grant-in-aid, and RPI or through the licence fee, neither one way or the other seems to me to be more beneficial.

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Q780 Lord Peston: You are therefore saying that you do not see the current methods of finance and possible changes as getting in the way of your acting professionally and with enterprise and making the programmes you want to make or have made. To invent an example from me—it is not my business—if you wanted to do something major on the life and times of Dylan Thomas—and I mention him because he is almost the only Welshman most of us have ever heard of—which I say with apology, of course!—you would find no difficulty. If you wanted to do something like that, which might well have enormous value for international sales, you would be able to have the money and be able to get something like that made.

Ms Closs-Stephens: Absolutely. I do not think that is the question. The question is: Would I feel equally free to do the life and times of the Welsh Assembly Government or of the Department of Culture, Media and Sport or any other funded body? The importance I attach to an independent authority which feels itself to be at arm's length is of the utmost importance, and one which reflects the aspirations of the people of Wales in the make-up of its board.

Q781 Lord Peston: To take an example connected with what you just said—and this also relates to what Lady Howe and Lady O'Neill have said—if you were strongly Welsh and feeling this, presumably one thing you would like to have a lot of on Welsh television is Welsh history. You have no problem with that. No one is pressurising you to stop you doing that sort of thing. Funds are not limiting you if you do not do it because you have decided at the margin you would rather spend the funds here rather than there.

Ms Closs-Stephens: I think the creation of S4C has been a phenomenon for linguistic harmony in Wales. Some years ago, and possibly more than 20 years ago, the idea of a Welsh channel actually celebrating Welsh history and Welsh language learning would be seen as subversive. We have managed to achieve, if I may say so—and I have been there for only seven years, so I cannot lay claim to the whole period at all—a kind of normalisation; that this small odd channel in many ways is of cultural benefit to a lot of people in Wales. It is agreed that it is something good and then that feeds into this new desire for the language to be regenerated.

Lord Maxton: But if you were doing a programme on Welsh history or Dylan Thomas—who actually wrote in English, as far as I know, or very largely, anyway.

Lord Peston: He had a Welsh accent.

Chairman: I think we will just pass over this comment on Dylan Thomas.

Q782 Lord Maxton: Yes. Could I make the point, however, that if you are doing that, quite rightly you would do it in Welsh for your Welsh speakers, but it seems to me that if you want that to go out to a much wider audience, you would have to produce it in English as well. Do you do that?

Mr Jones: For many years we have been involved in international co-productions, the essence of which is that we find a partner who will get involved with us. The money for the international version essentially comes from the international rights which are distributed in one way or another. We have been quite successful in that, I think.

Q783 Lord King of Bridgwater: Dr Philip Cordell wrote an essay on Switzerland in which he said that Switzerland was like Wales: two countries that had a lot of geography and very little history. So we will keep off Welsh history as well, I think.

Ms Closs-Stephens: I think there is too much history.

Chairman: I think most of the side comments we could stay off, if you do not mind me saying so. Let's go on, shall we, into less troubled waters. We will go into governance.

Q784 Bishop of Manchester: Let's move into that subject, which is one which does interest us very greatly. Earlier in our conversation today, in reply to Lord King you made reference to your own style of governance through the Welsh Fourth Channel Authority. I think I am right in saying that you described that in terms of independence: its chair is employed by the DCMS Secretary of State, and, I understand, the membership also after application. You have the experience therefore of that level of independence. We have been looking at the proposals in the Green Paper for the BBC Trust and of course there is the whole complex issue as to how far that relates to the BBC structure itself, how far it ought to be independent. I wonder if you could speak from your own experience about your views on the makeup of the BBC Trust, particularly in terms of its independence or otherwise.

Ms Closs-Stephens: I can see why the BBC have arrived at this new mechanism and I can see why there is an increasing divergence between the management and the regulator and that the BBC Trust is increasingly taking its regulatory role more seriously than its nurturing role. I am going to say something deeply unfashionable really: In my view, I am not quite certain that the whole system was as broke as it is made out to be post-Hutton. However, I think that post-Hutton there is no choice; that Michael Grade decided to walk down this route in order, possibly, to save the BBC from coming under Ofcom. I feel sorry sometimes. When I went to see him in Marylebone in BBC London Radio's headquarters, it seemed to me—and I am sorry to say

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this—that here was this big beast, somebody who could energise and keep up the morale of staff, not able any more to walk down the corridors and kind of sniff the air of the organisation. That seemed to me a loss for a chairman. I am currently trying to work out in our own way how best we can demonstrate that there is an effective distance between Huw’s management team and myself and the Authority, without going into an over-bureaucratic complexity of licensing and so on, in a very small organisation which actually has only one channel. It is a difficult read-across for us, and I am trying to be sensible about it, but it is one on which I would quite welcome people’s ideas as we move on. I think we will be having our own away day, possibly in September, to try to tease out some of the issues of governance for a small organisation, which does not have the complexity of the BBC, that still wants to demonstrate that there is a custodian of the custodians.

Q785 Bishop of Manchester: In terms of arguments that might be put for the complete independence of the BBC Trust, you have some views on that.

Ms Closs-Stephens: My own view is that it will be cleaner to have a public service trust. This is a halfway house. It will be very interesting to see how it works, and that is why I keep referring to the five or six years. That seems to me to be a good time to allow this trust to bed down and to see what it can do in relation to licensing its own services and monitoring its own services.

Q786 Lord King of Bridgwater: Something you said at the start—which some of us might be pretty sympathetic to—was that you do not believe a change should be made.

Ms Closs-Stephens: No.

Q787 Lord King of Bridgwater: You believe this is a post-Hutton reaction and you are seeing yourselves as political realists in the current situation of saying, “We probably have to make some sort of change,” so this is the least-worst option. Is that not so?

Ms Closs-Stephens: That is my reading of the BBC’s current situation.

Q788 Bishop of Manchester: There is a lovely quizzical look on Mr Jones’s face and I would be delighted to hear from him.

Ms Closs-Stephens: You can always tell when I’ve gone wrong!

Q789 Lord King of Bridgwater: It was a very honest answer.

Mr Jones: Just the fact that I’m leaving quite shortly. It is for someone else to sort out.

Lord King of Bridgwater: It was a very good answer.

Q790 Bishop of Manchester: It is an important point. To use the phrase that Lord King just used—no one has been totally enthusiastic in their evidence to us about this—“least-worst option” seems to be almost the characteristic of what we are getting. Would that be unfair?

Mr Jones: It is important that there is a process of transparency by which the public can see that the executive is being held to account by a body which is not appointed by the executive, it is appointed by someone else on the part of the public. How you do that—and there cannot be just one way of doing it—that is the essence of it, I think.

Q791 Lord King of Bridgwater: Chairman, may I say that it is the least-worst option if you accept that a change has to be made.

Ms Closs-Stephens: My own view is that it is very difficult to find an end to this process of custodian to custodian. At some point you have to draw a line and say, “We trust X to do this.” That is the problem at the moment.

Q792 Baroness Gibson of Market Rasen: If the Trust goes ahead, what is your view on the representation for nations?

Ms Closs-Stephens: I understood from Michael Grade’s address yesterday at the Institute of Welsh Affairs lunch that he was very firmly in favour of having a national governor on the Trust from Scotland, Wales and Northern Ireland.

Q793 Baroness Gibson of Market Rasen: Do you agree with that?

Ms Closs-Stephens: I would hope so, yes.

Q794 Chairman: Would the national governor be a representative of the nation?

Ms Closs-Stephens: Presumably he would be, as now, also the Chairman of the Broadcasting Council. That is another thing that needs to be teased out, perhaps.

Q795 Lord Maxton: Should he or she be appointed by the Welsh Assembly rather than by DCMS?

Ms Closs-Stephens: I think currently are they appointed by the Chairman of the BBC—

Mr Jones: At the moment they are appointed by the DCMS.

Ms Closs-Stephens:—assisted by DCMS.

Mr Jones: Assisted by the Welsh Assembly.

Ms Closs-Stephens: I rather think that the Chairman of the BBC makes the decision for the board in association with DCMS and the Welsh Assembly.

Lord Maxton: Having applied for it once to Scotland, I have to tell you that you apply to the DCMS not to the BBC. Unsuccessfully, I hasten to add.

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Chairman: With that confusion, we will move on. Lord King, with a question on digital.

Q796 Lord King of Bridgwater: Could I get some facts before I ask you this question. How many people are we talking about? I appreciate this difficulty about capability or language fluency, but how many people do you think you are actually serving in terms of people who are solely dependent on you, who do not speak any other language?

Mr Jones: We consider everybody who speaks Welsh to be bilingual over a certain level.

Q797 Lord King of Bridgwater: Do you have any idea of the audience you are talking about?

Ms Closs-Stephens: Our reach in a week?

Mr Jones: The number of people tuning into a Welsh language programme on average every week is in the region of 700,00, and on top of that there is another 150,000 to 200,000 outside Wales who tune into a Welsh language programme every week.

Q798 Lord King of Bridgwater: That is not 150,000 people tuning in at different times; that is 150,000 different people.

Ms Closs-Stephens: Yes.

Mr Jones: Different people, yes.

Q799 Lord King of Bridgwater: By their distribution. We had some rather disturbing answers, from talking about this in Bristol yesterday, about problems that might arise from the switchover on reception. Philip Cordell described Wales also as “one of those undulating territories”. I suspect a lot of the Welsh speakers are in some of the more undulating parts of Wales, are they not? Is there not a particular problem that is going to arise over reception?

Mr Jones: Wales is already 70 per cent digital. It has a high proportion already. That indicates that analogue reception is not without its problems in Wales, so people have chosen to go digital, primarily via satellite. But the need for everyone to have the same choice of platforms as they do in an English city is a matter almost of right, if that can be established. I have quite a lot of confidence that the problems relating to digital switchover, the technical problems, are understood and that the plans which are being put in place are as good an attempt as can be made to achieve near analogue coverage, but the cost of course has not yet been established.

Q800 Lord King of Bridgwater: The impression we got was that there will be winners and losers: some people who have perfectly good reception now with analogue may suddenly find, going into digital, that they do not get it, and some people who find they cannot get it at the moment might find their reception is improved. There is a certain feeling that it will not

become too apparent until it actually starts: suck it and see, and then there would need to be infilling and boosters and various other things going on, and it has just occurred to me that that could be quite exceptionally expensive relatively in Wales compared to other parts of the country where you are trying to achieve that.

Mr Jones: It could indeed. Therefore that is why as much clarity as possible is needed. I would say that my understanding is that people are getting on with the job of costing that and of coming up with the solutions as to how it should be achieved, but I think it is an issue for Charter Review to consider because clearly there is an expectation that the BBC will play a leading role in this.

Q801 Lord King of Bridgwater: In my own constituency which was over in Somerset at a place called Washford there is a big television mast. That carries BBC Wales and—exactly the point you made—some of my constituents used to get the Welsh opt out, which they did not care for, because that was the only way it could get up the valleys.

Mr Jones: There are concerns about the power of signals from certain masts. Apparently there are digital tuning devices which automatically home in on the strongest signal they can find and that may mean that you buy a piece of equipment and because the strong signal happens to come from across the border you find it more difficult to tune into the signal that you want.

Q802 Lord King of Bridgwater: You get RTE instead.

Mr Jones: They are not digital terrestrial.

Q803 Lord Maxton: Would it not be better to talk to BT and say, “Let’s do this down the telephone line,” rather than all this nonsense about digital terrestrial? It is technology that is out of date, gone, and we should ignore it and get on and do it some other way.

Ms Closs-Stephens: I suppose the other way is to have a public satellite. That is another option.

Lord Maxton: There are a variety of different ways of doing it and getting it more easily and cheaply to people.

Q804 Chairman: Mr Jones, do you want to come back on that?

Mr Jones: No, I will leave that for the time being.

Q805 Chairman: The last question, because we have run out of time, I fear. The independent sector: a very important sector as far as broadcasting is concerned; a very important sector here, I believe and understand. Do you believe that the system of joint commissioning at the moment is unfair to the

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independent sector? How can the independent sector be better nurtured?

Mr Jones: Just a word about what you referred to as the joint commissioning system. This is what the Chair referred to as the situation which arises when we want more programmes and have no alternative but to turn to the BBC, from them, and they say that they do not have the financial resources to do them. The six week block of the soap opera in the summer is the best example of this. Clearly, to have a soap opera which takes six weeks off in the summer is not good broadcasting policy, so there did not seem any alternative but for us to pay the BBC to produce additional programmes for us, but that money then is money which is no longer available to commission in the independent sector. The same applies to additional sports coverage and so forth. The issue is, I think, that if the BBC were to fund itself those parts of our programme strategy which it is reasonable to think the BBC should be funding—and if it is reasonable to think that you should have a soap opera running the year round rather than with a six-week block then it should be part of the agreed contribution—then you take that issue away and that money remains available for investment with independent producers. In the case of other examples—and sport is one of them—if it is sensible to acquire rights jointly, then it does not necessarily follow that the only way to produce those programmes is via the BBC's in-house system. If we were able to acquire rights jointly but to tender them to whomever, then I think that would be seen as a co-production between two broadcasters, operating in a way which supports the development of the market. That is a specific point about our relationship with the BBC. We ought to note that our relationship with the independent producers is critically important to us, so the partnership with the BBC is not the only one on the table. We have many partnerships here which we want to develop and we are in the process of making some important but substantial changes in those relationships at the moment. We have advertised substantial development contracts which run over a two-year period, a total of £1 million, and we specify that they will be shared out in minima of £100,000 each time. So there is a conscious decision there to have close relationships with producers which we think are capable of driving development in the future and of driving development of the industry for the future as well.

Q806 Chairman: They have to bid for them.

Mr Jones: Indeed. That is an entirely above-board tender process.

Ms Closs-Stephens: I wonder if I could just add to that.

Q807 Lord King of Bridgwater: Before you do, the BBC does your news, is that right?

Mr Jones: Yes.

Q808 Lord King of Bridgwater: Have you ever put that out to tender?

Mr Jones: No, we have not.

Ms Closs-Stephens: I was just going to add on the basis of the independent sector, that there have been some acquisitions and mergers recently which have resulted in companies some of which have a turnover now of over £10 million. They are ambitious and growing, and they are ambitious to do work for us, to be nurtured by us and to fly further and to achieve work from Channel 4 and from Sky and from possibly the new Manchester bases and so on. So this is a good time for the independent sector in Wales. We have to make certain that we spend our money wisely in cultural terms, but if we can spend that money wisely in economic terms as well, then that is a double win for the grants that have been given to us.

Q809 Chairman: The production companies are getting rather like the advertising agencies, are they not, in the sense that they are developing, becoming bigger, and it is a meaningful thing to ask them to bid for contracts?

Mr Jones: Indeed. Increasing the amount of competition there is for specific programme strands is part of our policy. We are now advertising the sixth tender in recent months. It is working. People are responding, they are coming forward with new ideas, and the more contracts they get the better able they are obviously to plan for the future.

Q810 Chairman: Thank you very much. I am very grateful. You have been, if I may say so, extraordinarily good advocates of your cause. If we have any other questions on any of the detail, perhaps we could come back to you.

Ms Closs-Stephens: Thank you very much.

Bishop of Manchester: Chairman, perhaps we could put it on the record that we would have been delighted to have heard evidence in Welsh and were rather looking forward even to using it.

Chairman: I am not sure, after Lord Maxton's remark, we should do that, but there you are.

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Supplementary letter from S4C

I am writing to thank you and the Select Committee for taking the time to attend to the concerns of Wales as regards the renewal of the BBC's Charter. I believe there is enormous goodwill on both sides to forge a new relationship between the BBC and S4C. We are currently teasing out the detail of what exactly is meant by a Strategic Partnership and current discussions seem to augur well for a partnership that includes an overall strategic discussion, monitoring and clear accountability. I need not go into detail since our own desirables are included in our response to the Green Paper.

There appears to be two areas that need clarification.

AUDIENCE FIGURES

The first is your Select Committee's request for clarification on audience figures. May I take this opportunity to offer some light on two seemingly confusing figures. Share is the measure of the proportion of total viewing in an area enjoyed by a particular channel. Reach is the measure of the number of different individuals who tune in to a channel each week on average. All such figures are derived from sampling of viewing by BARB, the Broadcasting Audience Research Board. S4C's figure is an expression of the number of individuals who have tuned in to a Welsh language programme on S4C. The average weekly figure for the first 20 weeks of 2005 was 661,000. The same measurement shows an additional 213,000 viewers living outside Wales tuning in to a Welsh language programme on S4C during the same period. In common with the BBC's Annual Report, we believe reach is a good measure in these multi-channel days where share for an individual programme does not reflect multi-channel viewing patterns.

There is therefore no inconsistency between these figures and the BBC's indication that viewing of S4C in Wales amounted to 3 per cent of total viewing. The share for all hours of programming on S4C drops in relation to the availability of C4 as a separate Channel. S4C wishes to note, however, that in common with ITV and Channel 4 it uses a different viewing panel to the BBC. This panel indicates S4C's share as 3.9 per cent.

CURRENT RELATIONSHIP WITH BBC WALES

Secondly, BBC Wales has expressed concern that I may have led you to misconstrue the present relationship. If so, I hasten to put things right. We are not seeking a new relationship with the BBC because of an irretrievable breakdown in the current relationship. Indeed, I would pay tribute to Controller Wales, Menna Richards, and to the Head of Programmes, Keith Jones, for working with our own executives in a generous and helpful manner. We are, however, seeking a relationship that will be more strategic, that offers greater opportunities for a far-reaching discussion, monitoring and accountability. I believe that, with good will on both sides, that relationship is within our grasp and that it can be encapsulated within the White Paper and the Charter.

I would not want to lead you and the Committee to understand that there is no consultation at present between us and BBC Wales. Let me take one instance in particular. It would be wrong to state that there was no offer of consultation or discussion regarding the possibility of local news. A discussion on this development was offered.

The point I was trying to make—albeit clumsily it seems—was that this offering was part of the BBC's overall UK strategy. It was not part of an overarching discussion on the news offering for S4C as a whole eg the possibility of joint branding, red button availability; interactivity; the possibility of texting messages as happens with its sister programme Wales Today. I am hopeful that the executives of both BBC and S4C will be having detailed discussions of this nature during the near future.

Within the multiplicity of channels on offer on UK television, S4C is the only channel to which a Welsh speaker can turn to hear his or her own language. As such it occupies a unique position and carries a unique responsibility. Despite the fact that Welsh speakers are a minority, it is the view of the Assembly Government that Wales should become a bilingual country. BBC Wales and S4C, working together, have made an immense contribution to that aspiration. Hopefully, with a new partnership emerging from the Charter discussion, that contribution can be strengthened and codified for the future.

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Examination of Witnesses

Witnesses: MR PAT LOUGHREY, Director, BBC Nations & Regions, and Ms MENNA RICHARDS, Controller, BBC Wales, examined in Cardiff.

Q811 Chairman: Good morning. Welcome. Mr Loughrey, we have met before, and Ms Richards, we are meeting for the first time. You know the background. We are looking at the BBC Charter renewal process and taking evidence from a lot of interested parties in London and around the country. I wonder if I could start immediately on this question of decentralising the BBC's focus. Mark Thompson said that the BBC's focus has been quite a heavily national one, based in Glasgow, Cardiff and Belfast—so not just London, but Glasgow Cardiff and Belfast. Would you accept that as being a fair criticism of what is happening in Wales?

Mr Loughrey: Historically, if I might begin, Chairman, I think that is true. We certainly had news collection centres scattered around the nations. Bangor, for instance, is a significant production centre here in Wales, but, in terms of production, of producers for general programme output and, indeed, for news living in and being part of communities across Scotland, Wales and Northern Ireland, I fear the criticism is correct, and that is something we intend to change in the future.

Ms Richards: Thank you, Chairman. If I may give a little context about BBC Wales and I will answer your question in the context of BBC Wales's operation. BBC Wales is unique in the BBC and probably in the whole world in that we broadcast in two languages, both Welsh and English. You heard earlier from S4C. Our partnership with S4C of course is one of the ways in which we address Welsh language audiences. We have a national radio service which BBC Wales is responsible for and an extensive Welsh language on-line presence, but of course we are also a significant supplier of English language output within Wales and a significant supplier of network output. We have, for example, 15,000 hours of radio from our combined national radio services, Radio Wales in English and Radio Cymru in Welsh, and we have the second largest newsroom in the UK outside London. One of the reasons for that is because we provide an international news service for S4C as well as the extensive news provision for BBC Wales.

Q812 Chairman: International?

Ms Richards: Yes. It is not simply based on Welsh news; it draws on the entire BBC news service worldwide. We are able to send reporters all over the world, to use the entirety of the BBC's resources to provide an international news service for S4C.

Q813 Lord Maxton: In Welsh?

Ms Richards: Yes. Also 800 hours of English language television output for local audiences. Perhaps it is within that context in particular that I will answer your question about decentralising from Cardiff. Yes, I think probably all parts of the BBC are guilty to some extent of being rather metropolitan in their outlook. Because of the presence of the Welsh language, and for the particular heartland of North-West Wales, we have a very significant presence in North-West Wales, in Bangor, which produces output both in Welsh and English. We also have offices in Wrexham, in Aberystwyth, in Denbigh, in Swansea, and in Newport in the South-East, so we do make efforts to reflect the geography and the diversity of Wales in every sense. Having said that, we can do better. I think the BBC's proposal to introduce local television, for example, will go a significant way towards addressing some of those concerns that people have expressed about the Cardiff-centricity, if you like, of the BBC.

Q814 Chairman: Local television will mean exactly what in Wales?

Ms Richards: Initially, as you may have heard yesterday, the BBC is running a pilot for local television in the West Midlands and BBC Wales is involved in monitoring that. Our proposal is that we will introduce local television. There will be five English language local television services and five Welsh language television services in different parts of Wales. The intention is that they would be in the North-East, South-West, North-West, Mid Wales and the South-East, and they would be based to some extent on the huge success of the local on-line sites, the *Where I Live* sites, which provide local news, local features, local information, local history and a significant proportion of content produced by local people—which has been tremendously successful because it gives local people the opportunity to express themselves in their own words, their own stories and so on. Local television will be an extension of that.

Q815 Chairman: Therefore, if I am living in one of the five service areas, will I get special programmes? Or will it be local regional news? How will it work?

Ms Richards: It will be local regional news. For example, if you lived in North-East Wales, in, say, Wrexham, you would be able to access local news about the area, information about events, about sporting events, about cultural events, about charity events. You would even be able to produce your own news bulletin or your own story to be broadcast on local television. So it is very much in response to the

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demands of local people. The BBC has conducted extensive research into the idea. Interestingly, so has Ofcom. There appears to be a huge appetite for localness—in Wales, in particular—so our intention is to respond to that.

Mr Loughrey: Just in case the prospect is a bit vague still, the key characteristic of this is news on demand, local news of immediate relevance to you from events. The agenda of daily news, available not when we choose to broadcast it—the historical kind of deferential picture of being there for the 6.30 news—but television news, with all its strengths on tap, 24 hours a day, seven days a week, so that that model of broadcasters frankly suiting themselves as to when they make information available, and one having to seek it through the schedule, has changed. It takes the strength of on-line—as Menna referred to the *Where I Live* sites—and extends it from text to moving pictures and sound, but it is a far more local version of that, building on that unique network that we have across Wales, for example, of relevance to audiences. Increasingly, an interesting product, as we mentioned yesterday, of the global virtual village is that people seek and really cherish that local relevance.

Q816 Chairman: It will be regional—at least, sub-regional perhaps.

Mr Loughrey: Yes.

Q817 Chairman: It will not be Television Wrexham.

Mr Loughrey: No.

Q818 Chairman: But for the area.

Mr Loughrey: In and around.

Q819 Chairman: We have been taking evidence as far as S4C is concerned, and one of the interesting things in the Green Paper is that it notes that BBC's expenditure on Welsh programming for S4C has not risen in line with overall expenditure or indeed expenditure on English language programming. Do you have any comment on that?

Mr Loughrey: We listened to the S4C evidence, so if you do not mind I will respond to that to some extent. I would like first, Chairman, if I may, to set some context. Twenty per cent of the population of Wales speak Welsh. At the moment the total budget, as I think emerged in your questioning, for Welsh language programmes on S4C is some £90-odd million: £70 million from DCMS, £20 million from ourselves. For the 100 per cent of the population of Wales who speak English, the spend on opt-out programmes on the BBC is £25 million. So: £20 million on Welsh programmes, £25 million for the rest, and on ITV it is £8 million. I say that not in a defensive or negative frame of mind—I come from a minority language background myself—but I think it is only fair to contextualise the concern here. The cost

per hour of our Welsh language output is actually higher than our English language output and by far and away the cost per user or the cost per individual member of the audience who choose to use it is significantly higher. And one has to say—and this is something that I think we are very keen to address with S4C—we are looking at a service in S4C that currently achieves a market share of less than three per cent across the output.

Q820 Lord King of Bridgwater: Three per cent of what?

Mr Loughrey: Three per cent of the audience at any one time.

Q821 Chairman: Three per cent of people watching television are watching S4C.

Mr Loughrey: Exactly.

Q822 Lord King of Bridgwater: Of the potential audience in their area?

Mr Loughrey: Of the actual audience watching television at any one time, there are 3 per cent—less than 3 per cent.

Q823 Lord King of Bridgwater: Of the Welsh audience?

Mr Loughrey: Of the audience in Wales watching television, less than 3 per cent, on average, choose S4C.

Q824 Lord King of Bridgwater: Does that tie up with the figures S4C gave—the 700,000 people?

Mr Loughrey: They gave you, Lord King, reach figures, which is that across a week 700,000 choose at some time to go to or to spend more than three minutes on a Welsh language programme. But I am not expert on the figures that they gave you; I am telling you the figures that—

Lord King of Bridgwater: I would be hard pushed to make three per cent equal 700,000.

Lord Maxton: They are two different figures.

Q825 Baroness Howe of Idlicote: What is 3 per cent of the actual viewing?

Mr Loughrey: Forty thousand people on average, I would have thought. I do not know that figure. Can I come back to you on that, please?

Q826 Chairman: Yes, please do, but, roughly speaking, for our purposes today you would expect at any one stage perhaps 40,000 people to be watching S4C.

Mr Loughrey: Yes. I want to contextualise that because the average equivalent share for an English language programme, for the programmes we make in the English language in Wales, is closer to 20–25 per cent of the audience chose the opt-out

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programmes, the Welsh BBC Wales programmes in English. That is the context of the discussion. I think that S4C and ourselves need to spend quite a lot of time reflecting on the changing needs, tastes and market context of Welsh language audiences and programmes. I do not think this adversarial position of challenging each other is necessarily the best way forward.

Q827 Chairman: It did not seem to me that it was particularly adversarial. I have been in more adversarial contexts than that, I can tell you.

Mr Loughrey: I am not suggesting that, but I do think that in the partnership spirit—and I was very encouraged by much of what was said this morning—that is a very clear need for the future.

Q828 Chairman: I do think it would help us if we could have figures which are agreed by both BBC and S4C on who is watching what and what the numbers are.

Mr Loughrey: We would be happy to do that. Another point of context, if I may, then I will move on to the specific questions. S4C is of course a television broadcaster but our commitment to the Welsh language goes way beyond television. We also spend some £9 million a year on Radio Cymru, the radio service for Welsh language audiences, and well over £1 million a year on our on-line provision in Welsh. So there is a significant breadth of commitment for Welsh language services from the BBC.

Q829 Baroness Howe of Idlicote: Given Ofcom's comments recently that S4C should be responsible and accountable for what goes out and given what you have said, they obviously do think there should be some changes in the relationship—and you have been listening to what was said, I will not go through it all, but a greater real sense of partnership and accountability. What new powers do you think they would need to determine the nature and entirety of the service they are providing?

Ms Richards: I have no doubt the BBC would agree that there needs to be a review of the relationship and a need to modernise the relationship. Indeed, I am delighted to say that that is underway. The chairman of the BBC, Michael Grade, and the Chair of S4C, Elan Closs-Stephens, have met on several occasions I think. The BBC has proposed a strategic partnership, and S4C, I am delighted to say, have welcomed such a partnership. At executive level we have now been charged with working out exactly what that might mean, and that work is happening at the moment and progressing well, I believe. I think your specific question was about new powers. I am not certain that it is a question of new powers so much as a question of clarity and transparency. The strategic partnership

that we propose should set principles that underpin the relationship between the S4C Authority and the BBC's Trust. We have already made it very clear that the BBC will make a financial commitment in advance to S4C, that there would be proper discussion. S4C, of course, are responsible for their own programme strategy—absolutely as it should be. There should be a more robust and agreed framework between us, I believe, at executive level, to ensure that the BBC and S4C understand how the BBC can best contribute to that programme strategy, and that those proposals from the BBC to S4C/proposals from S4C to ourselves are agreed in advance so that everybody knows how the relationship is to move forward. I believe that is entirely possible. It is supported by the Chairman of the BBC and by the Director General, both of whom have taken a very keen interest in this matter, but ultimately it has to be about recognising that both organisations have changed but also that the BBC has obligations to the Welsh language which are not exclusively on television, not exclusively to S4C. We also have an obligation to provide radio and on-line services in the Welsh language. As I think we said earlier, S4C is a part of that. But I think that the strategic partnership is on the right track.

Q830 Baroness Howe of Idlicote: You will have picked up the concern about just how is strategic likely to be defined and so on, but, thinking through that, one of the other areas was the accountability and at what stage. If things go wrong in negotiations, who should it go through? Obviously the Trust is pretty soon in the line, but then where, if there is not some sort of agreement? You can see sometimes perhaps that they have their plans and they have done this area with an independent broadcaster, perhaps, an independent commission, and then suddenly you are saying, "Here, you can have this one," which happens to be in the same direction they had already commissioned. Those sorts of things no doubt really do indicate where power lies. How are you going to resolve that sort of problem in future?

Ms Richards: I think it is important to say there is no evidence of failure here. The BBC fills with our output around one-third of S4C airtime and achieves 50 per cent of its audience in return for that. We do produce for S4C the most watched Welsh language programme in the world, *Pobol y Cwm*, a drama series, a soap opera, and we also produce an international news service to which I referred earlier. So I think we need to be clear that what the BBC currently provides for S4C is very successful and very popular with audiences. Nevertheless, the phrase "modernising the relationship" has been used on several occasions, not least by the Laughton Report, and that is exactly what we are proposing to do now. I do think, though, to pick up your point, that

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ultimately there has to be an agreement between the S4C authority, the Broadcasting Council for Wales and the BBC Trust. I would hope that an agreement between those parties is achievable. Given that we have been so successful in the relationship over the last 20 years, I have no real reason to believe that that should not be achievable, but that is in the detail of the work we are doing currently with S4C.

Q831 Baroness Howe of Idlicote: The point they made about paying you to do repeats, during a period when maybe the audience is expecting it to be continued throughout the summer, do you think it is right that they should pay for that directly?

Mr Loughrey: I think we are looking to enhancing the BBC's contribution to S4C in a variety of ways. That is inevitable. I think some of the points that were made this morning are fair and one of the means by which we might well further support, given an appropriate licence fee settlement, is to look again at that contribution. There is no reason why we would not.

Ms Richards: Just to be clear, that additional output is output that has been requested by S4C and of course we are very happy to supply it. But there is no reason at all why that cannot be part of the discussion going forward.

Q832 Lord Maxton: I would just say that BBC Scotland do some bilingual—too much some people might think! Coming back to this, what percentage of the licence fee collected in Wales goes towards promoting the Welsh language? Linked to that, is your responsibility to ensure that those people who speak Welsh get programmes that they want or is it also to promote the Welsh language and expand the Welsh language among existing population? Lastly, do you have any objections coming from people who do not speak Welsh about the fact that you have part of their channel, the Welsh channel, BBC Wales, is taken up with Welsh programmes?

Ms Richards: On the question of the percentage licence fee spent on the Welsh language, I cannot answer that. I do not know whether Pat can, but perhaps we can come back to you.

Mr Loughrey: Yes, we will write to you on that. Actually, we do not define—at least I do not have it at hand—the licence fee collection by nation, but we certainly will write to you on that.

Ms Richards: Perhaps I could deal with your final point first, and that was: Do we get any objection from English language speakers? No, because no Welsh language programmes are carried on the English language services. BBC Wales provides an English language television opt-out service and an exclusively Welsh language radio service alongside an exclusively English language radio service, and that is not an issue. Is it our job to ensure that Welsh

speakers get the programmes they want? Yes, of course it is. The important thing here is that our responsibility is to look at audiences in both Welsh and English. One of the advantages that the BBC has, because we have responsibility for on-line radio and television services in the Welsh language—that is, the television output we provide to S4C—is that we can ensure that across those three platforms we can take best advantage of the different audiences, the diverse audiences that come to each of those services, and make them, in a sense, more joined up. For example, on-line services in Welsh, in common with all other on-line services, attract a much younger audience. There are now a greater proportion of younger Welsh speakers. Bringing them into on-line services in the Welsh language can also bring them into radio and to television. In a fragmenting world, being able to capture Welsh speakers and to ensure that that audience gets the most comprehensive possible service across all platforms is extremely important. But we do also have a responsibility—and I think this was the question you asked, Lady O'Neill in the earlier session—to respond to the demands made by Welsh learners. As well as the Welsh language services that we offer, we also ensure that Welsh learners are catered for through our English language services. For example, we have recently transmitted a programme on BBC Wales called *Big Welsh Challenge*, where five high-profile celebrities—some rather unexpected ones: six o'clock BBC news readers, for example—wanted to learn to speak Welsh.

Mr Loughrey: Not Huw Edwards.

Ms Richards: Not Huw Edwards—Sian Williams, in fact. We have put the five celebrities alongside Welsh speakers and made a series about them learning Welsh. It has been tremendously successful. That is a direct response to the fact that some people do want that kind of service and because they are not Welsh speaking they cannot understand it in the Welsh language.

Q833 Lord Maxton: On-line I can learn Spanish, Portuguese, or whatever it might be from the BBC. Do you have Welsh programme?

Mr Loughrey: Yes.

Ms Richards: Yes.

Lord Maxton: Not that I want to learn Welsh.

Q834 Lord King of Bridgwater: What is the BBC assessment of what is actually happening to numbers of Welsh speakers and people learning Welsh?

Ms Richards: The number of Welsh speakers increased at the last census for the first time for many, many years, but the pattern of distribution of Welsh speakers is very different. There are a greater number of people who use Welsh as a second language and they are largely in the South-East. Whereas

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previously there was a greater proportion of first language Welsh speakers in rural areas, those are diminishing, but they are balanced by an increase in Welsh learners or people who use Welsh as a second language in the South-East, many of them having come through the education system and learned Welsh at School because it is part of the National Curriculum. We believe that the BBC has a responsibility to address those audiences, and that is the kind of audience that we are able to reach through the on-line and the radio services in particular.

Q835 Lord King of Bridgwater: So whereas previously it tended to be older people who spoke Welsh, you are now getting a lot more younger people coming through the curriculum who have learned Welsh as a language in school.

Ms Richards: Yes.

Mr Loughrey: And in Wales, as in Scotland, as in Northern Ireland, there is an increasing demand from people who do not come from a minority language background at all, from an indigenous language background, to have learning access. That is why we have for the first time created a joint learning resource across Scotland, Wales and Northern Ireland, using television as the front door and then on-line as the main delivery mechanism, to help people access those languages which are a closed and mysterious place for most people.

Chairman: I would like to move in a moment to governance, but Lord Peston you were trying to come in.

Q836 Lord Peston: One simple question. You referred to this soap opera—the name of which I will not endeavour to pronounce. Could you tell us how it came about? Did you make it and offer it to them? Did they say to you, “Make us a soap opera?”

Ms Richards: No. It is now in its 32nd or 33rd year.

Q837 Lord Peston: It goes back before your time.

Ms Richards: It was before my time and it was before S4C’s time! The BBC has been broadcasting in the Welsh language since 1923. *Pobol y Cwm* was not devised then. Before S4C was set up Welsh language output was broadcast on BBC One in Wales and on ITV and *Pobol y Cwm* was part of BBC Wales’s provision in the Welsh language. It continued to be produced by the BBC but was transferred to S4C to be broadcast when S4C was set up in 1982.

Q838 Lord Peston: So it was your programme; it was not one that they came to you and said, “Make for us.”

Ms Richards: No. It is also the most successful programme on S4C.

Q839 Lord Peston: Yes, I am not arguing about that, I am just interested in how decisions get taken. In this case, the question goes back into the distant past, but, secondly, you made it and they took it over.

Ms Richards: Yes. There have also been discussions over the years about whether it was appropriate to continue with it. Should it be rejuvenated in some way? Yes, and it has been. Should it be discontinued? No, was the agreement on both sides.

Q840 Lord Peston: Could you then give us as an alternative example another very successful programme that they thought up but then came to you and said, “Would you make that for us?”—not necessarily equally successful but successful.

Ms Richards: I would have to turn here to the resident expert, the Head of Welsh Language Output, who may be able to help us. But perhaps we can come back to you on that.

Lord Peston: It would be useful for the record.

Q841 Baroness Howe of Idlicote: My point is really, coming back to children and younger learners coming through, the perception that the sooner you are on to a second language—and I mean sooner—the easier it is to pick up the third. Have you also entered into any research on this that could be useful in selling the case of learning languages to the rest of the nation?

Ms Richards: Pat referred earlier to Colin and Cumberland, and that was the subject of some research. Certainly, yes, within our education department in BBC Wales, we have a number of examples of series that have been made for Welsh learners that have been adapted for other languages. There is one very good example recently of an on-line service called Vocab which was developed by BBC Wales’s New Media Department which enables people who are Welsh learners to use a cursor on the website which will give them a translation of the Welsh word into English. That has now been launched as an English to Somali service and it has been taken up by the BBC World Service and they are looking at it to see in which ways it can be adapted for other languages.

Mr Loughrey: The learning resource to which I referred earlier would be applied to all the languages, the main languages, non indigenous languages spoken in the UK in time, so it is an interesting departure. Also relevant to your question is the digital curriculum, the BBC’s new provision for children facing exam challenges over the years, proving a resource, a unique resource, on demand for the bulk of the subjects in the curriculum. It is interesting that the language skills in Scotland, Wales and Northern Ireland are being employed to provide resources for Spanish and for French as well. It is an interesting extension. I think the thesis is one that is

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difficult to capture and to find evidence—as an old teacher I can tell you, is difficult, but all anecdotal and all personal testament stories confirm your view.

Chairman: Let's go on to governance.

Q842 Bishop of Manchester: I have some particular questions to ask, but let me begin with a general one. I think it is fair to say that from many of the people who have come to the Select Committee, when we have talked about the proposals about governance, we have often received a fairly luke warm response. I would be very interested to hear you on the subject of the BBC Trust, and, indeed, in general terms your views about the importance of the independence, the accountability that the BBC should have.

Mr Loughrey: You have heard me on some of this yesterday, but I think the Trust is an appropriate evolution of the relationship that was established from the foundation of the BBC between management and governors. There is no doubt, in my long experience in the BBC, that historically there was confusion between the role of management and governance and that accountability was sometimes difficult to determine and difficult to differentiate as to where responsibility lay. Some of our most ostentatious efforts at accountability sometimes added to the confusion rather than otherwise. I remember the then Chairman and the then Director General co-hosting a television programme with members of the audience asking questions, and it was so difficult to differentiate who was who and who was accountable to whom. Michael Grade and the current governors, but, more importantly, the Government in the Green Paper outline, will add clarity and discipline to a relationship that is well tested and which has in the main delivered well but was quite difficult sometimes to separate and to explain. I think that will be easier in the new dispensation.

Q843 Chairman: Is there not always going to be some tension there? The Chairman and the Director General are still part of the same team, are they not?

Mr Loughrey: I think that is an issue but it is also a strength. I think the direct line of accountability between the licence fee and the Chairman of the trustees, and the audience sense of clarity about where that responsibility rests, is a strength, and the association of the Chairman of the Trustees exclusively with the BBC is bound to be of benefit in a confusing, ever more complex broadcasting marketplace.

Q844 Bishop of Manchester: If I may take up the issues in so far as they relate to BBC Wales. In the BBC response there is the statement that there ought to be a Welsh national representative on the BBC Trust, though interestingly that does not appear in

the Green Paper. Presumably, if that is going to be achieved, it will require some significant argument in support of that proposal. What are the arguments that you would want to put forward?

Ms Richards: Certainly the system of a national governor representing Wales, Scotland, Northern Ireland, England has worked extremely well. I think it is important from BBC Wales's perspective, we have a Broadcasting Council whose function is to advise the board of governors through the national governor on matters relating to Wales, not exclusively about BBC Wales' services but about the BBC services in their entirety. That certainly I believe has been successful in reflecting the diversity that exists across the whole of the UK. However, I think it is also important to make the point that the national governors are not there simply to represent the sectional interests of certain parts of the UK. They do have important roles and duties which they fulfil on the board of governors beyond their responsibilities in each of the nations, and certainly from my perspective that has been extremely useful.

Mr Loughrey: You can imagine over the years in Northern Ireland how incredibly reassuring and supportive it was to have the presence of, in my instance, some very experienced, some very wise national governors and Broadcasting Council members. At a time inevitably when journalism is your core product, there are inevitable political and other rows and disputes. To have critical and yet supportive scrutiny, to take a dispassionate look at, to stand back, I have found, in my experience, hugely beneficial. I would give enormous credit to people who give of their time freely to offer that support and I think for the national governor to be chair of the Broadcasting Council for the nation, and to hear on a monthly basis that kind of discussion and feedback and then to bring that . . . I do not think there are many Great British institutions that have quite that level of representation of the constituent nations of the United Kingdom and I think it is an enormous strength and something of which the BBC should be proud. It is perhaps one of the reasons that the BBC has achieved the kind of relevance to audiences across the UK that it has retained.

Ms Richards: If I may add a specific example, picking up from what Pat has said and just going back to an earlier conversation about S4C. I mentioned the engagement by the Chairman and the Director General of the BBC. I have to say that if it were not for the insight and the experience that the national governor and Broadcasting Council bring to their role advising the governors, I doubt that the BBC at the highest level would have been as engaged as it is with all these issues.

Q845 Bishop of Manchester: What you say sounds on the surface very persuasive, so it is surprising that in the Green Paper this is not being recommended as the continuing policy. Why do you think that is?

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Mr Loughrey: It may be inappropriate for me to speculate but I am sure that is something that the White Paper might rectify. It is certainly the very clear BBC point of view. It is a point of view that we are so confident in the relationship with the national governors that, as we mentioned yesterday, we are clear that that should be extended to England as well; that there should be a governor with responsibility for international affairs, for the BBC World Service and all of that work; that there should be a governor with particular interest in representing local and regional audiences in England.

Q846 Lord Maxton: In a devolved world, should the Welsh Assembly and the Scottish Parliament appoint that national governor, and in a sense they would then be accountable back to the Welsh Assembly and the Scottish Parliament?

Mr Loughrey: Ultimately that is a matter for Government, is it not? But broadcasting is a reserved power in the United Kingdom. The responsibilities of governors, for exactly the reasons Menna said, go far beyond just their local role. They have responsibility across the whole United Kingdom, have an input to all BBC's major policy decisions and broadcasting activities. I would have some caution about that. I think it would create a divisiveness that is not necessary and the strength of the BBC is, like the United Kingdom Parliament, its responsibility to reflect the UK in all its diversity. If we were to devolve that responsibility I think that would be unfortunate. But that is a personal view and ultimately the decision you referred to will be made by Government.

Q847 Chairman: To go back to the important point the Bishop of Manchester was making, I can well see that the Trust or the governors, whichever, are capable of giving good advice and very valuable advice. I totally understand that. I cannot quite see how they can both give advice and also be, if you like, a check at the same time. You are asking them to do a dual role. Some of the things which will have been done will be because of the input of their advice. Then you are asking them to check on that. Is that not the whole case for there being a different and independent check on the occasions, which are not very many frankly, when things go wrong?

Mr Loughrey: The advice in my experience tends to come often in the context of performance. With the Broadcasting Council, rather like the board of governors at present, we agree objectives at the beginning of the year and then report genre by genre on performance against those objectives, so the advice which is critical very often comes on . . . There is a danger of making this relationship sound cosy. If you are a BBC executive, it is anything but cosy, it is quite a rigorous scrutiny of performance against

agreed objectives. The advice comes in the form of reflection of how we have delivered against our stated objectives and the measurement we have chosen together to apply to that performance. I therefore think the two are complementary, provided one is clear from the outset of those measurable, attainable goals. In an increasingly protected marketplace, I think the rigour of that and the clarity of public purpose which is the core to the Broadcasting Council remit, for instance, restrains the worst excesses and points us in the right direction and broadens our view away from the day-to-day squabble of winning individual slots in the television output, for example.

Q848 Bishop of Manchester: Do you feel if the BBC Trust were not to accept the viewpoint put by the Broadcasting Council that it ought to be required to give its reasons publicly for making that decision?

Mr Loughrey: I think if you reach that kind of impasse the relationship has somehow failed already, if that is not evading your very shrewd question to too great an extent. I think the role of the National Governor and the Broadcasting Council is to inform and develop policy and strategy, to ensure that that point of view was being heard and absorbed within the process. The three national governors, and we hope now a fourth, with England in the group of 12, that is a fairly strong persuasive group. I think if you reach the stage of total disagreement, that in itself would be a failure. I would think almost inevitably, in the context of open meetings where all of the minutes are available on-line, that being public about such differences would be inevitable but hardly desirable, and unlikely if the relationship was sound.

Q849 Lord King of Bridgewater: At the present moment appointments for national governors is done by the Secretary of State, is that right, after consultation with the Chairman of the BBC?

Ms Richards: Yes, I believe so, and I also understand, in the case of the national governor for Wales, consultation with the National Assembly.

Q850 Lord King of Bridgewater: Would you see some sort of advice and consent procedure, like you have in the United States, that might operate to a nomination being made by the Secretary of State after consultation and then it having the democratic endorsement of an Assembly committee presumably.

Ms Richards: My understanding is that there is consultation with the Assembly at the moment.

Q851 Lord King of Bridgewater: What form would that take? A quiet word with the leader?

Ms Richards: I think currently it is consultation—

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Q852 Lord King of Bridgwater: A public hearing, certainly from my experience. And certainly endorsing very much what Mr Loughrey said about the calibre of the national government in Northern Ireland, the sort of people that actually attracted were not politicians, but people who command wide respect across the community, and the exercise would be very helpful in giving them a certain higher profile.

Mr Loughrey: I think you will recall, Lord King, the Secretary of State for Northern Ireland and the Head of the Northern Ireland Civil Service were fully briefed and consulted about the selection of the National Governor for Northern Ireland. That was an integral part of the process over all my time involved and I think that has evolved into a consultation with. Maybe it is appropriate that I am not *au fait* with how it happens, but I know that it does happen with the Assembly here and the parliament in Scotland.

Q853 Baroness Howe of Idlicote: If one takes the point that Lord King was really getting at, the greater transparency, the greater involvement of the people generally, and the greater reflected independence of this new set up, is there a case also for saying that all the governors—which would of course include the ones for the nation—should go through a rather more open process and not in the hands of Government. Nolan plus, if you like, or other regulator around to see fair play.

Mr Loughrey: There is, as we speak, probably more accountability to this Assembly, for example, than is obvious. This is the third time I have given evidence in this building in the last four months.

Q854 Lord King of Bridgwater: This is not answering to the Assembly.

Mr Loughrey: In this instance it is not, but the previous two times it was, but it is evidence, I hope, Lord King, of being held to task, subject to scrutiny—answerability in a way that certainly did not happen before the devolved parliament or Assembly and exactly the same degree of scrutiny as is happening with a fair degree of press attention in Scotland at the moment. I think inevitably the BBC in a devolved environment becomes a great deal more accountable than it was heretofore.

Q855 Chairman: It always occurs to me about the BBC that it must be the most investigated body on earth. People like you spend an awful lot of time giving evidence.

Mr Loughrey: The suit personified, Lord Fowler! I spend my life giving evidence and explaining things. We have 500 advisors across England with the wealth of meetings and gatherings that that implies, but when you realise that I think all of those people offer their advice for no financial reward whatever, other

than their belief and passion for the BBC and the determination frankly to make it better.

Q856 Chairman: Quite seriously, does it get in the way of your main job, which is not, presumably, to give evidence to itinerant committees?

Mr Loughrey: I think it could do if it became obsessive, but I do not believe that it is intrusive at the moment, and, in many ways, this kind of work, giving evidence in this way to this group, has made all of us think a great deal more closely about the key issues that face us, quite honestly, and in some ways it is quite refreshing to explain and to talk to people. We talked about this yesterday: the problem with the broadcasting industry is its introversion. We spend far too much time talking to fellow professionals in the business, going to conferences with other professionals, great massive newsrooms where people sit in rows, like battery hens, and work only on PCs. To be held to account, to explain yourself to critical friends, is refreshing in many ways. It is not intrusive, but I will let you know if it becomes so!

Q857 Baroness Gibson of Market Rasen: I want to ask you a couple of questions about Ofcom. The first one I asked S4C, so you may be expecting it, and that is about the proposals to give alternative funding methods for Welsh broadcasting based on contestability. What are your views on this?

Ms Richards: The BBC's view will come as no surprise, I am sure. Indeed, the Chairman was in Cardiff yesterday and articulated this once more. That is of course concern—and Ofcom made this proposal last week—that any kind of fragmentation of the licence fee should happen. In particular, in the case of Wales, to take a Welsh language television obligation in isolation and somehow to separate that—and it is the whole question of the licence fee fragmentation and then further the fragmentation of Welsh language television from radio and on-line services—we would clearly be concerned about, because it breaks the link between the BBC and the licence fee payers and therefore breaks the accountability link. But also Ofcom suggest that somehow this transfer of funding would enable a financial measurement to be made and in fact as far as ITV is concerned Ofcom are measuring hours; output rather than input, so we believe there is a rather confused picture there. But fundamentally we are concerned that any question of a transfer of a licence fee would, in effect, break that relationship between licence fee payers. The BBC Trust ultimately has responsibility for ensuring that all licence fee payers are given the kinds of service that they are used to and that they demand of the BBC.

Mr Loughrey: There is a sort of indivisibility here. When you think the Welsh language news service is a pillar of what we provide for S4C—as Menna said, it

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is world news in the Welsh language, it derives the bulk of its content from the whole of the BBC news gathering web across the world and the UK—to have a clear line of sight for all BBC news output as a member of the BBC’s journalism board is critical and for it to somehow be hived off into a separate form of accountability would seem dangerous.

Q858 Baroness Gibson of Market Rasen: Did this come out of the blue to you? It was June 9, I think. Had it been proposed before?

Ms Richards: Yes, it had. I think it was suggested in Ofcom’s second PSB review.

Mr Loughrey: We are grappling continually with how to achieve the most satisfactory relationship with S4C. If I may return, Chairman, to an earlier question, part of the problem is that we deliver to S4C two, if not three, very large blocks of output. Popular drama/soap, news and then sports. It does not create much space for creative dialogue for new ideas. We are printing the same regular proposition and I can fully understand their sense of unease at maybe not having as much creative input to our contribution as we might. We are a little defensive when we say that actually these are the highest performing, most cherished parts of the schedule. But I do fully understand the unease and that is why, as a critical part of this creative partnership, we envisage that there will be far more opportunity, we think, to work together to identify needs and to come up with programme propositions that meet them.

Q859 Baroness Gibson of Market Rasen: The second question is about regulation, the powers of Ofcom. Do you think Ofcom should have greater powers to require the BBC to increase expenditure or to redistribute resources? Secondly, should Ofcom’s powers with regard to the regional quotas be strengthened to allow new BBC targets?

Mr Loughrey: I never resist support for enhancing spend on regional output, so if Ofcom choose to advocate in that direction I welcome and applaud it. However, I have to say, in fairness to my employers, that we have increased the spend in the past six years on Nations & Regions’ output by some 70 per cent. We have created premises and opportunities for staff and for the public with open centres and buses; a beautiful new building in Norwich, which we described last night; splendid premises in Stoke; a marvellous new corporate centre in Glasgow at Pacific Quay; quite apart from £70-odd million extra for day-to-day television radio and new media output. I think that, without external regulation, the BBC, under the governors, has moved in a shocking way in terms of the BBC’s history of investment beyond London. We are making really rapid progress, because I think it is obvious to anyone who looks at our industry that the prime responsibility for

that delivery will in future rest with the BBC because the commercial world that used to provide that service seems less and less inclined to do it.

Chairman: I am going to try to move us on, because time, as always, is catching up on us. Lady O’Neill, would you like to take us into radio.

Q860 Baroness O’Neill of Bengarve: Yes. It is radio and it is also a question about independence. At present there is a voluntary quota for independent production on radio services in Welsh. Is that the way to do it? How is the quota set? Would there be other ways of improving the radio service? What role do independents play here?

Mr Loughrey: At the moment it is a voluntary target of 10 per cent. I think that the independent sector in radio, especially outside London, is much, much less mature than the television equivalent. There simply are not yet sufficient companies that are viable and strong to carry that output. However, in *Building Public Value* we have pledged to reach that 10 per cent target within two years from now. We are very nearly there in Wales, as we speak; we are there already in Scotland and Northern Ireland. Rather than sit back and say, “The sector is not ready yet,” we think we can work with the independent production companies to achieve that diversity of supply that ultimately I think is good for the audience. If we achieve that, and if we achieve this window of creative competition idea in radio as well which we are beginning to explore—it is fundamentally an idea that is being developed for television but we are now looking at how to create more competitive space in radio as well to allow that plurality of supply—I think we will improve the range on offer to them.

Q861 Baroness O’Neill of Bengarve: In a sense, the voluntary quota becomes irrelevant, at least at present, because you have a commitment to improve.

Mr Loughrey: It really does not matter to us whether it is voluntary or otherwise. In fact, quite frankly, it was only about a year ago that I discovered it was voluntary. I thought it was statutory from the outset.

Q862 Chairman: Is one of the reasons why there has not been the same development with independent radio companies, has that something to do with the amount of fees that you actually pay for your programmes?

Mr Loughrey: It is not so much the fee, because the fee is a proportion of the total budget, but radio budgets are relatively low compared to television. To sustain a company with the infrastructure of a company based on our routine budgets on Radio Wales or Radio Cymru would be quite a challenge, I have to say. We benefit from the high volume/low cost model of production in-house. I would welcome the

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television independent sector being more multi-platform than they are. We encourage them to offer more on-line and radio than they do. So far they have not found—

Q863 Chairman: That would share their costs.

Mr Loughrey: Exactly.

Q864 Lord Maxton: Are Kirsty Wark and Clements multi platform?

Mr Loughrey: They occasionally move towards radio and to on-line, but less wholeheartedly than I would like.

Q865 Chairman: If a company provided one of your excellent plays, that 2.15 slot which you could well do from Cardiff, how much would the production company be paid for that?

Ms Richards: I think we would have to come back to you with that kind of information.

Q866 Chairman: It is not standard.

Mr Loughrey: It is relative to the budget. It is within the budget.

Q867 Chairman: I think you had better come back to us.

Ms Richards: Of course. Could I make another point about the voluntary target: both national radio services in Wales, in Welsh and in English, are working towards the 10 per cent target. It will enable us, as Pat said, to assess how the market responds, but also, because of the nature of radio, because it is live, because it is continuous and there are issues around how great a proportion of that can be commissioned from the independent sector, I think it will allow us to make judgments about the nature of the schedule and how much of it is live and whether the expertise exists outside the BBC to produce that kind of live radio.

Mr Loughrey: I probably should have said, Chairman, that one of the reasons for the relatively slow growth of the independent radio sector is that commercial radio is 99 per cent in-house, so there is no support other than the BBC—and certainly where would commissions for radio drama come from other than the BBC or for most speech-based output?

Chairman: This would be a very fascinating issue to go on with, but we should proceed. Lady O'Neill.

Q868 Baroness O'Neill of Bengarve: I would like to ask one question about Northern Ireland, since we have you here, Mr Loughrey. Ofcom have recently said that it is not appropriate for all of the language Irish broadcasting in Northern Ireland to be brought in from RTE and suggest more cooperation between BBC and TG4. I would like to know what your view on that proposition is, but also, if the BBC in Ulster

were to put more resource into Irish language programmes—which after all are not just language but cultural productions—what, as it were, matching augmentation of work that addresses the other community more or primarily? And even if we do not think that Ulster-Scots is quite an independent language would we have to look forward to a future where there would be a website in Ulster-Scots?

Mr Loughrey: This could be a very long answer—a special subject here. In short, we are completely relaxed about the extension of TG4 into Northern Ireland. The BBC never resists competition. Why should we? We have a hugely privileged position.

Q869 Baroness O'Neill of Bengarve: You disagree with Ofcom on that point.

Mr Loughrey: Well, I am not quite sure of the terms of what Ofcom said, but let me speak in terms of the BBC. The extension of TG4 into Northern Ireland is ultimately a matter for Government and is more of an issue between Government and commercial broadcasters because that would be a rival for commercial revenues because they also carry advertising. So there are issues there, not so much for the BBC but for commercial broadcasters on the territory. We are beginning to build—which certainly was not there in my time in Northern Ireland—a very constructive relationship with Irish language production from where the BBC, UTV, TG4 can work together in an environment where there is public support for the creation of content in the Irish language. I think that will be carried on the BBC and by any other broadcaster who chooses to participate, often made on a co-production basis between those broadcasters. That is a big step forward. Ulster-Scots? In many ways Ulster-Scots, which was a kind of dialect I grew up speaking myself—which I am sure would not be unfamiliar to you, Lady O'Neill, either—was in many ways a repressed dialect: it was somehow socially undesirable and one's social progress was measured by the extent to which one had cast it off. Every instinct I have is to resist that kind of linguistic intolerance. The language of Burns has something proud and defiant about it and it seems sad that we should be ambivalent about offering support for it. The form of that support is a complex issue. I think learning resources and appropriate study of the usage and/or etymology and the on-line investment you suggest is very powerful but also there is more all broadcasters can do about the weaver poets, about the heritage of creative writing in that tongue that maybe we have been less comprehensive in studying than we might have been.

Q870 Baroness O'Neill of Bengarve: Musically you would have no ambivalence about serving both traditions.

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Mr Loughrey: No. It is a very interesting insight into social attitude and political attitude in Ireland, this ambivalence about usage—and I am trying to avoid the use of the word “language” here—but I believe we are maturing away from that and there are some very interesting projects from BBC Northern Ireland at the moment to try to engage with what is by any measure a community in cultural as well as in political change and the BBC should be in step with that rather than trying to—

Baroness O’Neill of Bengarve: You have caught exactly the concern that was at the back of that question.

Q871 Chairman: I think we had better bring this to an end at this point. Thank you very much again for your evidence and the way you have given it. There are one or two loose ends which we could perhaps catch up on.

Ms Richards: If I may, Chairman, very briefly respond to your question about what S4C had asked the BBC to deliver. My resident expert has now given me that explanation. Very briefly, a number of examples: sport; factual documentary series; a particular concert at the Millennium Stadium for Tsunami Relief. Those are the kinds of things which

we were asked for and which we delivered. I hope that answers your question. If not, we can offer you more information.

Q872 Chairman: Yes. I think we will find when we go through the transcript that there were a number of direct questions, relating to money on finance, for example. Could I thank you very much, Mr Loughrey, for your help and assistance over the last two days, for which we are very grateful. It has been quite an exceptional visit and the Committee is extremely grateful for all the cooperation and help it has received.

Mr Loughrey: Could I make one brief apology. In Bristol yesterday you had the most magnificent insight into natural history and high definition television. Menna and her colleagues are frustrated that you did not have a similar opportunity to see the creative life of BBC Wales: Dr Who, the Tardis and all that goes with it. Could I extend an invite, if it is not inappropriate, for yourselves as individuals or as a group to come and have the same creative experience in BBC Wales, because, believe me, it is richly available.

Chairman: Thank you very much. Dr Who fans here will probably respond to that. Thank you very much.

Supplementary letter from the BBC

The Committee had three questions following from the evidence session in Cardiff. I am still working on the first regarding agreed figures with S4C on how many people watch Welsh language television, but the answers to the other two are below.

THE PERCENTAGE OF THE LICENCE FEE COLLECTED IN WALES SPENT ON WELSH LANGUAGE TELEVISION

Total UK Licence Fee income is £2,798 million. An estimate for the licence fee income collected in Wales is £128 million.

In Wales the BBC spends around £90 million on programming for Wales (including Welsh language programming). It also spends around £35 million on programming made in Wales for UK-wide transmission, so total spend on programming in Wales is £125 million.

In the Welsh language, the BBC spends around £9.2 million on Radio Cymru and over £20 million on programming for S4C. Including online spend, total spend on Welsh-language programming is therefore around £30 million.

To put this into context, around 20 per cent of people in Wales are Welsh speakers.

However, we should also stress the considerable benefits all viewers (English and Welsh speaking) gain from BBC network programming made elsewhere in the UK. To reduce debates about the licence fee to a Wales-only equation risks undervaluing the contribution the whole BBC makes to audiences in Wales.

For instance, overall viewing to BBC One is higher in Wales than in many other parts of the UK, showing that the overall BBC schedule is valuable to viewers in Wales, not just that part of it made in Wales. EastEnders is one of the most popular programme in Wales, as it is in other parts of the UK. Viewers in Wales therefore also share in and obtain value from the programmes and services provided by other parts of the UK.

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Supplementary letter from the BBC

Following Pat Loughrey and Menna Richards appearance before the BBC Charter Review Select Committee on 14 June 2005, you asked the BBC to provide a set of figures that the BBC and S4C agree on regarding how many people watch Welsh language television. I am afraid, for the reasons set down below, this has not proved possible.

As you will already be aware from the letter of 1 July 2005 from S4C's Chair, a difference arises due to the BBC and S4C viewing panels using two different definitions of audience share.

On weekly reach, there is unanimity. For clarity, reach is the number of people in Wales viewing a channel at some point during the week. The BBC agrees that the basis on which S4C calculates its published weekly reach total is entirely appropriate.

Share is the measure on which we have not been able to agree. Share simply tells you: of all the people watching TV at a particular point in time, what proportion is watching which channel?

The BBC panel reports a share of viewing of 2.8 per cent in Wales for S4C in 2005 (3-1-05 to 19-6-05) whereas the S4C panel reports a share of 3.7 per cent for the same period, a figure that is 30 per cent higher than that from the BBC panel.

There is an explanation for this variation. It arises from our different approaches to defining what counts towards total TV viewing in Wales. The S4C panel excludes what is known as out-of-area viewing, so Channel 4 viewing in Wales doesn't count towards their total. It also excludes all viewing by the 7 per cent of people in Wales who don't receive S4C. As S4C's Chair says in her letter, that is a definition broadly in line with the ITV companies. It does yield some anomalies though, such as a zero share for Channel 4 in Wales (according to the S4C panel), even though most of Wales can now receive Channel 4.

As a broadcaster directly funded by the licence fee, and with a consequentially strong commitment to universality of access, we believe we should count all viewing in Wales towards total TV viewing, regardless of which channel is being viewed or whether the TV has been set up to receive a particular channel.

In the BBC's view, the share from the BBC panel is the appropriate figure to use because it reports share as a percentage of all television viewing in Wales, ie a slice of the whole cake.

I am sorry we haven't been able to agree a common basis for reporting share, but at least I hope that your Committee members will understand why they differ.

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WEDNESDAY 15 JUNE 2005

Present	Armstrong of Ilminster, L Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Gibson of Market Rasen, B Holme of Cheltenham, L Kalms, L	King of Bridgwater, L Maxton, L Manchester, Bp O'Neill of Bengarve, B Peston, L
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Memorandum by the Satellite and Cable Broadcasters Group (SCBG)

The Satellite and Cable Broadcasters' Group (SCBG) is the trade association for satellite and cable programme providers. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. SCBG channels remain highly targeted with audience shares ranging from less than 0.01 per cent to 2 per cent of digital viewers.

Satellite and cable broadcasters operate in an extremely competitive and volatile environment without privileged access to scarce Government-controlled spectrum or must-carry status that is afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and do not benefit from public funding.

Instead, satellite and cable broadcasters depend entirely on their own programming investments and marketing initiatives to attract and keep audiences across a range of different broadcasting platforms. Their viability depends on an ability to adapt to technological developments, respond directly to audience preferences and quickly absorb commercial pressures.

Satellite and cable broadcasting is the fastest growing sector in the UK television industry, employing over 6,000 people in the UK and revenues with revenues of nearly £5 billion. This sector produces more originated programming than the terrestrial channels combined, accounting for more than half the UK's total spend. Satellite and cable channels are also providing a huge boost to public service output, broadcasting over 14,000 hours of public service programmes annually.

1. THE GREEN PAPER

The Satellite and Cable Broadcasters Group is disappointed at the Government's failure in its Green Paper to respond adequately to the independent enquiries it commissioned from Lord Burns and others, or to the report of the all-party Select Committee on Culture, Media and Sport. Instead, the paper relies heavily on selective quotations from a few members of focus groups, and even more heavily on the BBC's own account of itself, to support its rejection of the evidence-based recommendations in those independent reports. The result is a weak and hesitant approach to reform and regulation, at a time when voices that strongly support the BBC have been calling nevertheless for substantial and effective change. We believe that the Government should re-assess and act upon both the spirit and the letter of the independent recommendations it sought.

2. THE ROLE OF THE BBC IN 21ST CENTURY BROADCASTING

We agree with two fundamental statements in the Green Paper: first, that the BBC should remain strong, independent and the cornerstone of public service broadcasting in the UK; secondly, that it should be distinctive from commercially funded services. For the benefit of consumers, taxpayers and the UK economy, the second criterion needs to be applied with much more rigour than is presently envisaged.

Since the last Charter was granted we have entered a new age of publishing via digital television and the internet, making hundreds of channels and websites available to citizens who can choose whether or not to pay for them—just as they do for commercially published books and CDs, newspapers and magazines. 60 per cent of households now have multi-channel television, with a choice of over 400 channels serving a multitude of different tastes, interests, demographics and cultural groups. The role of public service broadcasters, and in particular the BBC, needs greater re-evaluation within this new context than the Green Paper allows.

The only justification for forcing people to pay an additional compulsory communication tax in the form of the Licence Fee is that it will provide desirable public services not otherwise available. Undoubtedly there are services that a civilised society should demand. They include impartial, properly funded news independent of

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political control, and a range of formal and informal education for citizens of all ages. Arguably they include certain kinds of drama and serious documentary, and programmes of arts and music. But all of these are also now provided by other broadcasters, including independent commercial digital channels. In fact in the majority of programme genres that Ofcom defines as “public service broadcasting”, channels other than the BBC’s now provide most of the UK output: more than 60 per cent of news and current affairs, more than 90 per cent of documentaries, more than 80 per cent of arts and music programmes. It follows that publicly funded broadcasting should now be limited to services, or to a quality of service, that the private economy cannot provide or *would not provide* in the absence of competing public subsidy.

This reflects the EU rules governing the use of State Aid, which require that publicly funded services such as the BBC’s must complement rather than substitute for or duplicate provision by the market. Furthermore, where market developments supersede publicly funded provision, the BBC should withdraw from those services or activities and re-direct its valuable public resources.

Private v public finance

Unlimited provision of public money is wasteful for the taxpayer and tends to crowd out the supply of private equivalents. This is evidenced emphatically in SCBG’S recent report *Public-Private Partnership for the Digital Age*, whose factual data confirms Ofcom’s statement that “in the absence of licence-fee-funded BBC content, there would be better funded and potentially more niche channels than exist in today’s market”.

So it is important that the BBC’s duties and responsibilities are confined to meeting needs unmet either by other public service broadcasters, or by present or potential commercial services. Without this limitation we will be faced with the paradox of a BBC that expands constantly to mirror private-sector initiatives, rather than complementing them, and a licence fee that rises above inflation every year in spite of increasing corporate and personal investment in alternatives.

Inadequate restrictions

However, the Green Paper’s definitions of the role and purposes of the BBC are too vague, ambiguous and contradictory to ensure that the BBC’s financing and functions stay within these necessary limits. They are locks that any key will fit. Most significantly, there is no criterion of “distinctiveness” included in either the proposed purposes or characteristics. Had the proposed definitions and purposes been enshrined in the last Charter, they would not have prevented the BBC from making any of the programmes nor embarking on any of the enterprises that now come under strong criticism from many quarters including the BBC’s supporters. They will not prevent similar misjudgements and excesses in the future. Taken as whole, the definitions are an invitation to the BBC to continue to expand its activities for competition’s sake alone, with a commensurately increasing call on public finances.

Laissez-faire v regulation

This is in part because the Green Paper confuses the characteristics of high-quality broadcasting with the purposes of the BBC. Of course it is possible for a publicly financed BBC to go on producing high-quality programmes on any subject, for example house-hunting in Spain, and spending a large amount of public money on rights or acquisitions such as UK National Lottery draws. Under the Green Paper’s weak definitions, such programmes would fall firmly within the BBC’s remit. But they have no place in broadcasting funded by compulsory taxation, since other broadcasters can readily provide them without recourse to public funds. There is some provision in the Green Paper to stop the BBC bidding against other *terrestrial* broadcasters for the same content, but no such protection for the multi-channel sector. Without proper definition, the proposed regulations are a licence for the BBC to compete against the private cable and satellite sector for any type of content, at any scale of expenditure.

- In our view the BBC must be subject to an over-riding and rigorous requirement that all its services and programmes are distinct from, and complementary to, what is available on other services. This requirement should be monitored independently, and sanctions should be immediate if it is breached. This is the only safeguard that the private sector has against unwarranted publicly funded intervention, and the only protection the consumer has against wasteful duplication.
- A further over-riding regulation should be that BBC services reflect the requirements of EU rules governing the use of State Aid.

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- We believe that regulation of all service licences must start from the premise that the balance of BBC output between information, education and entertainment is weighted heavily towards the former two categories and not, as at present, towards the latter.
- We also consider there is a need for minimum quotas of UK/EU originated content to be included in remits for all service licences.

No commitment to distinctiveness

The Green Paper is, of course, right to argue that the BBC “should not be a broadcaster that shows only minority-interest programming”. But in its zeal to avoid this unlikely possibility, it undermines its own case for a BBC that is distinct from and complementary to all other services. Every restrictive rubric in the Green Paper, such as paragraph 1.23, which states that the BBC “should aim to complement what is available on commercial channels”, is matched elsewhere by a comforting escape clause. For example, the BBC is mandated to “provide a wide range of programmes across *every genre* [our italics], and try to reach the widest possible range of audiences”. Its programmes must be “entertaining” (1.19) but need be neither of high quality nor original, provided they are “engaging” (*ibid*). None of this represents the “objective system for making judgments about performance” that was called for by Lord Burns’ Independent Advisory Panel.

3. BBC GOVERNANCE AND REGULATION

As Lord Burns’ Panel’s report said, “the BBC’s remit needs the external discipline of being assessed by measures independently defined, that can judge its distinctiveness in relation to the commercial market’s provision”. We agree with their contention that if such a test is based solely upon criteria set by the BBC, using data and measures defined by the BBC, it will lack conviction. Unfortunately, in one of its many unwelcome departures from the Burns Panel’s considered and evidence-based advice, the Green Paper proposes exactly that approach.

It suggests that the required level of independence is guaranteed because judgements will be made not by a Board of Governors, as at present, but by a new “BBC Trust”. However, the Trust’s exclusive responsibility, like that of the Governors, will be the direction and regulation of the BBC. We judge that in practice the distinction between the BBC and the BBC Trust will be no easier to observe than the present distinction between the BBC and its Governors. We believe that the Burns Panel’s alternative recommendation of an independent Public Service Broadcasting Commission (PSBC) is far-sighted and practical, and would become increasingly relevant in the rapidly changing digital age. In our view, the Green Paper’s arguments against it carry little weight. Its proposed new structure of a BBC Executive Board *including non-executive directors*, and a separate non-executive Trust to which it is responsible, lacks both the standards of modern corporate governance and the necessary degree of truly independent regulation. Whether the same non-executive directors would appear on both bodies is an important issue not made clear in the Green Paper. But in either case the “Trust” concept fails to address the central problem, so recently brought into sharp focus by Lord Hutton, that it is untenable for the regulation of the BBC’s activities to remain in the same hands responsible for its direction and defence.

The PSBC is a constructive solution for the governance of the BBC and for maintaining its place within the changing communications ecology. It would command respect within the broadcasting industry and with the public. Since it would be demonstrably independent of any broadcasting organisation and also of Government, it would be trusted in a way that no body exclusive to the BBC and appointed by Government could possibly be, even if “Trust” were in its title.

- We believe therefore that the idea of the BBC Trust should be abandoned, and the PSBC proposal re-examined, refined and adopted in its place.
- Under its new regulator, and within whatever form of licensing system that may be adopted, the BBC should make an explicit and over-arching commitment to complement and not to imitate or replicate provision from other broadcasters and service providers.
- There must be an objective, independent, mechanism for making judgments about the BBC’s performance against this and other criteria.
- The public and the BBC’s competitors must be allowed direct access to the BBC’s governing body in the event of complaints.

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4. THE BBC'S CONSTITUTION

We believe the Royal Charter and Agreement are anachronisms that do not reflect recent reforms in other areas of public life and publicly funded institutions. The appropriate way for the BBC to be re-established, and given long-term security with independence from Government, is as a statutory corporation like the UK's other principal public service broadcaster Channel Four. The appropriate way for the BBC to be operated and regulated is, like every other British broadcaster, under licence—either from Ofcom or from a newly established Public Service Broadcasting Commission. Among other advantages, this would remove from the Department for Culture, Media and Sport its remaining direct responsibilities for many aspects of the BBC, which blur the lines between independence from Government and subservience to it. A recent example of this uncomfortable position was the DCMS's undisclosed permission to the BBC to expand without limit its range of commercial joint venture channels, permission given in secret at a time when expansion of BBC wholly-owned channels was the subject of intense public consultation and scrutiny. Clashes such as that would be avoided under clearer constitutional and regulatory arrangements.

- We believe that the Charter and Agreement should be replaced by legislation creating the BBC as a statutory body with long-term security and independence, operating under licence. All aspects of its direct governance should be removed from the Department for Culture, Media and Sport.

5. BBC IMPACT ON COMPETITION

As the Green Paper acknowledges, “the market is delivering a vast array of choice to consumers”. But the equally vast scale and ambition of the BBC nevertheless looms over the market, restricting its growth, deterring investment, and spending public money where private money could deliver the same service more efficiently. Ofcom acknowledged this “crowding out” effect in the Phase 3 report of its Public Service Broadcasting Review: “We agree that [the risk that public funding will crowd out potential private investment in PSB content] does exist, especially in emerging and niche markets—and so we believe that steps should be taken to ensure that broadcasting markets work better”. It warned against the “significant chilling effect [of public funding] on commercial investment”.

For the past decade the BBC has been an aggressive, unregulated competitor in an otherwise regulated broadcasting environment, able to spend public money on any competitive venture or activity that it chose. The result has been to slow the development of the multi-channel sector and to prevent new services and new ideas from flourishing. This is the same behaviour exhibited by the BBC towards independent producers, which was modified only by the imposition of quotas. Independent producers showed that despite its monopoly of public money the BBC did not monopolise the best ideas or the most creative talent. The same is now true of the independent commercial channel sector, and new safeguards must be put in place to ensure that BBC monopoly does not stifle its development.

However, nothing in the Green Paper gives confidence that the BBC will change its recent over-competitive, expansionist policies. The proposed system of governance and regulation is tied so closely to the BBC and its ambitions that no commercial company can regard it as fair and transparent in restricting anti-competitive behaviour. Uncertainty in relation to the BBC's remit, and the lack of effective monitoring and regulation, in turn reduces incentives for commercial players to invest and innovate elsewhere. Moreover, the BBC's new responsibilities for promoting digital take-up are a catch-all that will allow excessive expenditure in money and airtime on BBC marketing and self-promotion.

- We propose that activities with competitive impact must be clearly defined and regulated in relation to the multi-channel environment, and that such regulation should be wholly under the control of Ofcom or of a Public Service Broadcasting Commission. No BBC body will have the support of the commercial sector in this respect.
- This assessment of competitive impact must apply to all current services, and not merely to the BBC's proposals for new or modified activities.
- We believe that any measurement of “public value” applied to BBC's programmes and services must be independent and objective, based on criteria that all stakeholders in the industry can accept. In addition to the highly general criteria that the BBC and the Green Paper propose, there must be added a measure of cost-effectiveness.
- We support the Green Paper's tentative suggestion (5.43) that a threshold should be set beyond which the market impact of a BBC activity should be deemed unacceptable, especially if it risks foreclosing or significantly lessening competition.

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- As a first step towards this approach, we believe that a limit should be set on the amount of public expenditure and airtime on the BBC's promotion of itself, its programmes and its services. The massive scale of such promotion has a deleterious effect on competitors who have no such privileged access to public money and spectrum, and requires regulation in the interests of fair competition.
- The second immediate action required in relation to market impact is to produce tighter regulation of the BBC's behaviour in the "secondary rights" market. A free market and free flow of secondary rights will benefit creativity and the strength of the independent sector, and provide viewers with a wider range of content.

6. COSTING THE GOVERNMENT'S PROPOSALS: THE £200 LICENCE FEE

The most significant omission from the Green Paper is its failure to address the public cost of its proposals, without which no properly informed debate can take place. But it seems clear that the net effect of Government policy is that the Licence Fee must now rise even more rapidly than in recent years. The paper points to possible savings that the BBC might—though is not guaranteed to—make, but these are tiny compared with the scale of new responsibilities and requirements that the BBC must fulfil.

On the basis of the *present* BBC remit and responsibilities, and at a time when other public institutions have had to be content with lower-than-inflation settlements, the Licence Fee has been rising annually at inflation plus 1.5 per cent. This formula, even if inflation remained at its present modest level, would produce a £150 licence fee in the life of the next Parliament.

But under the Green Paper the BBC is required to carry out many new and very expensive tasks. To fulfil the Government's digital policy, it must:

- Develop new interactive and web-based services.
- Promote the development of a free digital satellite service.
- Extend the availability of its services on alternative platforms, and on-demand.
- Provide digital TV coverage in 98.5 per cent of UK households.
- Extend digital audio broadcasting coverage to 90 per cent of the population.
- Lead the establishment and management of digital switchover.
- Lead the switchover public information campaign and promote the benefits of digital television.
- Implement *and pay for* schemes to make reluctant consumers switch to digital.
- Provide adequate access across all media platforms for viewers and listeners with sensory impairments.

All these are massive new responsibilities with equally massive expenditure and staffing implications. They arise because the Government has chosen to make the BBC the instrument of its digital strategy, rather than adopting a platform-neutral approach that would have produced a beneficial public-private partnership. With everything instead funded by the licence fee, our calculations suggest that inflation plus 3.5 per cent rather than 1.5 per cent will be the *minimum* needed unless the BBC radically reduces other activities. So the nation should expect a £200-per-home Licence Fee before digital switchover is complete. For the majority of households, able at last to choose the services they want and reject others, a compulsory £200 subscription to services they have not chosen is unlikely to be welcome.

- We believe that the calculation of future licence fee should have zero above inflation as its target. This can be achieved by genuine savings in BBC expenditure, including a radical appraisal of BBC services that duplicate those of the commercial sector—ranging from TV channels and internet content to local radio.
- This appraisal should include examination by the NAO, under whose scrutiny all BBC accounts and expenditure should in future fall, without exception.
- The Government should publish an early forecast of future licence fees to assist informed debate about cost-effectiveness of the BBC's services.

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7. THE FUTURE OF PUBLIC SERVICE BROADCASTING

It is inevitable, regardless of Charters or Acts of Parliament, that public service broadcasting in the digital age will consist of a plurality of providers serving a plurality of media. On commercial multi-channel television there is already more Mozart than on the BBC, more health advice than on Channel Four, more news— independent and impartial—than on ITV, and more high-quality drama than on Five. The Green Paper holds back from recognising this reality, preferring to “wait and see” on a wide variety of issues until digital switchover is complete. But in doing so, and by maintaining its belief that exclusive public funding of the BBC is our only bastion against the collapse of public services in the UK communications industry, the Government is missing an opportunity to bring in new private partners. It has been encouraged in this by Ofcom, whose forecasts of a rapid Doomsday scenario for ITV, Channel Four and Five are linked to its preferred alternative the Public Service Publisher (PSP).

The reality is that the commercial, multi-channel sector is already supplementing and frequently outstripping the four designated Public Service Broadcasters in its provision of high-quality programmes of social value. It is reaching audiences, such as 12–24 year olds, who are migrating away from traditional channels in huge numbers. It is broadcasting to cultural and ethnic minorities in their own languages. It is providing specialist factual and educational services to viewers interested in history, music, nature, art or science.

It is through this sector that new public service growth will come, if it is permitted, incentivised, and not faced either by an over-mighty BBC or by a new publicly funded competitor in the form of Ofcom’s putative PSP. Government has already recognised, in its direct funding of The Community Channel and Teachers’ TV (both members of SCBG) that public service can be as efficiently delivered by small specialist channels with dedicated remits as by giant organisations and dominant brands. Future public service broadcasting policy must take account of this, rather than fight against it, and foster the ability of independent broadcasters to deliver valuable programmes cost-effectively to those audiences who have chosen to watch them.

One way to do this would be to follow the Burns Panel’s recommendation and allow a new Public Service Broadcasting Commission to allocate some licence fee funds to broadcasters other than the BBC. Another, suggested by Ofcom, is that some commercial broadcasters might volunteer for and be granted PSB status, along with its privileges and obligations. We recommend that both these proposals be developed quickly, and not in the long-term future as suggested by the Green Paper.

- We propose that a review of alternative public funding options should take place at the beginning of the new BBC arrangements, so that they can be put into place midway through the 10-year life of those arrangements.
- We believe that “contestable public funding” is the most appropriate way to achieve a plurality of top-quality providers of desirable content, and to ensure that the widest possible range of ideas and voices are made available to consumers.

The BBC is a respected and highly valuable organisation. But it should be acknowledged that its unitary structure and established attitudes produce a rigid and homogeneous approach to programme making, a narrow range of voices, accents and opinions on screen and on air, and an unjustified assumption of its cultural authority. There are other approaches, other voices and other values that have equal validity and serve audiences as perfectly. They are exemplified by the best in private multi-channel broadcasting.

The BBC must remain the cornerstone of public broadcasting. But it must not be the gravestone of the independent multi-channel sector, which is already offering much of value to the social, educational and creative fabric of the UK and can be an increasing contributor to public good.

This statement represents the position of SCBG but does not necessarily represent the view of every individual member in every respect.

May 2005

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Examination of Witnesses

Witnesses: MR JOHN HAMBLEY, Chairman of the Satellite and Cable Broadcasters' Group (former Chairman of Artsworld), MS CHARLOTTE WRIGHT, Executive Director, MR GEOFF METZGER, Managing Director, History Channel UK, and MR SIMON BOHRSMANN, General Manager, National Geographic Channel, all Members of the Satellite and Cable Broadcasters' Group, examined.

Q873 Chairman: Welcome. As you know, we have been set up to look at the BBC Charter review. We are aiming to get a report on the response to the Government in by the end of October, so we have not got a great deal of time. Thank you for coming and thank you very much for your evidence. Perhaps, Mr Hambley, you could just introduce your colleagues to us as it might be useful.

Mr Hambley: Indeed. Charlotte Wright is the Executive Director of the Satellite and Cable Broadcasters' Group, which is the trade association for independent satellite and cable channels and broadcasters, Simon Bohrsman is the General Manager of the National Geographic Channel, and Geoff Metzger is the Managing Director of the History Channel.

Q874 Chairman: And you yourself were also Chairman of Artsworld?

Mr Hambley: Yes, I was Chairman of Artsworld, Chairman. I am no longer since Artsworld was purchased by BSkyB quite recently and I then relinquished the chair, having been Chairman for a couple of years after Jeremy Isaacs was the first Chairman.

Q875 Lord King of Bridgwater: Could I just ask who owns those channels?

Mr Metzger: My channel is a joint venture with BSkyB and a company called AB Television Networks in the United States. They are an American broadcaster.

Mr Bohrsman: We are a joint venture with BSkyB, NBC in America and the National Geographic Society.

Mr Hambley: Artsworld, having been established as an independent UK channel by UK private finance, has now been acquired by BSkyB.

Q876 Lord Maxton: Totally?

Mr Hambley: Yes, totally acquired.

Q877 Chairman: It is a good question, Lord King's, because BSkyB does seem to run as a thread through all of this.

Mr Hambley: It perhaps runs as a thread through this group, but not through the membership of the Satellite and Cable Broadcasters' Group which has more than 100 channels in membership, many of whom are entirely UK-owned.

Q878 Chairman: Could you just describe, therefore, who the Group does represent and, roughly speaking, something of the ownership?

Ms Wright: Yes, it is an enormous range from entertainment channels for different age groups and different interest groups to specialised ethnic or cultural channels. We have got the Chinese Channel in membership which is highly specialised with a very small audience share, but with a very loyal audience within the Chinese community. There are factual channels dedicated to different interests, such as science, nature, the arts and music.

Mr Hambley: The Community Channel.

Ms Wright: Teachers Television.

Q879 Chairman: So, as you say quite rightly, BSkyB is not the only one represented, but would it be fair to say that, of the Group, it is the biggest shareholder, if I can put it that way?

Ms Wright: No, I would not say so.

Mr Metzger: I think actually the BBC is probably among the biggest shareholders in the Group since Flextech, which owns UKTV, is one of the members as well. The BBC owns half of UKTV, so it has quite a significant presence in the Group from a commercial point of view.

Q880 Lord Maxton: It is Flextech of course who run the UK channels. They are members of the Group as well?

Mr Metzger: They are.

Q881 Chairman: So we have established that you are a pretty wide group. Perhaps I can go on then to your evidence. First of all, one of the characteristics of your evidence, perhaps the characteristic, is that you are concerned about fair competition, competition between yourselves and the BBC. Would that be fair?

Mr Hambley: It is an important issue, Chairman, yes.

Q882 Chairman: Let's go on to your views on the governance of the BBC which is something which we have obviously been spending quite a lot of time on. You say that in practice the distinction between the BBC and the BBC Trust is not going to be any easier to observe than the present distinction between the BBC and its governors.

Mr Hambley: That is our belief, Chairman, yes. We do not think that the proposals in the Green Paper pass the tests which were laid down by Lord Burns' Committee for distinction between the operation, the

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responsibility for promotion and success of the BBC and the regulation of the BBC. Although of course the details in the Green Paper are quite sketchy, we do not have the confidence that this new proposal will be as different as we believe it should be. We wholly strongly believe in the independent regulation of the whole public service broadcasting sector.

Q883 Chairman: Is your concern and fear that the Trust will be in effect running the BBC, but at the same time will also be the regulator?

Mr Hambley: Yes, I think that is as it is laid down and I think there is a confusion, as we have said in our submission, between the idea of a management board which will now have non-executive directors, which the present management board of the BBC does not, and then an entirely non-executive regulatory body, but which nevertheless has substantial powers in the running of the BBC, perhaps not on an absolute day-to-day basis, but it will fulfil many of the functions of the present governors. It will have responsibility to the public interest, but at the same time will inevitably become, as the governors have become, the champion of the BBC as well as the regulator of the BBC. We think that the Green Paper proposals absolutely miss the mark.

Q884 Chairman: And your way round that?

Mr Hambley: Our way round that would be to accept the Burns Committee's proposal of the Public Service Broadcasting Commission allied to certain powers for Ofcom. Perhaps you might call it the Public Service Broadcasting Trust rather than the Public Service Broadcasting Commission. Our reason for that is again the same as Ofcom's, and we do not agree with Ofcom on everything, but we believe, as Ofcom says, that public service broadcasting has only two options in the future in the period covered by this Charter. It faces either a monopoly of public service broadcasting from the BBC or some attempt to create real plurality in public service broadcasting, which is what we believe in and we believe we have a contribution to make. Now, we think that the Public Service Broadcasting Commission idea can include the BBC in public service broadcasting and take a strategic view of the whole sector over this long period, this 2006 to 2016 period, and ensure that there is plurality. We feel that the idea of the Trust is going to cement the BBC as a public service broadcasting monopoly which is one of the reasons we oppose it.

Q885 Chairman: The BBC would have a Trust, so you would then have Ofcom and an additional body?

Mr Hambley: We would say not. We would say, like the Burns Committee, that there is the Public Service Broadcasting Commission and that the BBC would

have a management board perhaps including non-executive directors, but it would be a unitary management board.

Q886 Chairman: So you would strike out the Trust?
Mr Hambley: Yes.

Q887 Lord King of Bridgwater: How has the Satellite and Cable Broadcasters' Group's interest been affected, adversely or otherwise, by the present structure of the BBC?

Mr Hambley: Not particularly by the present structure, but certainly by the recent behaviours of the BBC which my colleagues might like to talk to you about.

Mr Metzger: I would say that the BBC is a massive structural intervention in the market and I think that is something which cannot be ignored. When people ask us who our competitors are, we tend to sort of look at ourselves. I am a factual channel and Simon is one of my competitors as he is a factual channel too. The fact of the matter is that most of my viewers watch the BBC and we are a viewer channel which is very similar to the BBC. We have generally a slightly older audience, certainly in demographic terms a slightly upmarket audience and we lose viewers at ten o'clock because they go to the news, so I think in market terms the BBC influences our business very much. In behavioural terms, the BBC has a vested interest. It has its own stake in the commercial sector through UKTV and it manipulates its strategic rights through that interest, and it is sound business.

Q888 Lord King of Bridgwater: But can you not make representations at the present time? Do you have contact with the BBC?

Mr Metzger: Absolutely. We are pursuing a complaint with the Fair Trade Commission at the moment.

Q889 Lord King of Bridgwater: And how would that be better, this Commission, which you are in favour of?

Mr Hambley: I think for one thing, even with current fair trading policy, the BBC is always judge and jury in its own cause and there are a number of instances for both Geoff and Simon where the jury always seems to find for the BBC and that is why we think independent regulation, as exists in the rest of the sector, is vital.

Q890 Lord King of Bridgwater: Can you give us a couple quickly?

Mr Bohrsman: I can give you a very current example. We have a programme at National Geographic, very high quality, and we would have invested a lot of money in that. Recently we were about to invest a

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substantial amount of money in the programme in which we were co-producers with the BBC where they would have the largest stake. We have just been forced to pull out because the BBC will not allow a six-month hold-back in the UK, and that is a programme being made by an independent producer and that independent producer has now been put in the position where they have to find the finance. The BBC will not 100 per cent finance the programme. We are prepared to put in a substantial amount of money as well. Therefore, they are using their hold-back policy, if you like, to restrict us from being involved in that programme.

Q891 Chairman: Is this not the normal kind of run of the trade in the sense that you are always going to have those sorts of disputes?

Mr Bohrsmann: No, we invest in a lot of terrestrial programming in the UK with terrestrial partners. For example, we have invested in *Deep Jungle*, a series on ITV which will be shown shortly. We do a lot of co-productions with both Channel 4 and Channel 5, but we do accept that we are minor partners, that although we are major investors, we are minor partners in the overall cake and that we will always come second.

Q892 Lord Holme of Cheltenham: An aspect of the competition which the Chairman mentioned in your belief that the BBC is, as it were, an unfair competitor is this issue of self-promotion by the BBC of its own programmes and services. Of course some people argue that those pauses between programmes are sort of punctuation when people put the kettle on or, like a piece of prose, they paragraphs breaks, as it were, and, therefore, people become accustomed and maybe it is part of the commercial culture that they are accustomed to breaks between programmes, so I imagine your argument is not that there should not be breaks between programmes, but it is how they are used. Then I find myself wondering about your suggestion that it should be either cash-limited or time-limited. If it is cash-limited, how do you compute the putative value of those slots? Is it analogous with a commercial slot on ITV? If it is time, how much time, and then who should decide? Is this something you see the Public Service Broadcasting Commission doing in your construct of governors? Do they decide how much time the BBC should be allowed to have? Presumably it is not part of your argument that the BBC should not be allowed to promote its own programming, but it is just that you think there is too much of it. Finally, is it part of your case that maybe other public service broadcasters should have access to that space? Is that part of the argument or just that the BBC should do less of it?

Mr Bohrsmann: I would say that the BBC can promote its digital channels which are our direct competitors, but it will not allow us to promote ourselves on its airspace and I think that is an unfair advantage to it.

Mr Hambley: I think certainly the Public Service Broadcasting Commission, in looking at public service broadcasting as a whole in the future, might well decide that there should be cross-promotion on all public service channels, including the BBC. We are doing some work, by the way, on the competitive impact of BBC promotions which will help to quantify it rather better than we have to date, and certainly we will send that work, which should be completed in a few weeks, to the Committee. The situation at the moment is that the BBC spends £1.5 million a week of cash, licence payers' cash, not including staff costs, on promoting itself and £0.5 million of that goes on on-air trails. We think that is excessive and we think it is beyond commercial necessity. We think it amounts to a market dominance which is unregulated and, therefore, although, I confess, we have not come up with a perfect scheme of regulation, we do believe there should be recognition that that massive, massive amount of money spent by the BBC on promoting itself on on-air trails every week is a really vital competitive force to all channels, but certainly to small channels like our own and some degree of regulation is necessary because there is nothing to stop that £1.5 million becoming £3 million in 2006.

Q893 Chairman: Just tell us how that £1.5 million breaks down. What exactly is being spent on what?

Mr Hambley: I wish I could, Chairman, but of course the BBC is not very transparent about these things, but those figures are taken from its latest annual report and that is as close as we can get.

Q894 Lord Holme of Cheltenham: If I can just press you, your position is not that they should not do it, but it is that they do it too much?

Mr Hambley: Too much, yes.

Q895 Lord Holme of Cheltenham: So could you give us some sense of what, in your estimate, would be proportional and appropriate in your construct of the words?

Mr Hambley: I think in our construct, certainly bearing in mind that we talk not only here about on-air promotion, but we talk about billboards which cover the country and radio advertising for television programmes and television advertising for radio programmes, we feel that there should be some limit on the cross-promotion of channels. We do not believe that individual channels should be limited in the promotion of what is on their own service, but we

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believe that there should be some limit on how the universally available channels should be able to promote all the other digital channels. I cannot quantify that and I would not necessarily quantify it in cash, but I think you could quantify it in that there should be fewer promotions for other channels on each BBC channel on television and radio.

Q896 Lord Holme of Cheltenham: And of course cross-promotion is a feature now of these large international media groups who dominate the global broadcasting ecology and a lot of them have come together precisely so that they can cross-promote from one medium to another, but—

Ms Wright: But they are restricted in that.

Mr Hambley: Commercial networks are restricted in cross-promotion, whereas the BBC is not restricted in cross-promotion.

Q897 Chairman: Are you restricted by agreement?

Mr Hambley: No, by regulation.

Q898 Lord Peston: I am very interested in the research you referred to and I hope that you have it done in time so that we can see it. I can see why you might argue this *a priori*, but my experience is exactly the reverse. What the BBC breaks tell me are all the programmes not to watch. I find it very valuable. They say, “This, this and this”, and I say, “Very helpful of you!” and the same with promoting their digital channels. I understand your argument, but what it does for me is that I then look at the *Radio Times* and I see that no, there is quite a swathe of stuff which I do not want to watch. I am genuinely interested in whether your research shows that what the BBC does in any sense works. I think it is a very good information provision of, “Go and look elsewhere for something worth watching”! That may sound rather cynical.

Ms Wright: But the channels that SCBG represents are competing against the BBC and it is a dedicated area, so perhaps you are seeing trails for minority-interest programming that does not interest you, but—

Q899 Lord Peston: No, no, I am seeing trails for majority-interest programming which I have no interest in and I am perhaps being directed from programmes of the sort I would like to watch, but most of what they trail I do not want to watch and there is a vast amount of stuff which no one in their right minds would want to watch, but it turns out that this country is full of people who are interested in seeing it.

Ms Wright: The areas that we are competing in, remember, are quite marginal activities for the BBC because they are minority interest on some of these

digital channels, but for dedicated channels, that is their bread and butter, that is their business.

Q900 Lord Peston: That is exactly my point, that if the BBC pushes its kind of thing, you are saying that there would be no spill-over of telling someone like me, why don't I look at what you are doing, and that is where I can and if you are cable, of course I cannot, but where, as it were, it pushes the notion of an arts thing, I think, “Well, I'll just go and look generally and see if there is anything on that which I want to watch”.

Mr Hambley: You said you referred to the *Radio Times* to see what else was on—

Q901 Lord Peston: Which of course you are not in.

Mr Hambley: Well, some channels are, some channels are not, but those channels in our sector that are in the *Radio Times* are in the *Radio Times* in spaces that small and print that small. From my own experience when I was Chairman of Artsworld, Artsworld, in the *Radio Times* when it first started, used to get well featured, but as soon as BBC4 came along, Artsworld was relegated to a postage stamp and sometimes less than that, so it is very, very powerful, the BBC's ability to promote its own channels and exclude the promotion of others which are equally important.

Q902 Lord King of Bridgwater: What is the circulation of *The Sunday Times* and the News Corporation and the coverage that they give to channels there compared to the circulation of the *Radio Times*?

Mr Hambley: Well, I do not know the circulation figures, but I think many of our channels would wish that they had access to *The Sunday Times*. Many of our channels are not featured.

Q903 Lord King of Bridgwater: Really?

Mr Hambley: I can assure you that News Corporation does not give special space to channels which are owned or part-owned by Sky.

Mr Metzger: No.

Mr Hambley: Would that it did for some of my members.

Mr Metzger: The editorial policy there has been very much like the Sky EPG or the cable electronic programming guide which is that the most important channels come first and BBC1 is first.

Q904 Lord King of Bridgwater: They do not in the Saturday edition of *The Times* which is called *The Eye*, I think. I think satellite channels come first and you have to go over a couple of pages before you come to the main terrestrial channels and there is substantial coverage. Do you look at *The Sunday Times*?

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Mr Hambley: Yes, I see most of those.

Q905 Lord King of Bridgwater: It is quite interesting, but I would be amazed to think that cable and satellite people are being cut out of those publications. Out of interest, what is the relative circulation of *The Sunday Times*, *The Times* and the *Radio Times*?

Mr Hambley: I am afraid I do not know.

Chairman: We can find that out.

Q906 Lord Maxton: Quite specifically, if you want the *Radio Times*, you have to go and purchase it. If you are a Sky subscriber, every month free into your postbox comes the Sky magazine which contains, I agree it does not contain a useful guide to all programmes, but it does contain a fair amount of information about the various channels, including a lot of yours, articles about them and so on. I never buy the *Radio Times*. If I want to find out what the week's programmes are, I buy *The Sunday Times* or whatever it is and I know I am going to get a guide to the week's programmes in it. You presumably advertise some of your programmes in there.

Mr Hambley: We absolutely do not have access to the cash to do the kind of promotion that the BBC does. With the Sky magazine, for example, very, very few small channels can afford to advertise in that magazine. I think it costs, as far as I recollect, something like £40,000 a page. Many of these channels are small businesses and not all of them are yet profitable even, so we are dealing here always with a mighty competitor with massive resources and sometimes we feel that those resources are used in an over-mighty way.

Q907 Lord Maxton: Is not your complaint, therefore, as much against Sky as against the BBC in charging £40,000 to put an advert in their own magazine?

Mr Hambley: That is a commercial decision for them.

Mr Metzger: We do have issues with Sky, there is no doubt about it.

Chairman: I am going to move this on now to the competition area.

Q908 Lord Armstrong of Iminster: One of our witnesses thought that some of the BBC's activities in what they call the 'new media sector', and it is mobile phones, news texts and the creative archive they talk about, was stifling competition. Do you share those worries? It is a different aspect of competition, I think.

Mr Hambley: My colleagues will certainly want to say something about that. We are obviously not in general involved in telephony, but we are involved in various aspects of the new media and the essential

thing is that all these BBC commercial activities should be completely separated from the production of channel operations activities of the BBC and that they should be open to scrutiny to see that, for example, they are not priced in a predatory way, as I think that was possibly one of the complaints that came before your Committee before. At the moment this is another reason for degrees of independent regulation, that we do not feel that the BBC necessarily trades fairly in these new developments.

Mr Metzger: I agree with John, that I think new media is the way we are going to watch television in the next ten years. I think that on-demand services will proliferate and in fact the whole notion of some channels will disappear. I think it is important that the notions of competition, of plurality and the benefits that competition bring are applied whether you are talking about television or you are talking about other delivery systems, be it watching on your mobile or video in an on-demand sort of way over the Internet, for instance, so I think these are very genuine concerns. It seems to me that it is the wish of Parliament that competition continues, that it is a good thing and that the risks of crowding out other players is a real one.

Q909 Lord Armstrong of Iminster: But who would you have regulate that?

Mr Metzger: Well, in my mind, call it television, call it telephony, call it IPTV, these are digital signals, this is media, and it seems to me that the same institutions that regulate us now could regulate these.

Q910 Lord Armstrong of Iminster: Ofcom?

Mr Hambley: We certainly think that Ofcom, yes, could possibly have greater competition powers. There is one thing I would particularly like to mention which you may be familiar with from the Burns Committee and that is that they looked at the current returns and the historical returns from BBC Worldwide who operate these services and, as they put it, their returns are extremely poor compared with commercial equivalence. That suggests to us that there is a somewhat careless attitude towards the commercial reality and a willingness to spend excessively in order to drive people out of markets when the BBC goes into a new market.

Q911 Lord Armstrong of Iminster: What you might call a 'loss leader'?

Mr Hambley: Yes, exactly, and we think that there is evidence of this. We do believe again that probably Ofcom should have greater competition powers to scrutinise. It is not that we ourselves want to scrutinise, and some of these things anyway may be commercially confidential, but we want an independent body to scrutinise whether we are being

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fairly treated in the BBC's competition, particularly in its new activities.

Q912 Baroness Gibson of Market Rasen: I think you have more or less answered my first question which was about the competition powers of Ofcom in relation to the BBC. The further question about Ofcom is that in your written evidence, you certainly do not support Ofcom's proposals for a public service publisher, so would you like to expand on why you think that is?

Mr Hambley: First of all, because we support the idea of the Public Service Broadcasting Commission that Burns put forward, we think that they would be mutually contradictory and you would not need the public service publisher of course, but mainly we do not think that it would give the plurality that we believe could be created by a series of public-private partnerships or contestable funding which helps to put public service programming on a wide variety of channels. The public service publisher will simply be a wholly new, single and competitive organisation to other broadcasters, whereas what we propose, and I believe we submitted to the Committee our paper on public-private partnership, is that under the Public Service Broadcasting Commission you can achieve a far greater degree of different kinds of public service programming on different kinds of channels, including many of our own very precisely targeted channels, rather than introducing a single, new, competitive body. Finally, I would say that we do not actually accept the underlying analysis of Ofcom which is that you need always in broadcasting to have a new entrant created in order to bring refreshment to the market. We do not think it is the place of the regulator frankly to bring a new entrant in and most new entrants to the market were not created by regulation; they were created by commerce and competition.

Q913 Chairman: So in précis then, you asking for greater powers for Ofcom in terms of regulation?

Mr Hambley: Competition regulation definitely.

Q914 Chairman: But not in seeking to create new programmes?

Mr Hambley: No, indeed because we do not think that is necessary, and particularly with the PSBC and with the still-growing number of channels, if channels like those in our membership are incentivised to include more public service content, that will be a better way of getting it to the market without creating a new fourth force, as it were, in broadcasting.

Chairman: Can we go on to complaints because you seem to have a number about the BBC and, therefore, there comes the question of how they will be handled.

Q915 Baroness O'Neill of Bengarve: I want to ask a bit about how you think the editorial complaints as opposed to anti-competitive complaints might be handled. In your written evidence, you say that, "The public and the BBC's competitors must be allowed direct access to the BBC's governing body in the event of complaints". As you know, the BBC have reformed their complaints procedure to a degree so that it now does involve a somewhat different code of practice and a target response time, but initial appeal is to the Editorial Complaints Unit and it is only on appeal that it goes to the Governors' Programme Complaints Committee. Do you think that is unsatisfactory and that all complaints should go directly to the second of those?

Mr Hambley: I do not know whether my colleagues want to say anything about this, but our main concern in our paper was commercial complaints and competition complaints rather than complaints from members of the public. However, speaking as someone who has been in broadcasting for a long time, I would not want personally to see every complaint go to the highest level the moment it arrives as I think that would not be good practice, but in terms of competition complaints, I know that my colleagues have some experience of this.

Mr Metzger: Again our own policy on The History Channel is that complaints get answered as quickly as they possibly can, so you would probably get an answer within 48 hours of a complaint. I think the BBC is pretty good at it. I have never made an editorial complaint to the BBC, but John is right, that we are certainly more concerned with complaints on those guidelines which the BBC regulates itself with, the commercial guidelines, and on that score they do not do well at all.

Q916 Baroness O'Neill of Bengarve: So that comment is part and parcel of your complaint about their anti-competitive practices, as you see it, not a complaint about their complaints procedure?

Mr Metzger: Yes, it is.

Q917 Chairman: And when you say, therefore, that they do not do well at it, what do you mean by that on the commercial competition side?

Mr Metzger: Well, I mentioned that we had three complaints before them at the moment. One of them has been upheld actually and they have admitted a breach. Another has been upheld, but there has been no redress at all. They have just said sorry and they have said it very nicely, but really there is nothing more and we are not going to get any benefit from that. The third has been, I think, researched very badly. We have been at it now for about nine months with them.

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Q918 Chairman: Nine months?

Mr Metzger: Yes. In fact the last letter I wrote was in February. I got a reply from a man named Anthony Salz who is quite a well-respected competition lawyer who apologised that they had never received my letter and that it would be taken care of quite quickly. I was promised a response last week and I have still not had one, so I think that there is—

Lord King of Bridgwater: What sort of issue?

Q919 Chairman: Yes, can you give us some idea of the substance of the complaint?

Mr Metzger: It was about *The World at War*. Now, *The World at War* is a programme you all know. It has been on our channel for ten years. We have shared it quite well with the BBC for the last five years. It is not a BBC programme; it was made by Jeremy Isaacs in the old Thames days and we bought it from what is now called Fremantle Television which is this new, Pearson, Thames Television distributor and we shared it with the BBC for five years. The contract is coming up in September and the BBC had let it be known to the distributor that they will make as a condition of their purchase with the licence fee of *The World at War* a secondary licence on UKTV, which is part of their commercial interest. This, it seems to us, is a clear violation of their fair trading commitment and it does make— not specifically the money, but certainly the objectives, the leverage, as it were, that the BBC has through the benefit it gets through the licence fee in order to further its own commercial purposes—this is a clear violation of the fair trading commitment.

Q920 Chairman: So just explain to me exactly what impact does that have then on both the BBC—

Mr Metzger: Our lifeblood is programming. *The World at War* is one of our flagship programmes and we are not going to have that anymore as a result and we think that the BBC used unfair competitive advantage to do that.

Q921 Lord King of Bridgwater: And they will put it on UKTV?

Mr Metzger: They will.

Q922 Lord King of Bridgwater: And they will use licence fee money?

Mr Metzger: Correct. Well, they have not bought it with the licence fee. What they have done is they have leveraged their position. In other words, no distributor in his right mind would sacrifice a very large sum of money in order not to satisfy other conditions of the contract, so to speak. The new producers' guidelines make it very clear that it protects the intellectual property rights of independent producers, but this is not the case in the

acquisitions market unfortunately. As I say, this is a programme in which Jeremy Isaacs has no intellectual property rights whatsoever. He wishes he did.

Q923 Chairman: He must be kicking himself! Tell us about the other two very briefly that you have reconciled in a sense.

Mr Metzger: One is a very clever series by a man called Mark Steel who sort of explains complicated ideas in a very simple way. It is called *The Mark Steel Lectures*. He is a comedian, but it is quite intellectually sound.

Q924 Lord Armstrong of Iminster: He is quite clever.

Mr Metzger: He is a clever man. The BBC said, “No, you are right in fact. We enforced an option for UKTV which we should not have done. This is in violation of our own self-published guidelines”. The second was *What The Industrial Revolution Did For Us*, I think I am right in that, and they said, “Gosh! We goofed again”. In fact they had to write us a second letter to say, “Gosh! We goofed again”, because they had not actually gone back to their documentation. But there is not much they can do about it because the programmes have already aired (on UKTV History), so we have their sincerest apologies, and that was the end of that.

Q925 Chairman: And on the National Geographic Channel, do you also have similar experience?

Mr Bohrsman: We do not fight as hard as Geoff for BBC programming, but I would just say that in the last seven years, the people who do buy the programming for us have tried to get BBC programming and so far have failed and I would say that is in direct acquisitions. We have recently been offered programmes, but only those over five years old which means that they are not really commercially viable at that age. As I mentioned before, we were involved in this co-production which we had to pull out of which then leaves the UK producer without funding, so they are as effective as us. We were involved in another recent potential acquisition where the producer offered us a series on martial arts which we were very keen to get, but I have just heard that the BBC have not allowed him to do it. I am not sure what the contractual arrangement is between the two of them, but once again no matter which way we turn, it is always very polite, but the door is always shut.

Q926 Baroness Gibson of Market Rasen: So the flavour that is coming over is that this is a fairly common thing. Would you say that is so?

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Mr Hambley: Yes, there are other members who could give you similar examples and very few of them have ever had redress from the BBC.

Q927 Chairman: So if we had a room full of your 100 members, we would be hearing a lot of complaints?

Mr Metzger: Not all. It is important to say that UKTV is a member of our group and if you are UKTV, you are friends of the BBC and that is an important thing, I think, to remember. It is a competitive world, is it not, out there and I think the BBC probably sees the writing on the wall that eventually it is going to be a totally competitive world for them.

Mr Hambley: We have members who are commercial partners with the BBC and that is fine. All we expect is the BBC to pursue its own fair trading commitments, but preferably to be independently regulated.

Q928 Chairman: You have given us examples of the kind of commercial complaint you have had. In general terms, would you say that they were frequent complaints or relatively rare?

Mr Hambley: I think they are frequent examples of the BBC's very aggressively competitive behaviour. Fairly few of us, I think it is fair to say, bother to go through the BBC's procedures because we do not have Geoff Metzger's grim determination to succeed and we sort of get on with the business, but certainly again when I was involved in managing Artsworld, we had a large number of difficulties with the BBC. They were not a major supplier originally. In our first 18 months of operation, they refused to sell us any programmes, but there were a number of occasions, for example, when the BBC would pay an excessively large price for a programme in the marketplace in order to prevent us acquiring it, not a commercial price, in our view, because there were only two competitors for it, us and them, whereas they would use very large amounts of money in a package to persuade a distributor to sell it to them and not to us. There are many, many other examples.

Q929 Lord Peston: I am trying to get my mind around quite what the nature of the competitive behaviour is here. If it were not the BBC and we invented a different world in which there was another very powerful body, but they were private, it seems to me that they would still do the same sort of thing. Is your objection not that it should not happen, but that the BBC, because of their special position, should not do it and that if some other big person did it—

Mr Metzger: They themselves say this, and they publish their own fair trading guidelines precisely for this reason, that they recognise their own special advantage.

Q930 Lord Peston: And it is because they are a public service broadcaster using public money that they should have a kind of standard which prevents them doing exactly that? I am well aware in industry that X buys something for too much money in order to stop someone else buying it. To take my favourite subject, football players, people often pay too much for a football player solely to stop someone else getting that player, but no one regards that, though I do regard it, as poor behaviour, but that is another matter, but it is not against the law. It seems to me that the BBC has a very special position here and ought to have the kind of standards so that it did not do it, or that when they did do it, they responded in a way where, as most of us have said, really they ought to look very carefully at whether they had broken their guidelines and finally some outside person ought to say, "Really you should not judge this for yourself. We will tell you whether you have behaved properly".

Mr Hambley: We think that, but we think that the cumulative effect of this behaviour is to drive other channels out of business, that it is to prevent the plurality of public service broadcasting and it is to help create the BBC monopoly, so that is our fundamental objection.

Q931 Lord Maxton: Can I look, therefore, at the other side. You are complaining that the BBC spends a lot of money sometimes to buy programmes, but presumably your channels from music channels that buy videos from the BBC of *Top of the Pops* and things like that right across through to The History Channel, and presumably you and the Discovery Channel buy all sorts of material from the BBC, given that you think they spend a lot of money, do they actually then charge you a lot of money for programmes and material from their archives that you get from them?

Mr Hambley: In relation to the rest of the commercial marketplace, yes. I can certainly say, and others may back this up, that in our business relationships with the BBC in the past, we have always got fewer rights for more money than with any other UK broadcaster or distributor with whom we have dealt, bar none.

Q932 Lord Maxton: That does not marry up. I am not quite sure. If you are buying to show in this country, you buy from the BBC, but your channels are not necessarily limited to being shown just in this country—

Mr Hambley: Some are.

Q933 Lord Maxton:—so what in relation to BBC Worldwide are you buying in that case?

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Mr Hambley: BBC Worldwide is the seller of all programmes. You buy programmes from them. BBC Worldwide is the distribution arm.

Q934 Lord Maxton: That does not marry up, what you have just said, that they charge you high commercial prices, with what you said earlier about BBC Worldwide not making the sort of money that they ought to be making.

Mr Hambley: That is because BBC Worldwide engages in many other activities than simply selling ready-made programmes.

Mr Metzger: It is quite Delphic. John Smith was charged with making more money by the Burns Committee largely because his margins were poor. He had very high turnovers, but he had high costs as well. The way that BBC Worldwide acts in this country, that is, for its rights in the UK, is on behalf of its commercial partners and they are UKTV. I do not know if you are familiar with the relationship that UKTV and the BBC have, but UKTV have a 25-year, and there are probably not 25 years left on it, but they have a very long, what is called an, 'output deal'. That is to say, they have exclusive access to all of the things which the BBC makes, so that all of the licence fee-funded programming goes to UKTV first and if they do not want it, it can be traded in other places, but that is a commercial relationship that UKTV has. In fact when the deal was done, Flextech's stock price went up quite substantially, as you can imagine, and it was an extremely important part of their supply chain and it makes them a very competitive group of channels. If you are friends of the BBC, then that is a good thing. I would like to be friends of the BBC.

Chairman: Lord Peston, you had a question on UK-originated content.

Q935 Lord Peston: Yes, just very briefly because we do not quite understand what you are saying. Wearing again my economics hat, as much as one would like to see much more UK/EU, by which I mean not American, content, one is sympathetic to that view, but surely it is anti-competitive and contrasts rather unfavourably with all of your pro-competitive views which you have been putting forward to us so far. There is no bias in the system which surely says people are biased against having UK-originated material, but I assume that if there is not enough, it is because it is not good enough.

Mr Hambley: It is fundamentally about the use of, and, as you say, the code is American, the use of American material in particular schedules, notably on the children's channels and the way in which it is used.

Ms Wright: I know over time that the children's channels found that once the licence fee funded CBBC, it stuck to its remit for a year or so, but then over time it dropped a lot of its factual programming and it started skewing its schedule so that the acquired programming, being American, was all pumped into its peak-time hours, which is actually when most children are watching, so that is essentially almost a child's worth of viewing and that was directly competitive obviously with what now 22 other children's channels on the market are doing.

Q936 Lord Peston: But does this happen because the US stuff is so good or because it is somehow being used, to go back to Lord Armstrong's learned phrase, as a loss leader? My children watched overwhelmingly things like *Trumpton* and all of those marvellous children's programmes in the old days and they were superb, so I cannot believe that the people who made those sorts of programmes cannot make equally good programmes today. Is it that there is an unfair competition thing?

Ms Wright: It is certainly directly competitive and it is not bringing distinctive British-originated drama to the older kids, but younger kids' programming tends to be British. Older kids, what they are watching is American, but the BBC, obviously CBBC, is competing directly like for like.

Chairman: Can we move on to regional broadcasting which we have been spending some time on.

Q937 Bishop of Manchester: You will be aware that Ofcom has said that where ITV no longer produces regional programming, the BBC should not offer a direct replacement and that seems, therefore, to provide an opportunity for satellite and cable broadcasters. I wonder if you can talk about that both in terms of the independent opportunities provided to you and the opportunities which it may provide you with in terms of partnership with the BBC.

Mr Hambley: We do have some experience, and Geoff Metzger has some experience, of working with ITV regional broadcasting to produce programmes about which he might wish to say a little.

Mr Metzger: Regional programmes are very important to us as they bring us audiences which is always the *raison d'être* for us and we have worked extensively with ITV and we have worked with Yorkshire and the West Country and Anglia and we have done a lot with them, but we have never done anything with the BBC. I have to be honest, I do not think we have ever tried to do anything with the BBC because we have been rather frustrated at any event with trying to work with the BBC.

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Q938 Bishop of Manchester: But with the reduction of much that ITV has been doing, there is that vacuum presumably, so how do you propose to fill it?
Mr Metzger: We will continue to do programmes that we think are good programmes. We just did something on Sutton Hoo and we have just done a series called *Going Home* which is about people who are from Norfolk and are returning to their first home, that sort of thing. It seems to me that whatever works for us, whether it is of national interest or of regional interest, for instance, we have very strong viewing figures in Scotland, it is a good idea for us to do Scottish programming and we do lots of it, and if that actually, shall we say, serves the purposes and characteristics of public service broadcasting, we will continue to do that.

Q939 Bishop of Manchester: When you talk about strong viewing figures, can you give us examples of the numbers you are talking about?

Mr Metzger: Well, let's see. We run *Burns Night*, for instance. Every year we run *Burns Night* and probably across the night 200,000 people will tune in.

Q940 Bishop of Manchester: That may not be a typical programme!

Mr Metzger: Well, we have a series called *Going Home* which I just mentioned which we have just started to run. That is a group of individuals who have returned to their roots, so to speak, to look at their first house. It is a six-part series. We have done well with it and I would say that probably average audiences were, certainly by comparison with the BBC, quite small, 40,000 or 50,000 people. Business models tend to work on cable and satellite channels by running things lots of times, so there are many opportunities to see them, so in the course of the next five years, this is a programme which will sit well on the channel and two million people could watch it easily.

Q941 Bishop of Manchester: Could I just press the point in relation to the BBC because I heard obviously the frustrations which you were expressing earlier this morning about it, but are there any opportunities which you do see could be taken in the future in terms of partnership with the BBC in regional and local programming?

Mr Hambley: I think one has to say that in the past the BBC's ethos has always been competition rather than collaboration. Perhaps in the future it will be different, but we have never looked to the BBC for that collaboration because you can see what the BBC's behaviour has always been. When commercial local radio started, the BBC wanted to produce competitive local radio and so on, so it has never had the sort of collaborative ethic. It is very

disappointing, we think, that ITV has been allowed so quickly to relinquish its regional broadcasting, speaking as someone who has spent most of his working life in ITV, and I think that now that ITV is spending the money that might have been spent on regional broadcasting on new digital and satellite entertainment services, this seems to us to be a great pity. I do not know why Ofcom has suggested that the BBC should not replace it, but in the end even the BBC cannot, and ought not to, do absolutely everything. We think we have a role here, but we are not in general set up as a sector to do sub-regional and local broadcasting and much of those things can be delivered by new media in the future, we think.

Q942 Chairman: Can I just ask one question arising from what the Bishop of Manchester was saying. You were talking about audiences of 40,000 and with *Burns Night* where you had 200,000. Is your channel profitable on this basis?

Mr Metzger: It is, yes.

Q943 Chairman: And do you publish figures on the profitability?

Mr Metzger: Well, our accounts are at Companies House. We publish audited accounts according to the statute every year.

Q944 Chairman: And they would be available for us if we wanted to see them?

Mr Metzger: Absolutely.

Q945 Chairman: You might even send them to us rather than us going to Companies House for them?
Mr Metzger: I can indeed.

Chairman: That is very kind. Can we just finally round this up and there are important issues about how you actually see the BBC.

Q946 Baroness Bonham-Carter of Yarnbury: You are quite critical in your written evidence about the Green Paper's definition of measuring public value. It strikes me that you want to make the BBC a very boring channel. You say that the balance in BBC output between information, education and entertainment should be weighted heavily towards the former categories and not, as at present, towards the latter. Are you suggesting that the BBC should be prohibited from producing programmes such as soap operas, sitcoms, the things that a lot of people like to watch? If so, would that not undermine the purpose of the BBC because its viewing figures would fall very dramatically?

Mr Hambley: Well, we prefer sort of encouraging the BBC to do better rather than sort of an ASBO prohibition approach, but I think that we are going from 2006 to 2016 when the world will be fully digital

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and the BBC has got to find its place, I think, in that digital world in a way which perhaps goes a bit back to the BBC that I knew when I was younger where its differentness and distinctiveness is evident from other broadcasters. If we talk about soaps, for example, if the Green Paper had taken the view that we must now look at broadcasting in 2006 and how it might be in 2010 or 2012, see what is provided by the commercial sector and by other public service broadcasters and see what the BBC should be doing and how much we should pay for the BBC, I suspect that would not have put soap opera and comedy high on the agenda. We think only that it is a matter of balance. If you look at this week, there are, and I counted, ten hours of drama on the BBC, that is if you do not count eight hours of American movies, four *Eastenders*, two and a half *Neighbours*, one *Casualty* and one *Holby City*. There is no classic drama, there is no work of contemporary playwrights, there is no Shakespeare, there is no Shaw, there is no Alan Bennett, there is no David Hare and there is no Sartre. Things that once were the stock-in-trade of the BBC are no longer there and, therefore, all we are saying is soap opera by all means, but not soap opera at the expense of all other kinds of drama that should be the thing that justifies charging people a compulsory tax. Do not prevent the BBC, do not make the BBC boring, but make it wide-ranging and make it distinctive from what is being provided on other channels and that is all we say.

Q947 Baroness Bonham-Carter of Yarnbury: Some would argue that *Eastenders* is more than a soap, that it is drama.

Mr Hambley: The BBC does argue that. I think personally I would argue that it has a very uncivilising influence on society, but the BBC would always argue for its programmes. The BBC argues that everything it does is public service broadcasting, but the fact that you can put pro-social messages into soap opera, and *Coronation Street* was putting pro-social messages into soap opera long before *Eastenders* was invented, it is not a reason for the BBC dominating its schedules with the pulp fiction of drama at the expense of other things.

Q948 Baroness Bonham-Carter of Yarnbury: Did your breakdown include BBC4?

Mr Hambley: No, BBC1 and BBC2.

Q949 Lord Maxton: But every household pays the licence fee, households all the way from the poorest to the wealthiest, and they, therefore, are, in my view, entitled to get from the BBC a wide range of

programmes from *Eastenders* to sport, whatever it might be, to satisfy the viewing wants and desires of those people who pay the fee in the same way as you expect to satisfy the needs of those who pay subscriptions to Sky or cable channels in order to watch you.

Mr Hambley: We would agree with that absolutely. We think the width of that range is currently insufficient.

Q950 Lord Maxton: So you do not want to stop them doing anything, you want them to add to it?

Mr Hambley: No—

Q951 Chairman: What you are saying is there should be a balance. I think we are going to have to draw to a close. I very much regret this. We could go on all morning on this. You referred to ITV and its regional public service broadcasting with the implication that it was going down. The evidence that we have had from ITV is that it is still the leading regional public service broadcaster. Would that fit in with your experience?

Mr Hambley: No. I would say that Ofcom's regulations have allowed ITV to relinquish many of its regional obligations. Of course, if you count up regional news and so on, leading in the sense of numbers of hours (?), but watch this space, watch what is going to happen as the world becomes fully digital. In my view ITV will no longer have any public service obligations other than possibly national news. No, I do not recognise that ITV description and I do not recognise the amount of money being spent by ITV. Having wasted money on digital, it is now spending more and more money on its new entertainment digital services. They are not regional services. That is not where the money is going at all. ITV is no longer a regional broadcaster in any true sense of the word.

Q952 Chairman: That is a very interesting observation which we should take further. I would like to thank you and your colleagues very much. It has been a very invigorating session. I think you have got that impression from the questions that you were asked. We are enormously grateful. I think there are a whole range of issues which we might like to come back to you on.

Mr Hambley: Thank you. We would be very happy to provide any further information. May I say that we are very conscious of the huge improvements your Lordships made to the Communications Bill. We think there is a similar opportunity here.

Chairman: Not enough, some of us would say.

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Memorandum by the Producers' Alliance for Cinema and Television (Pact)

1. BACKGROUND TO PACT'S SUBMISSION

The BBC Charter Review Green Paper published on 2 March 2005 states that “the BBC should accept the DCMS Select Committee recommendation to put together a film investment strategy to ensure that the best UK films are shown to a wider television audience”.¹

The Select Committee reported that the BBC has “failed to invest enough in British films” and concluded that “there is a strong case for a substantial increase in BBC funding for feature films”.²

Director-General Mark Thompson in his evidence to the Select Committee on 19 October 2004 recognised that “the development and support of the British film industry by broadcasters is very important”. He referred to “proper prominence for British films on our airwaves”.³

Mr Thompson also said in his evidence that “we are hoping that this year [2004] we are going to show as many as 70 [British films in peaktime on BBC1]”. UK Film Council's Research and Statistics Bulletin published in March 2005 shows that 434 films were shown on the BBC1 and that 106 were British. However, only 12 British films made in the last eight years were shown at peaktime on BBC1.

After several requests, Pact was invited to a meeting with the Film Board of the BBC on 21 April. The BBC's presentation to us discussed broad strategic objectives and confirmed that they have said publicly that they want to invest more into British film. This, however, was qualified with “provided we get the licence fee settlement”; Mr Alan Yentob, who hosted the meeting, also said that no financial commitments can be given until the level of the licence fee settlement is known.

The BBC also said that they intended to publish “A 5 Year BBC Film Strategy” in early 2006.

2. PACT'S POSITION

Pact welcomes the principles put forward in the Green Paper and agrees with all of the comments from the Select Committee. We acknowledge the fact that the BBC have finally entered into a dialogue.

Pact also recognises that a lot of time has passed without meaningful progress and is very concerned that the BBC will manage the negotiations over Charter Renewal in order to avoid making any firm commitment to an industry with which the BBC has engaged very little during the period of the current Charter.

To put our concerns into context, the House of Lords Committee may want to consider that the French film industry receives some 270 million Euros from broadcasters, while BBC Films (the production business) has an annual budget of £10 million and the BBC's expenditure on acquisitions in 2003–04 was £3.7 million, rising in 2004–05 to £8.5 million!

Pact has repeatedly said that the BBC is in a unique position to support the wealth of talent in the British film industry and to contribute desperately needed venture capital to the film production sector to enable the development of viable and profitable film companies within a vibrant creative economy.

Pact has consistently argued for and therefore reiterates the following recommendations:

1. BBC should more explicitly recognise its obligation properly to support British film talent.
2. BBC should make available further information on the level of total spend by the BBC on film and how this has been increased in line with increases in RPI/the licence fee.
3. BBC Films should commit to a significantly greater level of investment in new film production.
4. A minimum of 50 per cent of BBC's expenditure on film should be on British films.
5. Formal Terms of Trade should be agreed, under which the BBC will acquire films on limited licenses, with prices calculated according to a tariff to be agreed, based on budget and box office performance.
6. BBC should publish full information on its policy towards film and, more importantly, its expenditure on film, analysed to show the amount spent on US films, the amount spent on UK films, the amount invested via BBC Films.

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¹ Review of the BBC's Royal Charter published by DCMS on 2 March 2005.

² House of Commons Culture Media and Sport Committee report, “A Public BBC” on 16 December 2004.

³ Uncorrected transcript of oral evidence to Culture, Media and Sport Committee on 19 October 2004.

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Supplementary memorandum by the Producers' Alliance for Cinema and Television (Pact)

INTRODUCTION

The BBC has historically been at the forefront of protecting and stimulating British culture on screen, but competition is increasing in the digital age.

It is vital that the BBC responds to this increased competition by securing the best possible PSB programming. To do that, it must engage with the UK independent sector as well as its in-house production departments, commissioning a diverse array of the best ideas no matter where they originate.

At stake is not just the health of the BBC or the independent production sector, but how we express our own culture in the global environment.

EXECUTIVE SUMMARY

1. Pact has drawn up this submission in response to the Department for Culture, Media and Sport's call for reactions to its Review of the BBC's Royal Charter: A strong BBC, independent of government.
2. Pact is the leading body representing UK film, television, animation and interactive content producers, with a membership of more than 800 companies.
3. We welcome the Review of the BBC's Royal Charter. It is a crucial step in ensuring the BBC adapts to increasing competition in the digital age and provides the licence fee payer with the very best programming.
4. As part of the review process, we have contributed to the BBC's Content Supply Review and met with key BBC management, including director general Mark Thompson and director of television Jana Bennett. Discussions have proved positive, and have done much to create a template for realising our respective goals.
5. In particular, Pact supports the "window of creative competition" (WOCC) as a way of achieving the BBC's goal of investing in the best ideas and talent, whether they come from inside or outside the corporation. We believe the WOCC has the potential to create an environment of genuine creative competition that will foster the best programming for the licence fee payer.
6. However, we recommend that the WOCC and the entire BBC commissioning system are carefully monitored. Here, the role of the BBC Trust is vital. We believe this entity must be truly independent.
7. Another of our main concerns is the BBC's strategy regarding programming outside London. While we welcome many of the BBC's recent measures, we are concerned that significant areas lack a joined up strategy. We believe that the public in the English regions in particular is being underserved.
8. In the final section of this document we argue that there is an opportunity to better serve the licence fee payer by introducing a strong, precise strategy for film that has quantifiable financial targets. We believe the BBC is failing to maximise cinema's potential as a way of improving the cultural life of British society and promoting Britain to the rest of the world.

PROPOSALS AND QUESTIONS FOR CONSULTATION

Question 1: Do you think it is helpful to define the BBC's purposes in this way?

With competition increasing in the digital age, it is more important than ever for the BBC to reflect and strengthen the country's cultural identity by securing the very best programming.

The BBC is well placed, but must stay at the forefront of original programming and content—and it must ensure that its output is distinctive from that of commercial channels. This will depend on how far the BBC is willing to embrace a culture of competition, where the most creative and challenging ideas are commissioned regardless of whether they originate in-house or are supplied by independent producers.

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Question 2: Are these the right purposes?

Yes.

Question 3: Are these the right characteristics?

Yes.

Question 4: Do you agree that the BBC should be at the forefront of developments in technology, including digital television?

Pact agrees that the BBC should be at the forefront of developments in technology, including digital television, with one caveat: the corporation must not impact on other, commercial ventures that could bring additional investment and competition to the market.

As the BBC develops new technological platforms, there will be a continuing need to ensure that these deliver value for money to the licence fee payer. Technological developments will also have to be open to a range of content providers, both established players and new entrants.

Question 5: Do you support the proposal for a further review of alternative funding methods, before the end of the next charter period?

Pact does not support such a review. The BBC should have security of funding for the period of the charter to enable it to invest in new technology and content.

Any review that resulted in reducing the licence fee could result in “short termism” on the part of the BBC management, and bring uncertainty to the content supply markets.

Question 6: Do you have a view on any aspect of the operation of the licence fee: concessions, its collection or enforcement?

The BBC should explore how the licence fee can be collected electronically.

Question 7: Have we defined the roles of the BBC Trust and the Executive Board sufficiently clearly?

Yes. Pact has long argued that the historic role of the BBC governors was at best confused, and at worst enmeshed in the operational details and policy of the BBC management.

As long as the BBC Trust is truly independent, the proposed separation and clarity should achieve two goals: the Trust itself will be able to act in the public interest, and management will be able to deliver the required services while being held accountable. This should give all stakeholders confidence that the BBC is operating in the most efficient and effective manner at all times.

Question 8: Is this the right way to define the public interest remit of the BBC Trust?

Yes.

Question 9: How many of these options would you like to see adopted in the Trust’s statement of promises? Are there any other options that you would like to see considered?

There are other options we would like to see considered:

1. Pact welcomes the BBC management’s proposal that the Trust should conduct a biennial review of the operation of the WOCC.
2. Pact would propose that the BBC Trust is also required to conduct a biennial review of the entire BBC commissioning system.
3. These reviews should consider whether the structure and processes of the WOCC and the BBC in general

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are designed to deliver a commissioning meritocracy. This would ensure that the BBC is only commissioning the best programmes and content, regardless of who supplies them.

4. Both reviews should call in independent, external expertise, and the results should be published. The reports should also carry clear recommendations to BBC management on what improvements they should make.

Question 10: Have you any views about how the BBC Trust should handle complaints?

No.

Question 11: How many members do you think the BBC Trust needs?

The exact number is a matter for the Secretary of State for Culture, Media and Sport.

Question 12: What skills and expertise do you think they need?

It will be critical that the BBC Trust has access to people who understand the technological challenges facing the corporation.

Pact would propose appointing someone with experience of either programme and content production, or previous employment at another publisher or broadcaster. This is to ensure that the opportunities and challenges facing the UK programme supply market are properly taken into account in the Trust's decisions.

Question 13: Are there any particular communities or interest groups that you think the Trust members should represent?

Pact would propose that, in addition to the above representative, the Nations of the UK are represented.

Question 14: Do you think a "window of creative competition" can be made to work? If not, would you support a raised quota for independent production in BBC Television?

Pact welcomes the "window of creative competition" (WOCC) as a significant step towards the BBC's stated aim of investing in "the best ideas and the best talent, whether they come from inside or outside the BBC."⁴

Pact has contributed to the BBC's Content Supply Review and had extensive and detailed meetings with director general Mark Thompson, director of television Jana Bennett and key BBC personnel developing the WOCC. These discussions have proved constructive, and have done much to explore the BBC and Pact's respective goals over the course of the next charter.

The result has been a sea change in Pact's relationship with the BBC. More and more, the BBC is embracing the logic of an industrial strategy based on partnership with independents at a national level. We believe the WOCC could achieve a number of goals, which are outlined below:

1. Over time, the WOCC has the potential to raise the amount of commissions from external suppliers. In so doing, it can ensure that in-house production is exposed to increased creative competition.
2. Pact recognises that, to create space for the WOCC, the BBC is committed to reducing its fixed in-house staffing levels to "an overall level below the in-house output guarantee (ie below 50 per cent)."⁵
3. Pact welcomes the recent statements by the BBC that in-house production capacity will increase as and when it wins additional commissions from the WOCC. Pact anticipates this additional capacity comprising of freelance and short contract staff.
4. Pact strongly supports the BBC's initiative to clearly separate in-house production departments and commissioners and controllers. Relocating BBC commissioning personnel during 2005 should improve the information flow through BBC Commissioning, external suppliers and in-house production departments.

However, while Pact recognises these proposals are a major step in achieving a meritocratic commissioning system, we have two specific requests to help safeguard transparency and fairness, plus a longer term concern over monitoring:

⁴ Building Public Value: Renewing the BBC for a digital world, page 17.

⁵ Review of the BBC's Royal Charter: BBC response to A strong BBC, independent of government, page 81.

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1. To ensure transparent competition on price and value for money for the licence fee payer, all commissions, external or in-house, should be on the same published tariff and terms. This should include programme development.
2. Pact has asked the BBC to share more of its audience information with external suppliers. The aim of this request is to better inform third-party producers of its needs and ensure that all suppliers can work with the same level and quality of information.
3. We recommend that the WOCC is monitored rigorously. In this, the role of the BBC Trust as a truly independent entity will be key (see Pact's response to question 7).

In particular, Pact would urge the Trust to monitor the WOCC's performance regarding the two key issues about which we were initially concerned:

- (i) The separation of BBC commissioning from BBC in-house production.
- (ii) The range, diversity and cost of programming being proposed for the WOCC.

Both factors are key in determining whether BBC commissions are offered to all on an equal basis, and whether the corporation provides viewers with the best possible range and quality of programming. The next three sections explain our concerns.

Levelling the playing field: ensuring the separation of commissioning and in-house production

The WOCC proposals go a long way to replicating the tried-and-tested model of the ITV Network Centre. The very real issue about the separation of commissioning and production was recognised when the network centre was created. This ensured that all suppliers had to make their own arrangements with commissioners if they wanted a meeting to pitch or develop their ideas.

The independence of the network centre has established an open and level playing field for in-house and independent producers, raising the creative bar and achieving a mature diversity of programming over many years. This has resulted in both popular, commercial programming and high quality. Standards are reviewed continuously, and programming refreshed. Crucially, the structure has allowed this to happen under successive network controllers, even at a time of consolidation.

In contrast, the BBC has historically needed to justify and manage its in-house production capacity, and maintained a commissioning structure aligned to in-house production. There have been sustained and widespread concerns that commissioning was opaque, with ideas submitted to the BBC from outside producers having less chance of success.

In this respect, Pact applauds the BBC's aim of commissioning the best programmes regardless of who supplies them.⁶ This is essential if the BBC is to continue to deliver a broad range of programmes to the UK licence fee payer over the life of the next BBC Charter.

Protecting range, diversity and quality within the WOCC

The WOCC will fail to make any significant impact if it is filled with low-cost, single programmes at the margins of peak time viewing. If this becomes the case, even though the overall number of hours open to creative competition would in theory increase, those slots would be less attractive to independent producers and competition would be reduced.

Therefore, the BBC's commitment that all commissions will be subject to the same range and diversity requirements as the independent quota is essential to convincing Pact that the WOCC will be truly competitive.

If the WOCC fails to demonstrably establish greater creative competition by the BBC Trust's second biennial review, Pact would call for a 50 per cent by value quota to be imposed.

Opening a window onto the entire UK

Pact supports government recommendations in the Review of the BBC's Royal Charter, which defined the BBC's role in representing "the UK, its Nations, regions and communities" as one of its five distinctive purposes.⁷ However, while we understand the WOCC in itself is not going to address this issue, we would like to see further thinking as to precisely how the BBC will encourage and reflect a true diversity of programming from outside London.

⁶ Building Public Value: Renewing the BBC for a digital world, page 17.

⁷ Review of the BBC's Royal Charter: A strong BBC, independent of government, page 5.

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The BBC clearly offers a huge potential, both in terms of Nations and regions and its policy for out of London. Pact agrees with the government that opening up programming to beyond London would not only improve the cultural diversity of programming; it would also underpin economic growth, talent retention and investment in the Nations and regions. As the Secretary of State for Culture, Media and Sport said: “the licence fee should constitute venture capital for creative production and should support a strong independent production sector.”⁸

That, of course, is not to say that the BBC’s role in creating successful production centres is just a question of providing financial resources. In addition, companies based outside the M25 need strong relationships with, knowledge of and access to the corporation’s commissioning process.

The BBC’s national provision to Scotland, Wales and Northern Ireland has been critical in doing just that. We now have an opportunity to build on that good work. Pact therefore agrees with the Review of the BBC’s Royal Charter that the BBC should continue to provide “a larger amount of dedicated programming in and for each of the devolved nations.”⁹

This should include provision in indigenous minority languages across a range of platforms. Pact supports the development of a dedicated Gaelic language channel as a way of safeguarding Gaelic cultural heritage. We agree that the BBC should play a crucial role in any future provision of such a dedicated channel.

However, Pact believes that the objectives of some policies may be counterproductive. Pact urges caution in regard to the BBC moving to develop key regional in-house centres into genre-specific suppliers. This could potentially stunt the growth of the independent regional supply base.

Concern is mounting, for example, about in-house BBC Northern Ireland producing only current affairs programming for the network. There is a danger in BBC Northern Ireland’s relationship with local third-party suppliers also becoming restricted to this genre. We are similarly concerned about BBC plans to develop Manchester as a centre for entertainment programming.

Exacerbating this situation is the reduction of ITV’s PSB obligations to regional programming, which are decreasing as we enter a digital environment. This has left a void in the English regions.

Pact wants to ensure that any additional spend by BBC outside London goes to seeding a sustainable regional infrastructure. Independents across the UK are producing a wide variety of genres, including entertainment, drama, factual and current affairs. Companies based in any one specific region or Nation are not necessarily producing for any one specific genre.

Pact therefore supports Ofcom and the Department for Culture, Media and Sport’s proposal that the BBC: “should consider what scope it has for expanding its contribution to regional programming.”¹⁰ While we agree the BBC should not simply compensate for the reduction of ITV’s regional output, viewers in England are being underserved. This is particularly true in terms of regional programming, and the BBC should have an obligation to address this beyond its current proposals.

CONCLUSION

1. Pact welcomes proposals that the BBC move a significant level of production out of London, helping to build a greater range of production centres outside the capital. Over time, this move has the potential to transform the culture behind the BBC’s arguably metropolitan bias.
2. We support the BBC’s published commitment to raise network commissions from the Nations by 50 per cent to an overall total of 17 per cent.¹¹ We also support the recommended increase of drama made outside London from 30 per cent to 50 per cent, and that of network commissions from the regions by 50 per cent to 17 per cent. These commitments should have a major impact on the development and success of regional production centres.
3. While we welcome the BBC’s efforts to raise commissioning commitments from the Nations and regions, we would like clarity over whether these levels are intended to relate to both hours and spend.
4. Pact proposes that the current regional production quota for network be raised from 25 per cent hours and 30 per cent spend to 50 per cent by hours and spend. This should be achieved over time.

⁸ Ibid, page 7.

⁹ Review of the BBC’s Royal Charter: A strong BBC, independent of government, page 41.

¹⁰ Review of the BBC’s Royal Charter: A strong BBC, independent of government, page 41.

¹¹ Review of the BBC’s Royal Charter: BBC response to A strong BBC, independent of government, page 75.

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5. The BBC should re-evaluate and expand its provision to the English regional audience, providing a broad range of programming reflecting distinct cultures. The regional production quota for network should continue to constitute a significant range of different production centres, each producing for a range of genres. This should be monitored by Ofcom.
6. We recommend the BBC publish a clear strategy as to how it will produce a significant proportion and range of programmes from a variety of centres outside the M25. This should provide fair and unbiased access to the commissioning system for all.
7. Pact seeks assurances that independent companies outside the M25 will not be excluded because they do not work in specific, “re-located” genres.
8. This quota should contain a suitable amount of programmes commissioned from independent production companies using Ofcom’s definition of qualifying regional productions.

Question 15: Do you think a voluntary 10 per cent quota for radio is sufficient? Or should the quota be increased or made mandatory?

The voluntary quota for radio should be increased in line with the statutory quota applied to BBC Television. Increased competition in radio should ensure that these services also benefit from the best ideas. Linear analogue radio is soon to be replaced by digital non-linear audio content, bringing new creative opportunities. These opportunities should be more widely accessed by the UK independent radio sector.

Question 16: Do you agree that the BBC should be able to propose changes to its range of services over the course of the next 10 years?

Yes, provided that the BBC Trust approves these after a rigorous impact assessment.

Question 17: Do you agree with our proposals for handling new services?

Yes.

Question 18: How strictly should the BBC’s commercial services be restricted to those businesses that are linked to public purposes and public services?

The BBC should be strictly limited in the scope and range of its commercial services, even if they are linked to public purposes and public services. The BBC must not only be seen to be wholly transparent and accountable; it must also be able to demonstrate that commercial activities will not lead to the distortion of new and emerging markets to the detriment of commercial activities by others.

Question 19: Is the existing fair trading commitment a useful addition to the arrangements for regulating the BBC’s commercial services? If not what option would you prefer?

Yes, but additional tests should be introduced by the BBC Trust. This entity should have final approval of any services, either existing or planned.

Question 20: Do you agree that the case for a plurality of publicly-funded broadcasters should be kept under review?

Yes. This is a critical role for Ofcom.

A BLUEPRINT FOR FILM

In addition to the previous answers, Pact would like to submit a summary of its position on the BBC’s strategy for British film. As the Department for Culture, Media and Sport’s Select Committee recommended and the *Review of the BBC’s Royal Charter* affirmed, the BBC should devise a clear and precise film investment strategy, with quantifiable financial targets. Such a strategy will not only have a significant impact on the British film industry; it will also ensure that the best UK films are shown to a greater number of licence fee payers.

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As the nation's largest PSB broadcaster, providing the license fee payer with a showcase for the best of British cinema should be paramount. In a UK-wide survey commissioned by the UK Film Council, 81 per cent of people believed that UK terrestrial broadcasters should show "more new UK films."¹² The DCMS Select Committee highlighted the ability of national films "to provide and promote multiple perspectives on historic events, societal mores and norms."¹³

Alongside its importance for British society, film has a powerful international impact. The DCMS Select Committee argued that the film experience: "benefits the audience and, when in a British context, allows people around the world to identify with the story being told. This promotes the image of Britain abroad—an antidote to the domination of English-language cinema by Hollywood."¹⁴

In this regard, film is a key way of fulfilling the fifth point in the BBC's mission, as outlined by the Review of the BBC's Royal Charter, of "bringing the UK to the world."¹⁵

In addition, Pact has consistently argued that the BBC is in a unique position to support the wealth of talent in the British film industry and to contribute urgently-needed venture capital to the film production sector. It is universally recognised that a strong home broadcaster market is fundamental to developing a viable commercial film production sector.

The UK has failed to provide such a home market for its indigenous production sector. To put our concerns into context, the French film industry receives some €270 million from broadcasters. In comparison, BBC Films, which is the broadcaster's production business, has an annual budget of £10 million. The BBC's expenditure on acquiring UK films in 2003–04 was a further £3.7 million, rising in 2004–05 to £8.5 million.

According to the DCMS Select Committee, the BBC has "failed to invest enough in British films" and "there is a strong case for a substantial increase in BBC funding for feature films."¹⁶

BBC director general Mark Thompson, in his evidence to the DCMS Select Committee on 19 October 2004, recognised that "the development and support of the British film industry by broadcasters is very important." He also referred to the "proper prominence for British films on our airwaves."¹⁷

Yet that prominence has often been lacking. The UK Film Council's *Research and Statistics Bulletin*, published in March 2005, stated that 434 films were shown on BBC1 and that 106 were British. However, only 12 British films made in the last eight years were shown at peak time on BBC1.

Pact would therefore like the BBC's film strategy to address the following issues:

1. A minimum of 50 per cent of the BBC's production and acquisition expenditure on film should be on British cinema, both through increased investment in BBC Films and increased expenditure on new acquisitions or pre-buys.
2. Formal Terms of Trade should be agreed, under which the BBC will acquire films on limited licenses. Under this system, prices would be calculated according to a tariff to be agreed, based on budget and box-office performance. These Terms of Trade for film should be consistent with the Code of Practice.
3. Pact sees an opportunity for BBC equity investment in British films to be structured in a manner that allows the producer to better share in the "up-side" if the film is a hit. This could be achieved by affording producers a meaningful recoupment corridor from the BBC's income stream.
4. Pact recommends that both BBC Films and film acquisition and commissioning, ie pre-buying on a licence fee basis, operate within a discrete department outside BBC production. This department would offer producers more than one gateway to funding and would be open, transparent and subject to review by the BBC Trust.
5. Pact wants the BBC to explicitly recognise its obligation to properly support British film talent.
6. The BBC must publish detailed information on the level of its total spend on film and how this compares to increases in RPI/the licence fee.
7. Along with full information on its policy towards film, the BBC should publish its expenditure on film, analysed to show the amounts spent on US and UK films, plus the amount invested via BBC Films.

¹² UK Film Council submission to DCMS Review of the BBC's Royal Charter, page 3.

¹³ Culture, Media and Sport Committee: The British Film Industry, vol 1, page 11.

¹⁴ *ibid*, page 11.

¹⁵ Review of the BBC's Royal Charter: A strong BBC, independent of government, page 5.

¹⁶ House of Commons Culture, Media and Sport Committee report, A Public BBC, on 16 December 2004.

¹⁷ Uncorrected transcript of oral evidence to Culture, Media and Sport Committee on 19 October 2004.

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8. Pact acknowledges the statement from the BBC saying that it intends to publish *A 5 Year BBC Film Strategy* in early 2006. However, Pact would prefer to see a clear and meaningful strategy of investment in UK films, with detailed financial targets, as part of the BBC's Charter commitments.

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Examination of Witnesses

Witnesses: MR JOHN McVAY, Chief Executive, MR ANDREW ZEIN, Chairman, (and Managing Director of Tiger Aspect Productions), MS MARGARET MATHESON, Member (and Managing Director of Bard Entertainments), and MR DAVID FRANK, Member (and Managing Director of RDF Media), Producers' Alliance for Cinema and Television, examined.

Q953 Chairman: As you know, what we are doing is we are examining the whole BBC Charter review process. We want to provide a report in time for the Government to take that into account for their White Paper and, therefore, we are aiming to have something ready by the end of October, so we have not got too much time. We have been interrupted for one reason or another in between. We are enormously grateful to you for coming and we are very grateful for your written evidence as well. I wonder if you could begin by introducing yourselves.

Mr Zein: Absolutely. My name is Andrew Zein. I am the Chairman of PACT and also the Managing Director of Tiger Aspect Productions, which is one of the UK's biggest independent production companies.

Mr McVay: I am John McVay, the Chief Executive of PACT.

Mr Frank: I am David Frank. I am the Vice-Chairman of PACT and Chief Executive of RDF Media, an independent production company.

Q954 Chairman: Is that television?

Mr Frank: Yes.

Ms Matheson: I am Margaret Matheson, Vice-Chair of PACT, with responsibility for feature films, and I am also the Managing Director of one of the smallest production companies in the UK called Bard Entertainments.

Q955 Chairman: Does anyone have radio within their confines at all?

Mr McVay: We do have a number of PACT members who also do radio as well.

Q956 Chairman: But no one here?

Mr Zein: Tiger Aspect is a producer of radio as well. We do comedy and drama for Radio 4 primarily.

Q957 Chairman: PACT was founded in 1991. The development of the independent sector in this respect has been of very recent origin. How well established is it now?

Mr McVay: I think the sector has established itself as one of the key providers of fantastic programming for the British public. That has often happened

during very difficult circumstances which the Government addressed during the progress of the Communications Act and we were very grateful for that as it has been a major benefit to the economic stability in the long-term for the independent sector, we hope! The sector itself remains volatile. There are not many significant barriers to entry. If you have got a great idea and you can pitch it and get a commission, you can set yourself up as an independent company and make programmes. It is a sector that has always been volatile, dynamic and very competitive creatively. We would argue that one of its key strengths is that it brings price and creative competition to the programme supply market which overall ensures that you get better ideas on screen, although maybe not to everyone's tastes. That is something that we feel the sector has done over the last 20 years. We hope that over the next 20 years we will be able to see a far stronger economics sector and also a sector that will continue to provide more programming, particularly to the public service broadcasters.

Mr Zein: The other thing is how important it is in the schedules of all the broadcasters today. Channel 4 is obviously primarily built on programming from the independent sector. For the BBC and ITV, a significant amount of their prime time and daytime programming comes from the sector.

Q958 Chairman: Is there any rough estimate you can give us on how many are employed amongst your members?

Mr McVay: It is hard to estimate because the core companies are normally quite small and they flex and expand for each production. The best way to get a sense of that would be by the Skillset Census each year which takes a snapshot of how many people are employed on that day across all the productions. It is about the only methodological approach to getting some objective figures. We have 800 member companies covering phone, TV, animation and interactivity across all parts of the UK. At any one time how many are employed and what grades and so on is quite a complex thing to undertake.

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Q959 Chairman: Obviously the BBC are very important people as far as you are concerned. Last year they conducted their own content supply review. They are proposing now to open up a further 25 per cent of commissioning under this wonderful thing called WOCC, which is a 'Window of Creative Competition', which I learnt all about at the Westminster Media Forum two or three weeks ago. Do these proposals go far enough to open up production opportunities for the independent sector?
Mr Zein: We would hope so. I think one of the concerns of the sector is that we previously operated under the conceit that all of the BBC's scheduling was opened up to the best idea no matter what source, what production company or where it was based. It was slightly odd to then discover that it had been a managed economy, which is something that PACT had previously campaigned for and I think that had been recognised in the last Communications Act. We have worked closely with the BBC since they announced the principles to see if we can take comfort from the fact that it will open up the schedules to more creative competition and ideas being commissioned regardless of where they come from. As is often the case with big ideas from the BBC, it is the detail that is the issue and that is what we have been seeking to achieve over the subsequent months since the announcement and understanding what that detail would be.

Q960 Chairman: On the face of it, although it could be very attractive or it could be quite restrictive, because the decisions on this further 25 per cent are presumably being made by the BBC themselves, there is creative competition if you like. The adjudicator is going to be the BBC. The BBC is going to make the decision between an outside company and the inside production, is it not?

Mr Zein: Yes. We have pulled together a number of themes in our response. I think everybody is agreed on the principle that no matter where an idea comes from it should be duly considered and if it is the best idea it should thus be commissioned. There is another element which is to do with the commissioning of the programmes. At the moment they all sit rather comfortably together, the BBC commissioning and production. We should then talk about how that is managed because they also judge their own effectiveness as regards is the existing system working or not. There are a number of themes we feel are important to make it work. We have set out in all of this to go with the BBC on this journey to reach a set of proposals that we are happy with. The level of 25 per cent being opened up is one that we welcome. It actually mirrors our original proposal three years ago which suggested a similar system without such a snappy acronym, but, nevertheless, clearly saying

what part of the schedule is opened up to external suppliers. Where the BBC differed in their response was in allowing the BBC to compete for that other 25 per cent. We had originally set out to say 50 per cent of the schedule should be opened up to suppliers regardless of whether they were independent producers, parts of ITV, the Granadas or external US/European producers. In terms of how the decisions are made about which ideas are commissioned, we have been pushing the BBC to separate the commissioning of programmes from the productions of programmes. What became clear when they announced the fact that there was now a WOCC and there was competition is that the competition decisions at the BBC were made on a managed economy, which was a huge army of members with creative talent, and those decisions were influenced by how to employ that standing army, that in-house production arm. At the heart of what we are looking for is a true meritocracy in commissioning.

Q961 Chairman: That was really what I was trying to get at. I could not help noticing on a regional trip to Bristol one of the notices on a board which said "No more privatization", which I think refers slightly to the points that you are making.

Mr Zein: I have not heard it. Interestingly, very few have argued against what PACT is suggesting because it is rooted in what is best for the viewer and I have never heard it referred to as privatization before, but that might be a particular West Country approach to it.

Q962 Chairman: Perhaps I misread it.

Mr Frank: The other issue that goes to the heart of the developments that have taken place recently and the WOCC proposals is that it is premised on the basis that the BBC needs 50 per cent guaranteed to its own in-house production base in order to meet certain criteria that I do not believe have been open to public scrutiny. If you were starting with a blank sheet of paper to create the BBC for today's modern economy you are more likely to come up with a publisher broadcaster model *à la* Channel 4 than you are with the BBC that we have today where essentially 70/75 per cent of its programmes are made by one production company, ie BBC production. I think in terms of delivering value to the licence fee payer that cannot possibly be right. Every effort must be made essentially to open up that whole commissioning of ideas to the market as a whole. In an ideal world we will move to a system where there is no guarantee for in-house production and there is no guarantee for production for independents because we will not need them. The commissioning group at the BBC should just be buying the best ideas

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that are available in the market that they feel meet the remit of the BBC. A point that also needs to be looked at is on what basis is the BBC making a case that it should have 50 per cent guaranteed to its own production company.

Q963 Baroness Bonham-Carter of Yarnbury: How do you stop the BBC developing almost monopolistic relationships with the big independents through the WOCC proposal and undermining and squeezing out the small independents but also affecting the relationship between the big independents and Channels 4 and 5 and so on?

Mr Frank: On the point of scale, we are in the top five in any league table about independent production. We have less than three per cent of the £900 million that the terrestrial broadcasters spend externally on originated production. Although we are perceived as being there in economic terms, there is not a big production company there, that is part of the problem.

Q964 Baroness Bonham-Carter of Yarnbury: You know what I am saying.

Mr McVay: PACT is wedded to a principle of creative competition. Ultimately buyers decide on the best idea. We think that by opening up to more creative competition and restructuring the commissioning behaviour of the BBC they should be able to encourage, stimulate and develop smaller companies because those companies will often be regional companies, and certainly some of the spends on regional plans are quoted for us. Ultimately we do think it is the best ideas that should be adopted. It should not matter if the best idea comes from Touch Productions in the south-west or it comes from Andrew or David. In a sense you have got to commit to commissioning the best ideas. PACT try and encourage competition and we make sure that our members understand the market, they are better informed about the market and have the resources, both nationally and regionally, to pitch and win commissions. We try and make our members better at what they do regardless of how big or small they are.

Mr Zein: There are a number of natural safety checks in there. First and foremost, commissioners and channel controllers are judged on the content of their schedules. They will want to hand out the best ideas. They are not in the business of an easy life. Secondly, both within our proposals and preceding them we have always argued strongly that the BBC should share all of its research about audiences with the widest possible production sector. In my view if the BBC understands audiences then it can only be in the whole of the broadcasting sector's interests for those to be shared and for the viewers. Thirdly, we have

pushed strongly for proper regional commissioning powers in order to open up the access to the broadcasters.

Q965 Chairman: Margaret, what do you feel about this idea of a danger of the smaller producers being slightly left out?

Ms Matheson: Let me respond to the original question. As David has said, it is quite clearly never going to be a monopoly situation, which is what we had before independent production was established at the start of Channel 4 some time before this organisation (PACT) evolved into its present form. There is no question that as a result of the Communications Act and all of the changes that are taking place and the digital future that we are moving into there is consolidation in the independent sector and I am sure you could find a small company or two who would feel that this was a betrayal of what they stand for, but that argument simply does not stand up. One-man companies, of which there were many at the beginning of independent supply, is not the best way of running a company, that is freelance producing. The larger companies depend on the quality of the ideas that are brought to them and the quality of the people making the programmes. Absolutely continuous flow of new, material has got to come from somewhere. In many cases, apart from actually acquiring smaller companies, you certainly acquire individuals and create a much greater opportunity for them within a larger company where they can specialise in what they do best rather than having to be a jack of all trades.

Mr Frank: I would reiterate that point. I started out as a one-man band and I have gone through the process and today we employ 300/400 people here in the UK.

Q966 Chairman: Is that permanently you employ them?

Mr Frank: No, that is an average of our payroll. Of our permanent staff, it is probably about 150. Those are people whose contracts are not related to a specific project or time period. There is absolutely no shadow of doubt in my mind that as an organisation we are far more creative today than we ever were as an organisation when it was two or three people because when you are two or three people you are worrying about the rent and the paperclips and whether you are going to be able to pay people's salaries next week. In a larger organisation you can create an environment in which the talented people who would otherwise be one-man bands worrying about this can come in and be creative and do what they are good at. There has been a misconception that people who are good at making television programmes are also good at running businesses,

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which goes to the heart of why the sector as a whole has struggled. It has difficulty attracting into the sector the skills that are necessary to run and create businesses. That is the huge benefit that has accrued to this sector from the Communications Act. It has suddenly turned it into a viable business and as a result it is creating external capital. As a company we were floated on the Stock Market in the last month. That is not money coming from broadcasters or grants, that is new money in the sector. I know that right across the board there are individuals coming into this area now who are contributing a new skill set that I think makes it much more sustainable and it is not a problem. It may become a problem in 10 years' time in that there is two or three companies that have got sizeable market shares, but right now there are lots of other problems to solve. A problem we are not facing at the moment is a monopoly situation amongst one or more of the larger indies.

Q967 Baroness Bonham-Carter of Yarnbury: Do you think, as stated in the Green Paper, the regulation of the WOCC is going to be satisfactory? As we know, the BBC rarely hit the 25 per cent that it was meant to hit in the past.

Mr McVay: In exploring the WOCC with the BBC we came up with a range of issues that we needed to get some comfort on. One was that all the programmes commissioned in the competitive 25 per cent had the same range and diversity as all other commissions, ie they cannot put low cost crumbs from the table into the bid to compete for, it must be the same quality and range of programming as any other commission, which is quite a critical point and one where we wanted the BBC to make sure it will be reported on and we would like Ofcom to report on that. As for the actual operation of the WOCC itself, both in terms of the competitive nature of the WOCC and the commissioning structure, we would like to see the BBC Trust acquire a statutory duty every two years to publish a full independent report on that. If the BBC is operating a competitive meritocratic commissioning system and that is something we would promote to this Committee, we think that is a critical way forward. We want to take the BBC on face value, but we do know from experience that the DG of this time may not be the DG of five years' time and we need to future proof this arrangement.

Q968 Lord Kalms: What the Government is trying to do is to break up a virtual monopoly and you have recognised immediately some of the issues. You have just said, David, that you are concerned there will be another monopoly created by forcing the BBC to commission a lot of outside work where you would find that you had very powerful indies. Your idea of every year there being compatibility is a good start,

that sounds to me a sensible way of going. Nevertheless, you would try and make the BBC accountable. You are talking about a monopoly arising out of forcing the BBC to distort its powers within.

Mr Frank: I am not saying I think that will happen. I do not think that will happen.

Q969 Lord Kalms: What will happen?

Mr Frank: I think the market will mature enough to develop into a situation where maybe there will not be 800 companies—that is too many anyway—but a more manageable 100 companies. If there were 100 companies competing for every bit of business that the BBC was putting out then that is totally adequate to meet the needs of those commissioners. It will only become an issue when the commissioners themselves are saying they are not able to buy good ideas anymore because there are only two or three suppliers. Right now the situation is that the largest indie, a company like us, has a two per cent share of the BBC's business. You have one production company there at the moment and it has a 70 per cent share, the BBC. Yes, speculate and ride out far into the future and there may be an issue down the road, but the biggest issue now is that the BBC is buying three-quarters of its product from one supplier and that cannot be healthy.

Mr Zein: The barriers to entry to TV production are less than any other sector. One of the things we are already seeing is the ability of the independent sector to take talent out of the BBC and to free it up to operate across all the broadcasters, which can only be in the interests of the viewer, but when companies reach a certain size where they are no longer the right home for a particularly creative person, they fall off the top and go off and set up their own businesses. If you look at the top indie list from five, 10 or 15 years ago, you will find maybe a third of the companies from each five year period are still there. The thought that I wake up every night with is the names of those companies five years ago who are not there anymore. It is a people business. Broadcasters buy ideas off RDF, they also buy them off Stephen Lambert for RDF and they buy them off certain people at Tiger Aspect.

Q970 Lord Kalms: Can you ever see a case where the BBC did no production and became merely a broadcaster? Is there a case as to why you need a big monopoly not to have any production at all? Is there a case that could be made for that?

Mr McVay: I think David touched on it earlier on. If you were starting now then clearly you could restructure the BBC as a publisher broadcaster. Having an in-house production capacity for us to compete against is something that we welcome, we

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think it is good for in-house and independence. The BBC has said they want to get a 50 per cent guarantee and they have made various reasons and justifications for that. It is a question of what you really need to deliver the best programmes to the BBC. If you went to an absolute publisher broadcaster, clearly there are public interest issues that people have debated about news and current affairs. We feel that if you get the right commission brief anyone can make those programmes. Many of the best current affairs programmes have been made by independent producers. There is a debate around whether you should have those public address types and PSB programming located within a production base and within a broadcaster.

Q971 Lord Kalms: Do you feel inhibited at any time in answering the queries? The hand that feeds you is a substantial one and it is not customary to bite it.

Mr McVay: During the course of the Communications Act we bit that hand quite a lot because we felt, under the chairmanship of Lord Putnam in the Joint Scrutiny Committee, it was recognised that there was a public interest issue about maintaining a diverse programme supply market in the UK to ensure longer term that you do have a strong, creative programme supply market in the UK. We will bite whatever hands to fight for that because we think it is in our interest commercially, but it is also in the public interest.

Q972 Baroness Howe of Idlicote: Listening to what you are all saying, it is quite clear that you see a huge value attached to the creators of a programme and the ideas that come through. Thinking back to your success in achieving the implementation of a new Code of Practice between independent producers and the BBC. I am just wondering to what extent you apply the same principles to your own relationship with the creators and whether in fact you have the same ethical standards in relation to their rights by your members?

Mr Zein: I think we do. We understand this is the employment issue. We are in competition for the best talent in the UK. David talked about what we look for. Space and time are normally what give people a chance to do their best work. There is a self-interest reason for ensuring that creative individuals are properly looked after.

Q973 Baroness Howe of Idlicote: What about a proper percentage of the profits that are made?

Mr Zein: Certainly in Tiger Aspect—this is getting into a commercial area which is something PACT can advise people on—people who are writers and producers are all plugged into the success of the programmes and that is very much what the market

has to provide in order to house the best talent within companies. It is something that the broadcasters do as well. Producers within the BBC share in the revenues of their overseas successes.

Q974 Chairman: Can you give us at some stage, perhaps not now, a list of some description of the kind of programmes that you have been making because I think we are tending to talk a little in a bubble here?

Mr McVay: You will find most of them on the Bafta awards list!

Q975 Chairman: That is a very good reply. Let us see the meat on that.

Mr Zein: Every type of programming is made by the independent sector for one of the main terrestrial broadcasters. Every type of programming is made for the BBC by the independent sector, from religious programming to sports, to high end drama, to the *Pulp Fiction* nature referred to earlier.

Q976 Lord Peston: Does the market work by you inventing a product and going to the BBC or does it work by the BBC saying they want a programme of a certain sort and then they can go to one of your members, or is it about equal each way?

Mr Zein: Primarily it is individuals having ideas and trying to persuade a broadcaster that that idea can be turned into comparative programming.

Q977 Lord Peston: So you are the initiators?

Ms Matheson: But they provide the context. They will say, “This is what our schedule is going to look like.”

Q978 Lord Peston: For example, if one of your creators dreamt up a programme about poetry, which we get very little of, none at all on the television, that would be a useless idea to come up with because no one is remotely thinking of making a programme, would it not?

Mr Zein: Except that broadcasters very often do not know what they want. We did a programme called *The Monastery* which ran on BBC2 about six weeks ago. When we went to the BBC and said we wanted to do a programme on people living in a monastery in the context of spirituality they said that was rubbish. So we went off and showed a tape and it ended up being rather successful. It works that way. It is also partly about the broadcaster saying, “I need something for Saturday evening that will attract a family audience”.

Q979 Lord Peston: In other words they want some rubbish!

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Mr Zein: I would not necessarily take that view.

Q980 Chairman: Radio seems to miss out on all of this.

Mr McVay: In our submission we have asked that the BBC is required to put a 25 per cent quota on BBC radio partly because when you look to the future of digital radio and also the fact that audio content is now being used on what they call pod casting, where you can download a radio programme onto your iPod and listen to the tune, actually the whole concept about linear radio broadcasting becomes increasingly redundant. We think that as the BBC and other providers of radio need to engage mobile time shifted audiences this should be opened up to more creative thinking and more innovation as well. The BBC currently has a voluntary ten per cent quota on radio. We think that should be increased to give the benefits to radio that we feel that creative price competition brings to both BBC Television and BBC Online.

Q981 Chairman: Is radio a commercial proposition in the same way as television?

Mr Zein: It is a lot tougher. It is a creative opportunity. I think what is really telling is that there has been a statutory quota on television for 15-odd years. Radio and the BBC has not got there of its own volition. Of the top 30, there are probably about half a dozen that do it and there are a lot of radio companies who struggle to have access, which I think is ludicrous.

Q982 Chairman: So this is something we could look at?

Mr Zein: Yes.

Mr McVay: We would also ask you to look at the issue about the BBC's relationship with the British film industry as well.

Q983 Chairman: I was going to come on to that exactly at this moment.

Mr Zein: That is producers for you!

Q984 Lord Peston: The expression you use in considering this, which I do not understand at all, is it "should more explicitly recognise its obligation". Surely it should simply recognise its obligation.

Ms Matheson: It does not deliver what we feel its obligation is, but more importantly, a lot of its policy documents are silent on the subject.

Mr McVay: In the Green Paper response they say very little about their future relationship with film, although we understand there is a strategy to be launched next year.

Q985 Lord Peston: This would be something you would assume they would want to do. Why do they not do it?

Ms Matheson: Our position is that they should balance their film acquisitions between Hollywood and British films. What we would like to see them do is spend 50 per cent on either commissioned films through BBC films or bought films through the acquisitions department and at least half of them should be British. You are quite right, there is research that says that the audience wants to see more British films and we know it is not seeing very many. It is difficult to get accurate figures on the number of Hollywood films and the amount of money spent on them versus the amount spent on British films, but it is a huge imbalance. You only have to look back at the Christmas schedule to see what I mean. There were over 200 films on terrestrial television, of which, on the BBC, three were British films that had been made post-1997. The imbalance is monstrous.

Q986 Lord Peston: I understand the point you are making. What I would like is an explanation of why. If there is the talent there, which I am certain there is, the talent did not suddenly disappear. You assume it is what the BBC would want to do. I cannot believe there is an evil person sitting there and every time "British" comes up he puts a cross through it.

Ms Matheson: It is partly a deal structure issue. The Hollywood majors have the clout to sell their films in packages.

Q987 Lord Peston: So it is a bundling strategy.

Ms Matheson: Alongside *Mission Impossible* you get a lot of TV movies which then, having been bought, have to be broadcast and we would argue they are displacing British films.

Mr McVay: Under the previous Director-General they had a more orientated policy towards competing against commercial broadcasters. Clearly if you are going to do that you are going to buy and bid in the market for the commercial films which are generally the big films that come from the American studios. That means more of the budget is spent putting up bundled films in order to get the Saturday night 9 o'clock Harry Potter movie.

Q988 Lord Peston: How do you view the BBC's intervention? Would you view it as being part of the film making process or putting some basic money upfront and then getting it done, or what?

Ms Matheson: In order to provide better value we want to see 50 per cent-worth of British films. They will have to buy them. By buying them they will support the industry.

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Q989 Lord Peston: But if no one is making them how are they buying them?

Ms Matheson: It is a chicken and egg situation.

Q990 Lord Peston: I am trying to see how your mind works as to how we solve this problem.

Ms Matheson: Until they show a commitment to buying, the industry cannot expand. We have just come from a presentation by the *Ile de France* Film Commission at which, amongst other things, an interesting statistic was given, which is that on average 35 per cent of the budget of a French film comes from French broadcasters. I do not know what that statistic in this country would be if you averaged across all British films, but I would be very surprised if it was more than five per cent; it is probably less.

Q991 Baroness Howe of Idlicote: I would like to go back a little bit to this business of training because the BBC has always made a pretty good justification for why they have not gone beyond, let alone always achieved, the 25 per cent. I want to look at the importance of training that they undertake for the benefit of the whole industry. Do you think that is the situation now and is it likely to be in the future? How do you perceive the justification for that argument?

Mr McVay: Training is an issue for the whole industry. I think it is important that we now have Skillset as a sector of the Skills Council approved by the SSTA with additional investment and a new co-regulatory body set up under Ofcom to look at investing properly in training across the whole industry. The BBC obviously plays an important part. I do not think it plays an exclusive role in the training. Indeed our own research last year showed that for on-the-job training, which is what the BBC claim is important to sustain production, independents spend in the region of £131 million a year developing staff in production. They also spend a further £4 to £5 million a year on external courses. We also have our own training charity called IPTF where we contribute to the freelance training fund administered by Skillset. I think training is a really important issue for the whole industry. The BBC, because it enjoys the licence fee, has an important role to play, but it is not the only one. Historically it was the only training provider. I think going forward it cannot be the only training provider. You could say that if the BBC was allowed to maintain an exclusive role and was seen to be the main training provider it would allow a lot of other broadcasters not to contribute to the needs of our industry going forward, especially when we move to a digital environment where you have lots of companies who may benefit from the training we have invested in individuals but who may not contribute to training

going forward themselves. We recognise the importance of training. We do not think it solely justifies why the BBC retain a 50 per cent in-house production guarantee. We think it is a contributory factor but we do not think it goes as far as that.

Mr Frank: Not least because that training resource can be made available to the market. You do not need to have a huge production unit in order to provide training to the market. There is no reason at all why the BBC is not just generally making available its training resource to all comers. In a way that is what independents are advised to do. When we invest in people, unless we are making very long-term commitments to them, we are investing in talent that may well end up working for one of our competitors in six months' time, but we still do it because there is self-interest at heart. We think that it is a good thing to be training up that talent because they are likely to go round the system and come back to us at the end of it. Stephen Lambert, who is our Director of Programmes at RDF, was at the BBC for 15 years. He would probably be one of the channel controllers today. He is undoubtedly one of the main competitive forces in British television today. He has never been on a BBC course. What defines people coming out of the BBC is not the fact they have been on lots of courses, it is that they are good producers. People become good producers by learning their art from working on shows with other good producers. The best form of training in our sector is working with other people who are prepared to share their knowledge. It is not provided by people going into lecture rooms and hearing about how to structure the financing of a show or anything like that. I am not saying that is valueless, but I think it is completely blown out of proportion versus the rationale that underpins the BBC's 50 per cent guaranteed for its in-house production. Today one of the main platforms for that is training and I think it is a myth.

Q992 Baroness Bonham-Carter of Yarnbury: There is greater security.

Mr Zein: Not if you are working at the BBC at the moment. Certainly we are all competing for talent and the terms on which RDF employs people and Tiger Aspect are as good as, if not better than, the BBC because we are all trying to spot new talent.

Q993 Baroness Howe of Idlicote: It almost sounds as if you think ideas for opening up their training could be part of the WOCC.

Mr Zein: One of the points John did not stress was the training of freelancers. You talked earlier about looking after talent. PACT and Skillset are the biggest contributors to the training of freelancers in the UK. That does not include the broadcasters. Perhaps there should be an obligation on the

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broadcasters to supplement the funding available to Skillset. There is a strong freelance community out there which is in everybody's interest because you are taking skills from one show or one broadcaster to another area.

Q994 Lord Armstrong of Ilminster: In your evidence to the Culture, Media and Sport Committee last year you stated that you are not in favour of top-slicing the licence fee and I wondered why that was.

Mr McVay: We think that a strong licence fee funded BBC is in the best interests of our producers because you have got a strong buyer with the funds to innovate and invest in development and to make sure that we deliver great programmes. We are not in favour for that reason. The other reason why we are not in favour in terms of insecurity of when top-slicing may occur is that we feel that could lead to a short-termism in BBC management whereby instead of making the right investments to get the best programmes to people for digital switchover, they might be a lot more nervous about the planning because they do not know what the future is. I think those two things come together. We are not wholly convinced that the case has been made for top-slicing and effectively offsetting the licence fee to subsidize (a) commercial companies basically to pay for things they should have done under their previous public licences, or (b) that the case for a PSB has been fully met. That should also be considered in connection with Channel 4's position going forward, maybe not at this time but certainly at the next PSB review. At this point in time our position is as a licence fee funded BBC with the resources to commission the best programmes and to prepare itself for the digital future.

Q995 Baroness Gibson of Market Rasen: We have heard different views about Ofcom's proposals for the Public Service Publisher. Do you want to expand on your views?

Mr McVay: We understand why Ofcom conceived of the PSP as a way of addressing the need to have long-term plurality of public service broadcasting, as they are required to do in the Communications Act, and we would agree it needs to have something to compete with the BBC, but we have yet to be convinced that the PSP model is the best way to do it. It is an interesting model and certainly the model whereby it is not just delivered by terrestrial or digital signal, it may be broadband. Those are all very interesting propositions, but we do not think at this point in time the case for the PSP has been fully fleshed out and made. Certainly from the presentation we attended looking at the different propositions, some of them would appear to be taking a lot of money from the licence fee payer who

is wanting television programmes but actually subsidizing telcos to deliver broadband services. That did not seem to have been totally thought through. Although Channel 4 is strong commercially at this point in time, that may not be the case going forward, but again the jury is out on what that looks like as well.

Q996 Baroness Gibson of Market Rasen: So you would not totally dismiss it, you are waiting to see?

Mr McVay: It is too early to jump in to trying to launch a PSP. There are a lot of other issues there. There is also the licence fee which is there as a universal tax and that is what people will see as the BBC. If you then start to displace that into other parts of the broadcasting ecology, how well will the public understand that? That is a big issue.

Q997 Bishop of Manchester: When you were giving evidence to the Committee to which Lord Armstrong referred earlier you were not wholly enthusiastic about the plans that the BBC was producing for the re-location of its departments in terms of the effect that it would have on the independent industry. We are a bit further along the line now and the BBC has pushed its proposals for the expansion of production both nationally and within its existing research departments. Are you any happier at the moment? Do you see opportunities for independent production within the regional centres and so on?

Mr McVay: Very much so. We think that Scotland, Wales and Northern Ireland have done quite well in the last few years with additional investment from the BBC. However, it is fair to say that the English regions have seen a drop in investment, particularly in non-use programming by the BBC. We feel that any move out of London should be focused on production and commissioning programmes to help develop the capacity of those companies to deliver both for regional broadcasting and also for the network and that is a different level of the game, to move from being a small regional company producing regional to then trying to pitch a network drama series for the whole of the UK. We think that is critically important to make sure that the BBC reflects back to us the cultures across the whole of the UK and not just a meritocratic one. However, the BBC's plans to spend a lot on infrastructure in Manchester may give the BBC a strong presence physically there, but we think spending more time thinking about its commissioning strategy for particularly English regional independence is something that we are not entirely satisfied with now.

Q998 Bishop of Manchester: Can you comment on how you feel about the idea of hubs and co-ordination of the BBC, ITV, and the independent

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commercial broadcasters? Do you see that as a workable plan?

Mr McVay: Parliament put a duty on the broadcasters in the Communications Act to make sure there are production centres across the UK, but that can be a combination of broadcasters, independent producers and others. We think it is an important public interest to sustain a number of companies and indeed companies who relocate from London to Glasgow or to Manchester, which has happened and has been very successful. When I was working in Glasgow the investment and skills and talent that a lot of London companies brought to the Glasgow economy were very welcome and created a stronger production base, but that is based on getting a commission. If it is only about them going to open a studio, that is great for the BBC, but for the person sitting in Manchester, Bristol or Belfast actually getting a commission is the most important thing and that is where you build clusters that will then attract talent. It is unlikely that a friend of mine who works on *Big Brother* will go back to Glasgow unless there is the same quality of work and opportunities in Glasgow, but that is exactly what the producers in Glasgow may want, to have someone with that experience. I think at this point in time we are not entirely convinced that there is a clear commissioning strategy. There will be opportunities, but I think they have focused a lot on the infrastructure and not enough on the creative opportunity for producers.

Q999 *Bishop of Manchester:* What opportunity does PACT have for discussions with the BBC, be they formal or informal, over these kinds of plans?

Mr Zein: We have a regular dialogue at the very highest level with the BBC and we also have a dialogue with our membership base. As an organisation we have got where we are today by being able to represent 800 members and being able to communicate with them. Some 40 per cent of our members are based in the regions. We understand what is important to them, we understand the geographical spread of them and we are able to look at their development. The dialogue with the BBC is always about trying to find out more detail and understanding how it is going to work. For example, with Manchester one of the things we did is we made a comedy hub. There has been a long tradition of strong comedy talent coming out of Manchester. They have talked about a commissioning editor and that was a great public statement. Actually knowing that that person has got the ability to commission programmes is the difference between that strategy working and not working. Getting that answer out of them is always crucial to these things.

Q1000 *Lord Peston:* It has only dawned on me in recent weeks that regional means two different things. One is that it means making the programme in the region and the other is that it is a regional continuity programme. We are talking about both things, I take it, are we?

Mr McVay: Yes.

Q1001 *Lord Peston:* In terms of your members, would you agree that, if we were talking about national programmes made in the regions, this is something that would be in their interest? It has always upset me that we never see anything like a good sample of the major theatre works in our country on television these days, everybody recognizes that. If we were to go and say we had to have that, there is absolutely no reason why these would have to be made in London. Bristol would be as good a place to commission some Shakespeare play as anywhere else you can think of. Would that be your view, that you would be pushing for national programmes made in the regions as well as regional programmes?

Mr McVay: Yes. The way you build up the creative capacity in the different hubs is by doing regional for regional and regional for national and that has been the big experience for sectors like Glasgow, where a combination of strong indigenous companies and some inward investment from a London company who re-located there has created a strong hub which will produce regional programming for BBC Scotland, but it also has companies who aspire and produce for the network. It is that mix that attracts talent and sustains talent. Ultimately you will want to make something and you have got to create that creative ambition for people as well.

Q1002 *Chairman:* If you were to sum up the major problem that you have in your relationship with the BBC, roughly what would that be? It just occurs to me that quite obviously people in the BBC must be protective of their in-house production. You have got a lot of people, some very bored, working for the Corporation with all the advantages that has in terms of regularity of employment and so on and actually offering them the brave new world of independent production is not necessarily the most attractive future that they may have.

Mr Zein: There are two issues. The headline issue is that the BBC is there to provide the services to the public. Spending that £2.8 billion of licence fees in a way that gives full British society and a full range of the population content that relates to them and appeals to them as well as things that they do not know they want and that over-arching principle that commissioning the best content and where it comes from to a certain extent means that decisions should

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be made, not on how many thousand people you have sitting in a production arm that you need to maintain, but based on what the ideas are. That is where there is some friction. I think it always goes back to what is in the interests of the licence fee payer. That is why there is a simple but rather competitive drive to make the commissioning system transparent and meritocratic and it is one thing that the independent sector has said from day one.

Q1003 Chairman: And that would really your banner?

Mr Zein: Yes, the best ideas being commissioned regardless of source.

Mr McVay: My 800 members get up every day knowing that they are not only competing against the BBC and Granada but against everyone else as well. It is a fundamental principle for driving forward what we think has been one of the most successful parts of our creative industries. The TV sector overall is increasing its exports. Independent producers are both selling programmes and formats and producing abroad. Those sales are going up. We are second to the US overall. We think that we should be a better second. The independent sector along with BBC

programmes internationally should do more to bring more money back into our economy in the UK.

Mr Frank: I would agree with that. The licence fee is mandatory. There are people today who are sitting in jail for not having paid their licence fee. That imposes on the people responsible for that money an overriding obligation to spend it on the best content. There never has been an obligation to maintain 100,000 or 200,000 people working for the BBC. They have got to maintain a system that delivers the best content to the licence fee payer and I think the current system does not do that, and until it is totally transparent and meritocratic it will not do it.

Q1004 Chairman: Do you want to add anything to that?

Ms Matheson: No. If you take what has been said to apply to film as well then we have covered it.

Q1005 Chairman: I am enormously grateful. It has been a very fascinating and interesting session, in fact a very good morning altogether. I think we have learned a lot and been impressed by a lot that we have been told. Perhaps we might come back to you if we have any further questions.

Mr Zein: Yes, certainly.

Chairman: Thank you very much.

TUESDAY 21 JUNE 2005

Present	Armstrong of Ilminster, L Bonham-Carter of Yarnbury, B Gibson of Market Rasen, B Holme of Cheltenham, L Howe of Idlicote, B (Chairman) Kalms, L	King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Examination of Witness

Witness: SIR CHRISTOPHER BLAND, Former Chairman, BBC (1996–2001), examined.

Q1006 Chairman: Good afternoon and thank you very much indeed, Sir Christopher, for coming. I am sure you have heard that Lord Fowler sadly could not be with us today so I am in the Chair in his place, inadequately but here. We are really very much looking forward to what you are going to say in response to our questions because frankly (and I do not mean just to flatter you by this) I cannot think of anybody who is better qualified to assist us in our deliberations, having been a regulator, a member of broadcasting commercial enterprises and, finally, Chairman of the BBC. There is pretty well no area we shall be covering which you will not have expertise in. We are very grateful indeed for your presence. Various colleagues have got questions they want to ask but could I start off with a rather specific question. One or two of the organisations giving us evidence have mentioned (of course around the Hutton scenario) that there was a lot of conflict between Government and broadcasters, as it were; that there were instances when politicians were leaning on broadcasters and, of course, they were not in public. We wondered in your time as Chairman whether that sort of activity went on?

Sir Christopher Bland: Chairman, yes, if you look at the history of the BBC there has been no time in which politicians have not attempted to bend the BBC to their will. The draft questions asked whether this was an attempt to exert *undue* influence: I am not sure it is undue; I think it is perfectly legitimate for politicians to try and make sure their views are heard and to try and correct any feeling of undue bias—by definition, all the parties feel they are unfairly treated by the BBC; the Tories always did; the most passionate denunciation I ever heard of the BBC was Harold Wilson's—and I think that has continued. The question is really how they do it. Since the days of Bernard Ingham it has been done by proxy, and now it is refined to an elevated level of bullying by Alastair Campbell. It does not, on the whole, concentrate on the Chairman or the Board of Governors, nor even the Director General; it focuses really on the people who have the most ability to do something, if they wish, about the complaint in question. It is, as it were, Alastair Campbell ringing

up and grumbling bitterly and using colourful language to the Editor of the *Today* programme and that is where it happens. I think the BBC editors are strong enough and determined enough to put up with that. That is really where the influence is exerted: it is not on the Chairman; it is not on the Governors; it is not really on the Director General either; it is at the operating level; and it is not done by the Prime Minister or the Secretary of State, it is done by somebody else.

Q1007 Chairman: Obviously it is the independence of the BBC that is so important. Taking it in a more general sense, do you think that the proposals contained in the Green Paper will be a better way of protecting the independence of the BBC?

Sir Christopher Bland: I think that is yet to be proven. I take some encouragement from the title of the Green Paper which is about an independent BBC; it emphasises that importance and, historically, that has been of great value to the country and, indeed, to the political parties too because they are not always in power, and when they are in opposition they need an independent BBC prepared to listen to their view. I think the best guarantee is a proper independent source of funding, restraint by the House of Commons and, to a lesser but considerable extent, the House of Lords in keeping their hands off the BBC; and the willingness to accept that independence may lead to views they will not always agree with; and, finally, to the form of governance. It is not absolutely clear to me yet how that is going to work and subsequent questions can focus on that.

Q1008 Chairman: I think some questions will. Just thinking about the evidence you gave to the other place's select committee a little while ago, you seemed certainly there to think that having two Chairmen, Chairman of the Governors and Chairman of the management side, would probably not work. Could you expand on that?

Sir Christopher Bland: I do not think the proposals, as laid out in the Green Paper, do work or will work. They are an uneasy compromise between having a

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Sir Christopher Bland

separate regulatory body and a German-style two-tier form of governance. You have to make up your mind which it is you want and then select that. It is an odd mishmash. The operating board, the Board of the BBC, is going to be chaired by its Chief Executive, which is, frankly, entirely inappropriate and not in line with any modern form of governance in any corporation that I am aware of; and it is to have a minority of non-executive directors on the Board, which again I think will not work well. You can see how it has happened: it is a compromise; it is a fudge. If you want to do the thing properly you should have a majority of non-executive directors on that Board; you should have a Chairman who is not the Chief Executive; and a Chairman also who is not appointed by the supervisory body—I do not think those two marry well. You have to have very clear blue water between your Trust Board and the Board of the BBC that runs the business, and give the BBC Operating Board the responsibility of meeting the Charter objectives, and the Trust Board the responsibility for making sure that it does. That is the only two-tier structure that will work in my view and is absolutely clear and distinct. I will not go into the arguments about the unitary approach; I have rehearsed those before and I think a two-tier structure is an idea whose time has come. I happen to believe that the unitary structure is best; that separating the responsibility for doing and the responsibility for ensuring that the thing is done is artificial, but it can work.

Q1009 Lord Holme of Cheltenham: Could I bring together two of your answers about what you concluded from your time as Chairman that there was not undue pressure, and bring that together with what you have just very interestingly and helpfully been saying about governance. If the Trust were to occupy the space that you are recommending to us of being, if you like, the body that makes sure the BBC does stay within its mission, would that be the appropriate place for decisions on new services to be made, rather than the Secretary of State or Ofcom, which is proposing a role at least in terms of analysing the competitive impact of new services: because presumably that BBC Trust's mission at that point would be to ensure the BBC was in conformity with what the public expected of it and what its Charter said and what the Communications Act prescribed? I want to relate that to the issue of undue pressure because when you look at the points of sensitivity between the BBC and the Government I suppose they are: one, the quantum and duration of the licence fee; two, the issue I referred to of new services, where as the moment the Secretary of State is in a position to affect the BBC's future? The worry must always be, with there being over-pressure, that the BBC itself (and particularly a Charter Review

period) is very anxious not to upset those who will make decisions that could affect its future; and, therefore, it is not so much undue pressure as perhaps the BBC itself being vulnerable to having to play ball with the government of the day because a lot is at stake. There is a whole issue of licensing which I do not want to go into, but there is also this issue of approval of new services. You can see where the two halves of my question come together.

Sir Christopher Bland: Yes, I think it is plain that new services need external approval, as does the review of the impact on the market of any BBC new services, including some existing ones that have grown up historically but have now got big enough to impinge on the market. You pay your money and you take your choice. It could be within the Trust; that is not an inappropriate place for it to be. It could also be Ofcom, who have that overarching responsibility for the commercial sector, and they could take a view. If you assume, and it is not unreasonable, they would not be captured by ITV and Channel 4 then Ofcom could do it. I do not think it makes a huge amount of difference, but the argument in favour of the Trust doing it is that it gives a separate function for them and balances what otherwise might be thought of as the considerable power of Ofcom.

Q1010 Lord Holme of Cheltenham: You would be, on the whole, in favour of it either being the Bland-type Trust or Ofcom, rather than the Secretary of State?

Sir Christopher Bland: Yes, I think so.

Q1011 Bishop of Manchester: Can I just come back to a point you were making earlier when you were describing what you saw as a more desirable way of creating a Board Chairman. I may have missed this but you talked about how a Chair ought not to be appointed and I wonder if you could just say how you feel such a Chairman ought to be appointed? Who would have that power?

Sir Christopher Bland: Historically Chairmen of the BBC have been appointed in one of two ways: what the Tory Party call the customary processes of consultation, ie behind closed doors; and that resulted in my appointed by John Major and my reappointment by Tony Blair without any publicity or stuff like that, and I regard that as a wonderful but no longer appropriate method of appointment. I think an open process is appropriate for appointing the Chairman of the BBC, and that is a system now that has been installed and serves for both the BBC Chairman and the Board of Governors, and that should continue, it seems to me, for the Chairman of the Trust and the members of the Trust, for the Chairman of the Board of the BBC and the non-executive directors; but it should be the Board of the BBC that appoint the Director General of the BBC

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and its senior executives. It does not make a lot of sense and is slightly blurred but the Green Paper appears to imply it is automatic that the Director General will be the Chairman of the BBC Board; it is not quite clear next time round who then appoints the Director General of the BBC. I do not think it should be the Trust; I think it should be the Board itself, with a major of non-execs, which is how most organisations would function. The idea of an external body appointing the Chief Executive of that which they are meant to regulate has an inherent contradiction in it. Do they fire him? That is not clear. If they appoint him the assumption is that they also dis-appoint him, and I do not think that works.

Q1012 *Lord King of Bridgwater:* Can I clear up one political point. Your successor came here and said that, on reflection, he thought the news team in the BBC and those working in current affairs had a soft Left bias about them. If the Chairman came and gave that evidence, whose job is it actually, if that is right, to get the balance right?

Sir Christopher Bland: Plainly the Chairman of the Board of Governors.

Q1013 *Lord King of Bridgwater:* That is how you would see it?

Sir Christopher Bland: That is their job. I do not agree with the soft Left bias view. No, I think that, by and large, the BBC news and current affairs is remarkably impartial. He plainly spoke for himself. You might describe him as having a soft Left bias too!

Q1014 *Lord King of Bridgwater:* That is what was interesting about it!

Sir Christopher Bland: Just as I have a soft Right one.

Q1015 *Lord King of Bridgwater:* Can I just cover the point about the governance. We were given this great model which seems, to many of us, like a great confusion arising out of a certain degree of “something must be done and something must be changed”. You have been Chairman of a leading number of companies and this argument, about how can you possibly balance the interests of the licence payer and the management—defend the management and, at the same time, properly looking into complaints against the BBC—is that not what every Board of Directors does? Does it not balance the interests of shareholders, customers and employees; and is not that balance exactly what a single Board of Directors should be charged with?

Sir Christopher Bland: Yes. It seems to me it is a false dichotomy to imply that there is a separate interest of the management and the licence fee payer. The Charter lays down very clearly what the BBC is for: it is for the licence fee payer; it says that it has to make programmes that educate, inform and entertain; it is

quite detailed and prescriptive. It is the Board of the BBC that is responsible for that and that alone. It has no other responsibilities. It does not have to make money; it has to live within its means; but it has no shareholders, other than licence fee payers. I think there is a perfectly strong argument for saying that you cannot separate or second-guess that responsibility. That is why I think, in spite of the zeitgeist of the times, a unitary Board of Governors actually makes the most logical sense.

Q1016 *Lord King of Bridgwater:* Somebody said there was too much work for a Board of Governors to do. Who changed the Board of Governors from meeting every fortnight to now only every month?

Sir Christopher Bland: In my day it was certainly every month.

Q1017 *Lord King of Bridgwater:* Previously it used to be once a fortnight.

Sir Christopher Bland: I do not know who, but certainly by the time I arrived in 1996 monthly meetings were clear; but there were many other sub-committees of the BBC, and that would be like most boards. The Board of BT meets once a month and has two-day strategy away days. I think you would find that kind of pattern common in most pls. Ten meetings a year would be typical, I would think, and a couple of two-day away days when you try and take a look at the bigger picture. Monthly is okay.

Q1018 *Chairman:* I want to go back for a moment to the choosing of the Chairman, if I may. There have been suggestions that this needs to be even more transparent than has happened even in the recent past, and that you might include representatives of all the political parties because it is still very much felt that this position is to some extent in the gift of the Prime Minister. What do you think about a Board which include that sort of thing?

Sir Christopher Bland: I think that is more apparently attractive than actually attractive. I think you then overtly politicise the process. The process as I knew it was absolutely not—It used to be, when I was appointed twice, that was in the gift of the Prime Minister. First of all John Major and then Tony Blair were absolutely key in the process; but, subsequent to that, the process has been a selection panel whose advice for both the Chairman and the Vice Chairman has been accepted by the Prime Minister of the day. He has accepted that. I think that is all right. If you look at the various committees that have been set up, they have been impressive groups of people, chaired by, usually, the Permanent Secretary in the Department of Culture, Media and Sport but with two or three heavyweight external advisers on it. Their recommendation has been accepted, and that seems to me all right.

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Q1019 Chairman: And, of course, it has gone one stage further, has it not, by having sitting in on the latest appointment the Commissioner for Public Appointments?

Sir Christopher Bland: Yes.

Chairman: So there is a move to greater transparency. Before I bring in Lord Kalms, because there may be some other areas we want to follow up, you wanted to say something?

Q1020 Lord Armstrong of Ilminster: I am now confused about these two chairmen. I think you said just now that you would like to see the chairman of the executive board (or whatever you call that in future) not to be a Director General but to be a non-executive, chosen in whatever way. However, I think you said to the House of Commons Committee that two chairmen would raise difficulties. I wonder if you have changed your view on this or whether I have in some way misunderstood.

Sir Christopher Bland: No, I think two chairmen will raise difficulties, and that is an argument for the unitary process, but I have given up because I think that battle is lost, which may be wrong. I think there are strong arguments for the unitary process and two chairmen will cause difficulties. Who is in charge and what happens when those two boards disagree? It is fine when the Trust Board says: "The BBC has done brilliantly well", and the Chairman of the Board of the BBC agrees with that, but the problem comes when the Trust Board says: "Actually, the BBC have fallen far short in this department and that". That might cause creative tension but that is an issue, and what happens when they disagree is not at all clear. However, if we are to have two boards then I think the Chairman of the BBC Executive Board should be non-executive and should be appointed by due process, not by the Trust Board. I think the Chairman of the Trust Board should also be appointed in a similar way.

Q1021 Lord King of Bridgwater: But it is not your recommendation. You have just given up the battle but you actually think a unitary board would be best.
Sir Christopher Bland: Yes.

Q1022 Lord Kalms: One of the interesting things in all our discussions so far, with almost anyone who has touched on governance, is a universal dislike of the proposals; it is the one thing you have not seen a single word in favour. You have just now used the word "mishmash". I wonder whether you are not understating the problem. You and I are used to a unitary board and you are now accepting that that argument may be lost. If you look at the small print in the Green Paper of the rules and regulations and the separation of responsibilities between the unitary

board and the first board and this structure in between of vast bureaucracy—there are many, many clauses in small print of the responsibilities of every party within it—it looks to me as if—and I must say I have read it slowly, I have read it quickly and I have read it at night and I cannot understand it—you are making an artificial separation between the responsibilities, and you and I know perfectly well in business it has to be totally seamless. So the question I am going to ask to start with is: should we not fight a bit harder for a bog standard supervisory board, which although it is not as good as a unitary board does work in other countries? It is a clearly defined process, taking into account the point of value of one chairman. You do not have a chairman on a unitary board, you have a chief executive. This is a third model; what you call the mishmash model. Could we not argue much more strongly and would you not be more in favour of arguing absolutely for a supervisory board—the German model or European model—as opposed to this rather contrived model?

Sir Christopher Bland: I think, with one significant exception, that is what I would do if my task was to make sense out of a two-tier arrangement, if that was the given. My preference, as I have made clear, is for the unitary approach and—

Q1023 Lord Kalms: We have lost that.

Sir Christopher Bland: Perhaps I am being a bit feeble in giving up the struggle early, but I fought the argument, and have not won it in many places. If you are going to have a two-tier structure then something closer to a supervisory board in a German corporation makes more sense, with this exception: I do not think it is right for that supervisory board to appoint either the chairman or the chief executive of the group which they are supervising, because it is not quite the same. This is, after all, not a supervisory board in the German model, it is a regulatory body designed to make sure that the BBC achieves its Charter objectives. There are some subtle differences there. Also, the German model, as we know, has some serious drawbacks. I know of no British company that would leap to adopt it.

Q1024 Lord Kalms: I only put it forward as an alternative to the present. You are quite right, should we all fight harder for the unitary board, but I think generally the view is right across the board that has gone, so therefore the only alternative is to fight for the supervisory system with the amendment. What powers would the supervisory board have? At the present moment, it has to approve all budgetary proposals. It has its own vast structure to look at the same things which have been produced beneath a unitary board. That is just creating the unstoppable

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versus the immovable. It is a natural conflict process, of vast bureaucracy facing a vast bureaucracy; it is just a dream for people doing it. Should we just duck it or should we put a marker down and fight it?

Sir Christopher Bland: No, we should certainly fight that, amongst others. The devil is in the detail. You have to define—and the Green Paper does not yet do this clearly—why you want this second tier. It is because there is unease about the idea of a board of governors, however wonderful they are, regulating the organisation that they also run. You can argue about that, but that is the unease. That means that if you are going to separate then you have to have clear blue water between the Trust Board and the Board of the BBC, and that should not include doing things that are normally the prerogative of management, which are approving budgets, appointing the chief executive, appointing the executives and, from time to time, dismissing them. That does not work, and that is where the muddle, I think, has really arisen. Part of it, you can see, is personalities; you can see people thinking, “I am not sure being Chairman of the Trust Board is that good a job”—and I am not sure it is, by the way.

Q1025 *Baroness Gibson of Market Rasen:* That takes us nicely on, I think, to the regulation of the BBC. I have two questions. My first one is about your assessment of the proposals by the Lord Burns Panel on the Public Service Broadcasting Commission.

Sir Christopher Bland: Well, that only makes sense if you want contestable public service broadcasting funds. I think that there are two risks about having contestable public service funds. One is that by definition it is not going to increase the total amount available for public service broadcasting, and therefore anything you shift to ITV or Channel 4 is taken away from the BBC. Secondly, I think it is an excessive concentration of power, because the temptation to use that ability to direct or shift funds in support of your view about whether (if your job is to regulate the BBC) or not it is doing all right, is I think a conflict of interest and would not work well. The reality is that public service broadcasting going forward, given the increased commercial pressure on ITV, is going to be the major preserve of the BBC and the secondary preserve of Channel 4, and that more or less is it. You may regret it; as a former Chairman of an ITV company that produced *The South Bank Show* and Walden, Jay and Parris—you can regret that—but that is the way the world has gone. To divide that money up is effectively to start top-slicing the BBC and arguably Channel 4. I do not think that works too well.

Q1026 *Lord Maxton:* Is that not, however, a very narrow view of what people now watch on television? If you go on to subscription television—Sky

Television and cable—there is a whole range of public service channels on Sky: all the Discovery channels, National Geographic and all sorts of channels like that, which are essentially educational channels and little else. So why do you limit yourself to looking only at the terrestrial channels which, to be honest, by the year 2012 (if the Government has its way), are not going to be the sole provider for anybody on television.

Sir Christopher Bland: My remarks do not undermine the role of Discovery or National Geographic, but they do play to very small audiences, relative to the opportunity the BBC has to bring something like, say, *Blue Planet* to a genuinely large audience of 5 or 6 million. That is an unrivalled opportunity which only the BBC going forward is going to continue to have. So I think there will be programmes that you would identify as having a public service content on subscription but they are, by definition, going to play to really quite small audiences, and only the BBC has that ability going forward to bring the widest possible range of educational programmes to a really broad audience. If you look at how Discovery built up its business, it started out, largely, by playing second-time-round BBC and ITV natural history programmes.

Q1027 *Lord Peston:* Can I ask you whether the point you made about ITV not making public service broadcasting would extend to the future (?)? Does it really make sense to you that someone whose operation is commercial still would not see the enormous commercial advantage in producing high-quality programmes that are clearly in the public service? I have been very puzzled by what ITV have been saying. If I may just draw an analogy, if you take *The Economist* newspaper, which has been, over its time, an enormously profitable operation (not now, I gather), looking at it, it was an entirely public service publication; everything it had was public service. Yet they made money out of it. Do you fully accept the argument that ITV will not find highly profitable audiences, from the point of view of advertising, built around public service broadcasting?

Sir Christopher Bland: Yes, I think it will. Plainly, there is a good audience for news and ITV will continue to—and be required—to produce news. There is far less of a clear audience for current affairs at peak time. There is little audience for serious religion and there is a diminishing and difficult audience for certain kinds of drama, all of which are expensive to put on. While ITV will continue to have, for commercial reasons, an interest in producing good news programmes and some current affairs, probably not a lot in peak time, it is hard to see them competing effectively without going for a broadly populist approach, particularly in peak time.

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Q1028 Chairman: Can I just challenge one thing that you have said? The implication was quite clear that whatever the sum of money what would really be happening would be that a proportion would be taken off that BBC sum and used for other public service broadcasting activities. Can you think of any other way in which that money could be found so that it is not assumed that it comes from the BBC tranche?
Sir Christopher Bland: Not obviously for free-to-air services. I think there is no easy source. So I think the answer is no, I cannot. What I think is a step forward by the BBC is increasing the amount of programme-making that is contracted out to the independent sector. I think the problem with the independent programme-making sector is it is too small and the only way it can be bigger is if the BBC and ITV give it more of their business. At the same time, committing to the regions, I think, is again a real step forward. The contribution a strong BBC creative presence can make in Bristol, Birmingham, Manchester, Glasgow, Belfast and Cardiff, I think, is hard to overstate. It is a very powerful regional contribution, and the more they take outside the M25 the better.

Q1029 Baroness Bonham-Carter of Yarnbury: Picking up on Lady Howe's point, as I understand it Ofcom have just suggested in their response to the Green Paper something they call an "enhanced" licence fee, which I think probably is a bit semantic, but they are suggesting it is an extra tax so it is not sliced from the top of what the BBC gets but is a direct tax on licence fee payers. What is your response to that?

Sir Christopher Bland: I wait to see the Government that greets that proposal with glee! It will not happen. It will not happen.

Q1030 Bishop of Manchester: I was interested in the points you were making about ITV and then your mention of Manchester. I wondered if you could express a view on the proposals over Manchester and the building of a new media centre in which both the BBC and ITV—and indeed other companies—would be able to share facilities. Do you think that is an important way forward? Do you think, actually, it will happen?

Sir Christopher Bland: I think it is a brilliant way forward. If there is the will, yes, it will happen. Not all creative genius resides in London. I think it will.

Q1031 Lord Peston: The two buzz words of the day are accountability and transparency. I am not clear. Obviously, there is a subtext to everything going on. You were remarking on a single supervisory board rather what we are now asked to accept and, unlike you, I do not accept that the battle is over in terms of having a sensible governing structure of the BBC—

but that is by the way. Clearly, there are pressures to make the BBC more accountable, although it is not at all clear what "accountable" means, other than pandering to the prejudice of whoever is telling you that it ought to be more accountable. Since one wants, as part of public service broadcasting, an organisation that is both independent and creative—and creative does mean both in the arts and the sciences—it means taking enormous risks and means you get things wrong quite a lot of the time. Can accountability not get in the way of that? More to the point, will it get in the way of that?

Sir Christopher Bland: I do not think it need. Accountable to whom and how is the key question you have to ask, and with the BBC it is peculiarly difficult. With a plc, in theory and, to some extent, in practice, but only when things go disastrously wrong, the chairman and the board are responsible to the shareholders, who own the business. There is no equivalent of that in the BBC's case. There is, I think, accountability in two directions: general accountability to the licence fee payer—and that can, in part, be measured by how many of them watch the programmes (that is not a despicable measure of accountability); how many of them like what they see; how many of them value what they see—all those are questions that you can examine and ask and report on. There is also accountability to Parliament. I think that is reasonably well discharged through presenting an annual report to the House of Commons and the House of Lords at the equivalent of an annual general meeting. It used to be a fairly staid event to which a lot of interest groups were invited, but it became I think increasingly useful. And a Select Committee, when it works well, can be a good means of holding the BBC Board of Governors and the Director General to account. That should not be underestimated or discarded. So I think there are existing mechanisms that work reasonably well. What you cannot have, however, or at least I have not seen a system that provides it, is the kind of accountability that exists in organisations with simpler remits and simpler ownership. That is precluded by the nature of the BBC, I think.

Q1032 Lord Peston: I understand that point, and it seems to me entirely valid. I think what is troublesome, is it not, is that accountability creates an open season for people to tell you about what they do not like. I doubt very much whether accountability would ever amount to people writing in and saying in a very loud voice: "You are doing an extremely good job". It will always be about, "What you are doing that I personally do not care for". Is that not going to inhibit, if it gets stronger, the sort of great people that you would like to see working on the BBC?

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Sir Christopher Bland: I think there is that. I can say that Lord Maxton, from time to time, at the Select Committee, praised the BBC and said that he thought that in certain respects it was doing a good job, and so did other Members of the Select Committee. I cannot remember Gerald Kaufman ever agreeing with that point of view, but no doubt that was a useful counterbalance. I think that, in the end—and you see this in the Green Paper—people want to preserve the BBC, and I take some encouragement from that clear thrust in the Green Paper. It is not a perfect document but at least it wants to try and make the BBC better and keep it going. There is no suggestion, as from time to time has happened, as fashion has ebbed and flowed, that somehow the BBC was a waste of time and space—it is not; it is one of our great creative and cultural assets; it is a treasure beyond price that is genuinely the envy of the world, and we should not let go of it. All we should do is try and make it better and not, through new and fashionable forms of governance, stop its independence and stop its creativity.

Q1033 Chairman: Just picking up on that, you mentioned *The Blue Planet* development, and we have just been down to Bristol last week and we saw a great deal of what is going on there, some of it requiring a great deal of investment over time. Is it really likely with this tightening of accountability that that sort of innovation is not going to be restricted in future?

Sir Christopher Bland: I do not think accountability is ever going to interfere with *Blue Planet*. Where it might bite if it does not work well is the BBC taking risks in either its political programming and its current affairs or even its satire. I think it is quite interesting that it has taken a long, long time for the BBC to produce an equivalent of *Yes, Minister* in relation to this Government. Now it has done it, and done it extremely well and very funnily (I have never seen a better Alistair Campbell than on the programme) but it took a rather long time. Was that fear? No, I do not think so; I think it was lack of creative spark, but that is the kind of thing you can see being marginalised if the BBC started to get nervous.

Q1034 Chairman: I am thinking much more of the vast sums of investment that would go into some of these projects. I am thinking of that side of it.

Sir Christopher Bland: In the case of something like *Blue Planet*, because that is internationally marketable and plays forever and does not date, then actually the net cost to the licence fee payer is remarkably small. What is harder is contemporary drama or series set in a United Kingdom setting—something like *Our Friends in the North*, which you cannot sell abroad, for accent and structure reasons.

Q1035 Lord Holme of Cheltenham: Could I ask you about a question, which is a perennial one, on both the BBC abusing its position as it is perceived by its competitors unfairly? You have been on both sides of this, both as a competitor of the BBC before you were Chairman and at BT as a sometimes competitor of the BBC now, at least on some of their new services. I suppose the issue is so difficult because the BBC is a very large company and, therefore, everything it does has an impact on competition, but it is also financed in a unique way by the taxpayer. I wonder whether you think, looking back on it, that on issues that have been raised with us—like the way the BBC uses its trailers and promotional time, like its advantage in bidding for foreign product in Hollywood, and so on, or the tie-in with magazines, for instance, that have been launched, or at least were a few years ago, with alarming frequency—whether in any of these respects there has to be some formal way of putting constraints on the BBC's activities so that they do not represent an abuse of market and taxpayers' strength rather than just a natural way of extending the BBC's activities. I am very interested in your views on that.

Sir Christopher Bland: I do think that the BBC needs constraints on its commercial activities, and that those constraints probably have to be externally policed and agreed through a form of licences. The natural tendency of organisations, even with noble objectives like the BBC, is to grow and do new things and, *post-hoc*, to say, "It's a brilliant idea to have a magazine for young women because they are part of our audience and, by the way, we can cross-promote it". Actually, that does not matter too much when it is quite small but as it grows bigger and has a greater commercial impact then I think it does need appropriate and external monitoring, and a form of, as it were, licensing. The BBC has never knowingly given up any part of its empire or responsibility; it has always found a justification for going on and doing exactly what it is doing and doing a bit more. That is in the nature of organisations.

Q1036 Lord Holme of Cheltenham: What do you think of the concept in the Ofcom response to the Green Paper of a BBC fair trade commitment which would be policed? What do you think of that idea?

Sir Christopher Bland: There is a fair trading commitment already, and at the moment it is policed by the Board of Governors. I do not think the ceiling would fall in if that was policed, for example, either by Ofcom or by the BBC Trust. I do not think that is unreasonable. It would certainly be seen as fairer by the competitors of the BBC who think that the BBC currently is judge and jury on matters of commercial competition.

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Q1037 Lord Peston: Can I follow that up? Supposing the BBC is very good at something—for example, two of my favourite things are the *BBC Music Magazine* and the *BBC Gardening Magazine*, both of which are the best of their kind. I imagine that the people who publish *The Gramophone* think the *Music* magazine is unfair competition and whoever publishes, I do not know, *Amateur Gardening*, or something, views the other one as competition, but why should the BBC be put under pressure not to do that kind of thing simply because others are going to argue that this is unfair competition? Wearing my economics hat, it possibly is unfair competition because they have already got all the expertise in-house and somehow it has already been paid for. On the other hand, without that you would not have these two marvellous magazines. That is just a simple example.

Sir Christopher Bland: I think that somebody has to take a view on what unfair competition is. What has traditionally happened in the BBC is that it has set up services and been, quite often, the first in the world to do it—Radio 5 Live is a good example. The BBC invented the concept of running live news and sport, but if you listen to Kelvin Mackenzie you would have thought it was his idea, and of course it was not; he came in on the coattails of the BBC and the BBC invented that concept. Does that make that unfair competition? No, it does not. I think you have to look at each individual case and decide, first of all, does the very existence of a magazine like that make the competition unfair, and, what is probably more important, does the BBC use its tremendous media power unfairly to promote, through as it were the equivalent of advertising, its magazine empire? I think that is a more serious issue.

Q1038 Lord Maxton: What about the other side of it? Certainly in the sports field, for instance, the commercial companies have used their commercial power to basically push the BBC out of large areas of that market; therefore, depriving the licence fee payer of things that they want to watch and cannot watch because they are not prepared and cannot afford to pay for Sky or cable? Do we regulate that?

Sir Christopher Bland: It is Parliament's privilege to regulate them if it feels like it. Of course, by listing and having the listed events you do at least ensure that certain sporting events viewed as of national importance are seen on free-to-air television. That does not mean the BBC but at least it means that you do not have to pay Rupert Murdoch £400 a year to watch certain types of national events.

Q1039 Lord King of Bridgwater: Just a quick question on the NAO. You said in the Commons that the NAO would be right “. . . to confine itself to what

it properly does, which is an audit and that is a financial audit and a value-for-money audit. If it starts widening its remit—and that is the temptation and the thing which the BBC fears then that will not turn out to be successful.” What are the sort of things that you would have thought they might seek to do?
Sir Christopher Bland: I think, to put it another way, the NAO ought, as it were, to justify what it is going to bring to the party, and that is not what I am clear about. It would be a plain extension of the NAO empire to have the BBC fall within its remit, but the BBC has a thoroughly effective firm of commercial auditors doing the audit *per se*; it does not need the NAO to do a second audit. I think, at the most, the NAO's role ought to be restricted to specifically directed and defined value-for-money studies if those can be sensibly agreed. I think the risk is that the NAO becomes yet another regulatory and supervisory body saying: “The BBC should be doing this and not that.” I do not think that is a great idea.

Q1040 Lord King of Bridgwater: Would that not come under value for money? That is the implication.

Sir Christopher Bland: There are risks.

Q1041 Lord King of Bridgwater: What if it said it was bad value?

Sir Christopher Bland: It might. Therefore you would have to be convinced that what it said was bad value really was that. Given my preferences, I would not let the NAO near the BBC.

Q1042 Lord King of Bridgwater: Is there any other area of taxpayers' money that under the PAC and the NAO does not come under, or on behalf of Parliament, some form of scrutiny?

Sir Christopher Bland: I am not sure, but this, of course, is licence fee payers' money paid direct to the BBC. It is different in kind and in nature, and there are risks. I do think Parliament has been really wise in distancing itself from an annual licence fee and from annual approval of the BBC. It is a painful relinquishing of real opportunity for power and messing the BBC about, but I think that has been a great self-denying ordinance. I think that the NAO is a backdoor way of correcting that self-denial, and I think that is the risk about the NAO.

Chairman: Thank you very much. Can we move on to funding?

Q1043 Bishop of Manchester: Which I think follows on quite well from that. We keep returning to the Commons Committee which, of course, as you have indicated, was Chaired by one of Manchester's more well-known Members of Parliament. If I may quote you on this particular issue of funding, in that

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Committee you stated that the previous licence fee settlement "... enabled the BBC to sustain ... the roll-out of digital services both online and in broadcast." The BBC in its own response to the Green Paper proposes the new licence fee settlement should reflect the continuing role as well as supporting the regional relocation project which we were referring to earlier. There are one or two questions arising from that. One is whether or not you feel it is legitimate that the BBC should require continued above-inflation increases in the licence fee, and then to ask what you feel is the best way of ensuring the fullest possible digital inclusion for the future of the BBC?

Sir Christopher Bland: I have become, like Chris Smith, just another licence fee payer, and I have no particular view on what the licence fee should be, except to point out that on the one hand there are dangers of over-indulging the BBC (I am sure Mark Thompson would not wish to see it, to quote his own words, "in a Jacuzzi of cash" following Charter Renewal); on the other hand, broadcasting is, on the whole, more expensive than the rate of inflation and with anything less than that it will be difficult for the BBC to fund and maintain its range of services. So my instinct, for what it is worth, and it is not a scientific conclusion, is that the licence fee pegged to the rate of inflation for five years would be a respectable and reasonable settlement for the BBC. The digital inclusion argument is one, of course, which the BBC is extremely well-equipped to address and help with. It cannot do it on its own and the Government needs to contribute too, but in terms of, for example, making available of the widest possible range of online services, that really was very far-sighted by, in particular, John Birt who, as Director General, led that vision long before anybody else had a view of online services and created the BBC as, really, Europe's best online provider of news and current affairs across a range of activities. That was a powerful and, I think, genuinely public service contribution. The digital divide affects people who are not rich enough to afford, in particular, broadband and online services, and I think that is something the BBC cannot address on its own; that is as much a question for governments and, to an extent, for BT as it is for the BBC.

Q1044 Lord Maxton: That is exactly the point that has been made to combine your past role as Chairman of the BBC and your present role as Chairman of BT, of course. Are you having talks with the BBC, who have got responsibility of ensuring switch off of analogue and the move to digital, in terms of how you, as BT, as the major telephone line provider in the country, can actually help and work with the BBC to ensure that happens? The underlying view is that terrestrial digital is just a

waste of time, and we have to go towards broadband programming, as with Homechoice and things like that. Surely BT should be in discussions now with the BBC to see how they can help.

Sir Christopher Bland: Of course, we are, and the major caveat is that we do not have in the United Kingdom, and will not for some time, a broadband network that is genuinely video-enabled throughout the whole of the country.

Q1045 Lord Maxton: How does Homechoice do it with your telephone line?

Sir Christopher Bland: They can do it but they only have 15,000 subscribers, and that is in a very restricted metropolitan area. A universal service is much harder and more expensive to envisage. It is changing; the technology is changing all the time and the BT is trialling 8 to 16 megs of broadband service, and that might, if it really worked, reach 60, 70 per cent of the population, but even then that is not a universal service. It is moving but it is not there yet. So I think broadcast either off-air or by satellite is going to be with us for some time but supplemented increasingly by video services down the copper wire, as the copper wire gets better.

Chairman: I am glad we got that one in. We have got time for one more, and I think we will go to Baroness Bonham-Carter.

Q1046 Baroness Bonham-Carter of Yarnbury: I want to ask you a few questions on programming. The BBC has been told by the Government to ditch its obsession with ratings and to concentrate more on public service broadcasting, which is something, I think, you also reflected in your evidence to the House of Commons. Having worked myself at the BBC, I know the problem it runs into, which is that it stops chasing the ratings, the ratings fall, there is an outcry that it is somehow not justifying the licence fee and that, after all, the foundation of the BBC's universality is that it must be popular. How does the BBC avoid what is called "dumbing down"?

Sir Christopher Bland: You have put your finger on the balancing act. I think it has to keep moving on from popular programmes which it devises but then become formulaic and adopted by everybody else—makeover shows and cookery shows are an example—and it then has to find the next new thing. That next new thing has to be popular. It is much easier to say than to do, but that is the problem for the BBC. The other point, as you rightly say, is that the BBC that does not have a reach of—suppose the reach of the BBC fell (it is around 90 per cent now) to

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50 per cent, then the universal licence fee is really hard to justify. The other thing is there is a real correlation between approval of the BBC and the audience share of BBC 1.

creative competition, do you feel this is a route the BBC should follow?

Sir Christopher Bland: Yes, absolutely, and ITV as well. I think they both should.

Q1047 Baroness Bonham-Carter of Yarnbury: The suggestion of using more independent companies to make programmes for the BBC, the window of

Q1048 Chairman: Thank you very much indeed, Sir Christopher. It has been extremely helpful.

Sir Christopher Bland: Thank you.

Memorandum by Professor Mark Armstrong (UCL)

PUBLIC SERVICE BROADCASTING IN THE DIGITAL AGE

Public policy towards the broadcasting industry needs to focus on three questions:

1. Will the market deliver what people want to watch?
2. Should people be able to watch what they want?¹
3. If the answer to 2 is negative, will people watch what we want them to watch?

Gavyn Davies (recent Chairman of the BBC) has expressed the sensible view that²:

“some form of market failure must lie at the heart of any concept of public service broadcasting. Beyond simply using the catch-phrase that public service broadcasting must ‘inform, educate and entertain’, we must add ‘inform, educate and entertain in a way which the private sector, left unregulated, would not do’. Otherwise, why not leave matters entirely to the private sector?”

It is clear that market failure in broadcasting, while quite severe in the early days, is nowadays much less of an issue.

In the broadest terms, the old analogue broadcasting world consisted of:

- Just a few channels.
- The inability to charge viewers directly.

The current and future digital world, by contrast, involves:

- Very many channels (or even abandoning “channels” altogether and moving to forms of “view on demand”).
- The ability to charge viewers directly.
- An increasing ability of viewers to avoid both adverts and unappealing public service broadcasting (PSB) material.

The main cause of market failure in the analogue era was that advertising was the sole commercial source of funds. The basic problem with advertising-funded television is that whether or not a programme is profitable does not depend on how *strongly* viewers like the programme, but only on whether they can be bothered to switch on the TV to watch. If a cheap quiz show draws the same audience as an expensive drama then there is no point in an (unregulated) advertising-funded broadcaster spending extra resources on the latter. Similarly, programmes that appeal strongly to a relatively narrow audience would not be produced. In the context of advertising funding, illustrations of how different genres are more costly to produce and attract different sized audiences are given below³:

Soaps	high margin and large audience
National news	high margin and low audience
Sport	low margin and medium audience
Drama series	low margin and large audience

¹ Public policy advisors have in the past given very direct answers to this question. For instance, the 1962 Pilkington *Report of the Committee on Broadcasting* (intended in part to advise on the desirability of a second BBC channel) said (page 16): “‘To give the public what it wants’ is a misleading phrase: misleading because as commonly used it has the appearance of an appeal to democratic principle but the appearance is deceptive. It is in fact patronising and arrogant. [. . .] In this sense we reject it utterly. . .”

² Gavyn Davies (Chairman), 1999, *The Future Funding of the BBC*, Report of the Independent Review Panel to DCMS, page 10.

³ These descriptions relate to ITV’s evening schedule in 2003. See figure 7 in Mark Oliver, “The UK’s Public Service Broadcasting Ecology”, in *Can the Market Deliver? Funding Public Service Television in the Digital Age*, 2005, John Libby Publishing.

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Current affairs	low margin and audience
Arts and religion	very low margin and audience

Thus, for instance, drama series attract plenty of viewers but are costly to produce, and so have a low profit margin. Soaps also attract a large audience but are cheaper to make. If there were no PSB regulation for such an advertising-funded broadcaster, we expect that they would show only programmes towards the top of this list of genres.

Moving to a subscription television service, however, greatly mitigates this problem. Since the broadcaster can extract viewers' benefits directly, we expect that it will have an interest to show a diverse selection of programmes of quality appropriate to viewers' willingness-to-pay. (For instance, drama series might be unprofitable for an advertising-funded broadcaster, but not for a subscription-funded broadcaster which can extract viewers' higher willingness-to-pay for this genre compared to soaps, say.) A sceptic might argue that the current state of pay-TV in Britain is evidence against this claim. However, the presence of a state-funded, sometimes high-quality broadcaster in the market (the BBC) greatly diminishes a commercial broadcaster's incentive to supply good programming. (I return to this point later.)

The rationales for intervention in the broadcasting market fall into two broad categories. First, there may be *externalities* associated with viewing particular kinds of television. That is to say, if large numbers of people view particular kinds of programmes, this will affect the wider population in some way that the viewers do not take into account. (This relates to question 2 at the start.) There could be negative externalities: a clear example would be if watching violence on television induces violent behaviour. Some claim that when children watch hours of television each day this could be bad for their physical fitness or their mental agility; if so, then maybe public efforts to make television ever more attractive and readily available to that age-group should be reduced.⁴

And there are positive externalities. People might be able to pick up life-saving skills by watching medical dramas. History and science on television can serve as a form of adult education, and no one would dispute that this has merits. There is the currently popular notion that television is an important medium to build "citizenship", and that news and current affairs programmes are needed to obtain a well-informed citizenry who can adequately discipline government and other powerful interests. Perhaps people become more community-oriented, or tolerant, by watching certain behaviour on television? (However, just as with negative factors such as violence, a direct link between viewing and the viewer's own behaviour is highly contentious.) But there is some irony in using the largely anti-social medium of television to attempt to build community spirit.

While there may be disagreements over the scale and source of externalities, there is a clear rationale for intervening in the broadcasting market to accentuate those programmes with positive externalities and diminish those with negative externalities. There is no particular reason to suppose the scale of such externalities has increased or decreased since the analogue era. However, one crucial way in which the digital transformation has had an impact is on the feasibility of ensuring that people actually *watch* socially desirable content (question 3 at the start). In the early days, the BBC could almost force people to consume an austere diet of organ recitals, public announcements, and so on, since a viewer or listener's only option was to switch off. Nowadays, the presence of many channels, together with the introduction of the remote control, means that people will switch over as soon as unappealing content comes on. If we think people should watch more, or better, news than they would do left to themselves, there is perhaps not much we can do about it. As Richard Eyre, then Chief Executive of ITV, put it:⁵

"Free school milk doesn't work when the kids go and buy Coca-Cola because it's available and they prefer it and they can afford it. So public service broadcasting will soon be dead."

Of course, precisely the same issue faces advertisers and advertising-funded broadcasters. Just like advertising, the obvious strategy to ensure viewers consume PSB content is "product placement", ie, to include PSB material *within* popular programmes. This might include, for example, instances of racial tolerance, or discussions about the duty to vote, in the storylines of soaps. But there are obvious limits to how far this can be taken without losing the programmes' original attractions. Whatever their desirability, if the benefits of positive externalities cannot, in fact, be realised, there is only a weak basis for public intervention.

⁴ Robert Putman provides a persuasive account of how most Americans watch "too much" television, and the effect this has on people's lives and communities. He provides a good quote from T S Eliot: "it is a medium of entertainment which permits millions of people to listen to the same joke at the same time, and yet remain lonesome." See chapter 13 of *Bowling Alone: the Collapse and Revival of American Community*, 2000, Simon & Schuster.

⁵ MacTaggart lecture at the Edinburgh International Television Festival, 27 August 1999.

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The second broad category of reasons for intervention involves the need to ensure that viewers can watch what they want to watch. (This relates to question 1 above.) For instance, in the analogue world it is likely that there will be insufficient diversity and quality of programming in a purely commercial market with advertising funding. The move to pay-TV, together with a greatly expanded number of channels, largely overcomes this problem. Another point in this category is the familiar argument that, since the cost of delivering television programmes to an extra viewer is zero, economic efficiency requires that the charge for viewing should also be zero. (In economic terminology, television is a “public good”.) This argument leads directly to the use of a licence fee, or equivalent public funds, to finance broadcasting.

There are a number of problems with this economic argument that, in my opinion, make it unsuitable as a guide for policy. First, it applies equally to all broadcasters, not just one. Second, the argument applies only for an *existing* set of programmes. It ignores the effect of such a policy on the *incentive* to develop good programmes in the future. In most other creative industries, we do not think that price should equal the marginal cost of supply. We do not think that novels, for instance, should be available at marginal cost, say 50p, since that would give poor incentives to writers and publishers. We do not think that a new pharmaceutical should be set equal to the cost of producing an extra dose, say 5p, when the development costs are so enormous. And there seems no good reason to think that it is a good idea in the context of television.

Another reason why the license fee is arguably undesirable concerns its application to just one broadcaster. If one broadcaster is financed by public funds while all others must stand on their own (either by advertising or subscription), then there is a clear danger of inefficiency. In a nutshell, in order to attract a viewer away from the BBC, a commercial broadcaster must offer programmes which are significantly more attractive than the BBC’s, so as to offset the payment (or the disutility from seeing adverts) that the viewer must then incur. To illustrate this, consider an example from another industry. Suppose a train company puts a specific newspaper on everyone’s seat on each journey. Travellers know that this will be freely available, and so there will be a tendency to read this free newspaper, even if another newspaper is actually preferred. In fact, a closer parallel with the broadcasting situation would be if the specified newspaper were put for free through each household’s letterbox each morning. In such a situation it is hard to imagine many other newspapers being able to compete effectively, even if they offer a superior product. Take a narrow broadcasting example. People sometimes complain about the “low brow” nature of Classic FM compared to Radio 3, with only short pieces of music interspersed with car adverts, and so on. But of course, since it has no access to public funds unlike its rival, the commercial channel has no alternative! Many commentators have worried about the “predatory” nature of the BBC’s entry into commercial spheres (24 hour news, children’s channels, and so on) but there seems too little recognition of the fact that exactly the same distortion is present in the core free-to-air markets too. These considerations make it unsurprising that the pay-TV sector has so far failed to provide much diverse and high-quality programming (as some argue), when it must compete against a state-funded broadcaster which offers its service for free.

Of course, there will be some people disadvantaged by a move to make the BBC self-financing. But the BBC itself estimates that 80 per cent of people would pay a subscription fee at the level of the current licence fee.⁶ And many of the remaining 20 per cent would also be better off as a result of the change to subscription, since they would not have to pay £126.50 a year for programmes they do not particularly value. Worries about the adverse impact of a change to subscription on poor households could be mitigated directly (like over-75’s are currently). And anyway, the licence fee, with its “poll tax” character, is hardly ideal from a social equity viewpoint.

To sum up:

- The digital world is less prone to traditional market failures, and will supply the programmes that viewers broadly wish to watch.
- The remaining rationale for public intervention is linked to externality and “citizenship” concerns.
- The possible adverse health effects of excessive television viewing, especially for children, might mean that government should not expend so much effort to make TV ever more attractive and freely available.
- The ability to ensure actual viewing of PBS material is increasingly constrained.
- Given the declining benefits, and major costs (including the distortion to competition due to the presence of a state-funded broadcaster in the market), of intervening in this market, the time will soon come when this intervention is no longer appropriate.

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⁶ See Simon Terrington and Caroline Dollar, “Measuring the Value Created by the BBC”, in *Can the Market Deliver? Funding Public Service Television in the Digital Age*, 2005, John Libby Publishing.

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Memorandum by Dr Georgina Born

INTRODUCTION

I set out below comments on the Green Paper, to be read in the context of initial observations on the wider broadcasting environment which bear on the BBC's position and future.

1. THE WIDER CONTEXT

There are two fundamental issues to highlight at the outset:

- (a) The shifting balance of forces across Britain's television industry and its effects on public service broadcasting:

From the mid 1990s there was a shift in the centre of gravity away from the "double duopoly" based on competition between BBC1 and ITV, BBC2 and C4 that characterized the 1980s and early 1990s. With new entrants, there was greater crowding in the commercial sector of the market, causing a growth in derivative and imitative programming and a re-balancing of the industry towards commercial populism and away from the former PSB-oriented structure. The BBC had to respond in its popular output: it had little choice if it was to remain connected to popular tastes. This, as well as internal changes in the 1990s, explains BBC television's increased populism.

Ofcom is therefore right to raise in its recent PSB review the problem of ensuring sufficient "PSB competition" to re-balance the British television industry back towards PSB-type purposes. However, there are serious questions as to whether Ofcom is right in its analysis that a loosening of ITV's PSB commitment is unavoidable, and in its assumption that Britain's commercial broadcasters cannot be held to PSB purposes through content regulation. Relatedly, it is questionable whether Ofcom is right to suggest that such a re-balancing can effectively be secured through the operations of a new, small, publicly-funded entrant (the proposed Public Service Publisher or PSP), rather than by addressing also the present state of Channel 4 and whether tighter regulation would reorient the Channel towards its PSB purposes. The message for this review is that holding the BBC alone more tightly to PSB purposes cannot have the effect of rebalancing the industry as a whole, and the risk of doing this may be to isolate the BBC, undermine its universality, and drive it towards a "market failure" position.

- (b) The assumption that the independent production sector is the main source of quality, innovation and diversity in British television:

This common assumption appears to be at the base of some of Ofcom's pronouncements; it also forms part of the BBC's rationale for the current proposal to cut its staff numbers and institute a "window of creative competition" (WOCC) for the independents. However, it is highly problematic. Over the course of the 1990s and since, the independent sector has been subject to considerable restructuring and consolidation. A small number of large, internationally-oriented companies, often subsidiaries of larger international concerns, now dominate the sector. It is commonly acknowledged that these companies absorb a considerable proportion of the available commissions, as broadcasters cultivate sustained relationships with them. Such large companies themselves then wield considerable power with the broadcasters, and are able to set the terms and to operate with relatively light oversight and controls. As large businesses, they have become increasingly concerned with extending and securing their markets, resulting in a more commercial orientation and more risk-averse behaviour, changes that elevate the drive to increase profitability over the other social and cultural purposes befitting Britain's PSB system.

It goes without saying that successful independents should be supported to grow as businesses; this is of great benefit to Britain's economy. But there are two critical points. First, in the current competitive climate, both the large, profit-oriented independents and the smaller, relatively insecure independents are motivated, for different reasons, to proffer safe commissions and populist programming that can be formatted and sold in additional territories. These conditions, then, are unlikely to promote or secure quality, innovation or diversity in programme production.

Second, the large independents and the sector as a whole have a poor record in terms of commitment to both training and good employment conditions; these crucial functions, the basis of quality and innovation in television production, have been better fulfilled by the large integrated producer-broadcasters, especially the BBC. The eruption of scandals over faked scenes and guests in documentaries and talk shows in the 1990s was a symptom of the poor training and lax employment conditions that had become widespread. The large

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independents should be required to resource training and to engage in good employment practices in order to combat these trends.

Two conclusions follow. These points suggest that the argument being made to increase the independent production quota across the television industry is premature. Until the independent sector, and particularly the large companies, are required to institute training structures and good employment practices, extending their remit via higher quotas for independent production will threaten to reduce the quality of British television. In addition, the definition of the independent sector should be tightened so as to exclude those independents that have achieved substantial scale, while regulatory interventions should be considered that nurture the growth of new and small independents, supporting their access to major commissions. It is to be hoped that Ofcom's review of independent production will prioritise these issues.

2. THE BBC GREEN PAPER

In what follows I focus on issues that, in my view, require attention.

(a) *Governance and regulation of the BBC:*

Overall, with the provisos that follow, I consider the Green Paper (GP) proposal that the Board of Governors be replaced by a BBC Trust and Executive Board to be the best available option. It is likely to bring improvements in governance and self-regulation, and will thus significantly enhance the BBC's independence from government. However, the details need to be worked out, and the following points should be borne in mind as the proposal develops:

The Trust

- Research base: the GP says the Trust will be supported by its own body of expert staff this is the crucial basis on which it will be empowered to exercise its independent oversight of the BBC and of the Executive. However the GP then adds that this expert body will be “along the lines of the Governors’ recently established Governance Unit”:⁷ this is a cause for concern, as it is not clear whether the current Governance Unit, itself newly established, is sufficiently large and well-resourced, or optimally structured, to sustain such functions. The Trust’s research function must be substantial; it should be designed from scratch according to its new objectives, not modeled on the existing Unit. It should have a permanent staffing embodying an ongoing knowledge base about the BBC, and should not rely primarily on commissioning external research from research agencies.
- Transparency and accountability: these issues are rightly central to the GP’s proposals for the Trust, and certainly the Trust should “demonstrate to the public that its principal obligation is to the public”.⁸ But the details of the proposal undermine the Trust’s capacity to function properly by weighing it down with excessive instruments and with a naive conception of how public responsiveness can be ensured. It must be a basic principle of the Trust that, once appointed, Trust members have the confidence to act and exercise judgment as they see fit; they are expert delegates of the public.
- Some of the proposals for openness are appropriate: for example, that the Trust should sometimes meet in public, webcast some of its main meetings, and publish its minutes and research.
- But the proposals to publish the voting record of each Trust member, to put them through external appraisals, and to replace members with a “particularly poor appraisal” (according to which criteria, and judged by whom?) are Draconian and may have the effect of inhibiting Trust members and making them vulnerable to inappropriate external pressures. They may also prove to be a disincentive that prevents potentially valuable people from applying to be Trust members.
- It is in the process of appointment to the Trust that accountability must be accomplished, and seen to be accomplished, in order to sustain public confidence. The GP rightly stresses the need to appoint those with expertise in legal and business matters, and in broadcasting and new media, so as to ensure a range of relevant professional expertise. But beyond this, further thought needs to be given to the

⁷ GP p 11.

⁸ Quotation from GP p 78, 5.53; and see GP summary on p 12, and pp 78–9, 5.56 to 5.58.

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representative nature of Trust members. In addition, the appointments process should be transparent and competitive in a way that appointments to the Governors have not been: this requires attention (see below).

The Executive Board

- The key questions raised by the Executive Board concern the proposed non-executive directors. First, their functions have not been spelled out: what would they add to an already efficient Board, and given that the public interest is vested in the BBC Trust? Second, how will potential clashes be resolved when their role as external advisors to the Executive conflicts with the views of the Trust, whose function is to provide the primary external oversight? Third, if the proposal goes ahead, the appointment of non-executive directors should not be made by the Executive Board itself, but should be subject, like the Trust's members, to a rigorous external appointments procedure.
- The appointment of members to the Trust and of non-executive directors, if this goes ahead, should therefore be entrusted to a new appointments body made up not only of members of the Government of the day, but members of the other main parties involved in related areas of policy, as well as distinguished figures from related areas of public life (such as science, culture and education).

Public value tests, market impact assessments, and proposals for new services

- The GP states that the BBC Trust should forthwith make judgments, after due process, on BBC proposals for new services, and that the Secretary of State would only be able to veto such recommendations on the basis that due process had not been observed.⁹ This is to be welcomed and is a major step forward in ensuring the BBC's independence from Government. The BBC's proposed public value test for new services is also a step forward, although the details remain to be developed. The GP proposes that Ofcom should carry out for the Trust its market impact assessments, as part of the Trust's consideration of new services. However, the relationship between the Trust and Ofcom in developing market impact assessment tests and interpreting their results is unclear and might cause conflicts.¹⁰
- Moreover, the idea that it may be possible to establish in advance a ruling as to whether "the market impact of a service might be deemed completely unacceptable"¹¹ is problematic. Economics is not a hard science: what is entailed here is market forecasting, and in new media technologies such forecasts are intrinsically uncertain and risk squashing the development by the BBC of new media markets in the public interest. The base presumption should not be that the BBC inhibits innovation, since it is just as likely to promote innovation and open out new markets (as happened, for example, with Freeview).
- Questionable thinking on the assessment of potential market impacts is evident in the GP when discussing the scope of the BBC's publicly-funded services, and specifically the BBC's proposal for a Creative Archive (CA) that would make existing BBC content more widely available on the internet for non-commercial uses.¹² Rather than welcoming this initiative to release the BBC's publicly-owned archive for public use, the GP cites the interests of "those who may want to buy or sell the rights to internet content"¹³ as a reason for subjecting the CA to a market impact assessment before any decision is taken to approve it. This is misjudged; it elevates private, entrepreneurial interests over the BBC's primary responsibilities to the public and the obvious public benefits of the archive's release.

(b) *Relations between the BBC and Ofcom, and competition regulation:*

- As mentioned above, a critical issue is the future boundary to be established between the BBC Trust and Ofcom, and where responsibilities lie. As stated in the GP, Ofcom has been established as the competition regulator for broadcasting, and on the face of it, it "makes little sense to duplicate

⁹ GP p 76, 5.44.

¹⁰ GP p 76, 5.42 and 5.43.

¹¹ GP p 76, 5.43.

¹² BBC, *Building Public Value*, pp 62–3.

¹³ GP p 89, 8.4.

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expertise in this area”.¹⁴ However, as I have shown, the proposals in the GP leave legitimate questions to be raised not only over market impact assessments, but, for example, over Ofcom’s suggested power of approval over the BBC’s internal fair trading rules.¹⁵

- Also problematic is the proposal that, for the BBC’s publicly-funded services, Ofcom should agree the methodology of the assessment to any change to existing services. If the Trust is not empowered to make this kind of judgment, based on due process and the commissioning of appropriate research, then it is surely not being empowered to make judgments on the central strategic decisions that face the BBC. As it stands this suggests a lack of confidence on Government’s part in full devolution of regulatory powers to the Trust—a worrying sign. The Trust must be so empowered.
- In relation to the BBC’s commercial services, the GP suggests making a better separation on competition and fair trading issues between “matters of internal BBC housekeeping” and matters of external competition, the latter to be overseen by competition law and the competition authorities, and this is to be welcomed.¹⁶
- Clearly, while the GP evidences some good reasoning on these issues, the boundary between the Trust and Ofcom merits further attention. The core problem is that, by vesting competition regulation in Ofcom, there follows a ‘hierarchy of approvals’ such that the BBC Trust risks becoming subordinate to Ofcom in critical areas of the BBC’s strategic decision-making. Further thinking in this area needs to be developed at the next legislative stage.

(c) *Funding the BBC and the wider PSB system:*

The BBC’s funding settlement

- The GP proposes that there should be interim, mid-Charter reviews of the post-2016 funding model for the BBC and of the 2006 licence fee settlement, to consider whether the licence fee should be top-sliced and (along with any other available public funds) distributed beyond the BBC to sustain plurality in PSB.
- However, it is questionable to revisit the BBC’s financial basis before the next 10-yearly Charter review period; and justifying this, as the GP does, simply by reference to the changes attendant on digitization is unsatisfactory. This would compromise the BBC’s autonomy and its capacity to plan long-term. Indeed, even the 10-yearly Government review of its financing risks undermining the BBC’s independence, and I have called elsewhere for the adoption of the German model of an independent commission to monitor the sector and recommend the level of the licence fee.

The wider system of PSB

- I mentioned earlier, in 1.a), Ofcom’s concern to ensure “PSB competition” so as to redirect the British television industry towards PSB-type purposes; this is a concern shared by the GP. Indeed Ofcom’s arguments are accepted in the GP, which appears to take the view that only public funding can secure PSB competition and therefore floats the idea of ‘contestability’: that in future part of the licence fee might be top-sliced and awarded to other broadcasters to ensure plurality of PSB supply.
- Earlier I questioned whether Ofcom is right in its analysis that Britain’s commercial broadcasters cannot be held to PSB purposes through content regulation, and I reiterate that point here. The recent history of Channel 4, for example, suggests that its increasingly commercial orientation after 1997 was caused in part by lack of strenuous regulatory oversight by the ITC when that might have constrained the Channel’s drive for profitable demographics.¹⁷ Similar questions could be raised in relation to ITV and Channel 5.
- I therefore question “contestability” on two grounds: 1) it is not only public funding but regulatory oversight that has, throughout the history of Britain’s PSB system, supported high standards and PSB competition; and 2) while I agree with the need for plurality in PSB, no argument has been

¹⁴ GP, p 75, 5.35.

¹⁵ GP p 7, p 14 and p 103, 9.18.

¹⁶ GP p 14.

¹⁷ See G Born, “Strategy, positioning and projection in digital television: Channel 4 and the commercialisation of public service broadcasting in the UK”, *Media, Culture and Society* v 25, n 6, 2003, pp 773–799.

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advanced as to why this has to be resourced by top-slicing the licence fee, so undermining the scale and scope of the BBC. Ofcom has identified other sources of public financing in its PSB review, and this merits further discussion.

(d) *The BBC's relations with the independent production sector in television:*

- The GP addresses the relations between the BBC and independent production, questioning the BBC's own recommendations in certain ways. In several respects, the GP's proposals are productive: for example, the need to ensure transparency and regulation of competition in programme supply, and an effective complaints system. While agreeing on the need to retain a critical mass of in-house production, the GP asks for justification of the BBC's proposed 50 per cent in-house production guarantee. It also supports the BBC's plan to establish a 25 per cent "window of creative competition" (WOCC) in addition to the existing 25 per cent independent production quota.¹⁸ There are several points to make here:
 - First, there is the logical problem of why a WOCC is needed if, beyond the 25 per cent quota, a system of open, fair and "full meritocracy in commissioning" is operating. If it is, then in principle it should be possible for independents to compete with in-house producers for as many of the remaining commissions, beyond the 25 per cent quota, as they can attract.
 - However more worrying, in light of the analysis of the independent sector presented above in 1.b), is the apparent acceptance on the part of both the GP and the BBC of the benefits of increasing independent production, coupled with the absence of a reasoned defence of the presently superior conditions offered by in-house production for sustaining quality and innovation. The basic assumption seems to be that if the BBC fails to meet its independent quota, as it has in two of the last three years, then this is due to mediocre BBC in-house programming unfairly keeping out superior independent fare, rather than being due mediocre independent proposals or to in-house proposals being of higher quality.
 - Of greatest concern must be the BBC's arbitrary proposal, endorsed by the GP, to reduce the BBC's in-house production capacity to a maximum of 60 per cent, a key rationale justifying the Director-General's controversial proposal to shed 4,000 jobs. On a number of grounds, which I touched on in 1.b) and have developed at length elsewhere, under present circumstances creativity, quality and innovation in content production are more likely to be secured by in-house than independent production. Moreover, in-house producers can in principle cultivate close creative dialogues with network controllers and commissioners more readily than independents, thereby boosting diversity.¹⁹ As the GP states, to boost these potentials, attention has to be given to the commissioning structure. But for these reasons, while the 25 per cent quota will continue to inject a degree of competitive vigour into the system, no increase in the quota should be made until it can be demonstrated that the independent production sector supports high quality training, evidences good employment conditions and reliably sources innovative and high quality programming.

(e) *The BBC's role in achieving the transition to digital television:*

- The Government's decision that Britain should move to digital television (DTV) was a controversial one and has remained so. There have been a number of casualties of the policy; and there was a threat that Sky would establish a de facto pay-TV monopoly on arguably the most powerful platform, digital satellite. But in 2002 the BBC managed deftly to launch a free-to-air competitor with the Freeview digital terrestrial offering. Whatever its origins, the Government's policy must be carried out, and over 60 per cent of households have now adopted DTV. But in light of this history it is questionable whether the BBC should be yoked too closely to this policy, controversial and risky as it remains, for several reasons:
 - By yoking the BBC to Government policy in this way, the GP threatens to compromise the BBC's independence by rendering it effectively a proxy for the controversial policy. To make the BBC lead this policy would evidence a lack of separation between Government and the BBC.
 - Moreover the BBC will shoulder significant political and economic risks by becoming closely identified with the policy of transition to DTV. These risks should not be devolved on to the BBC.

¹⁸ GP pp 86–7, 7.14 to 7.17.

¹⁹ On these points, see G Born, *Uncertain Vision: Birt, Dyke and the Reinvention of the BBC* (Secker and Warburg, 2004).

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- If, despite these objections, the BBC is asked to take the lead in fostering the transition to DTV, there will be considerable costs attached. Such costs should not be taken from the licence fee settlement but, based on research, should be given in addition to the licence fee calculation. Commercial broadcasters should also be required to contribute to the costs.
- In sum, the Government should not direct the BBC to become its agent. It should support the BBC to continue its independent research and development into extending public access to, and public uses of, digital and interactive media. Hitherto, these R and D activities, undertaken often in public-private partnerships, have proven to be successful and innovative.²⁰

(f) *Programme and service characteristics:*

- The GP sets out a series of purposes for the “vast majority” of BBC programmes and content to fulfil, which are generally well considered. However, in popular programmes there may be tension in the stipulation that they should be both “distinctive” and “entertaining”, and in the desired qualities listed.²¹ This is for several reasons:
- First, it is in the nature of the BBC’s popular programmes that they respond to commercial popular output, and while this should never mean mere imitation, the definition of “distinctive” entertainment programming is often contested.
- Second, high quality entertainment does not always exhibit qualities of being challenging, original, innovative or distinctive. Since it is a foundation of the BBC’s universality that it must be popular, the final version of this GP proposal should therefore include a recognition of the historical principle that the BBC must provide the full range of genres, including entertainment, and state that while the BBC should strive for its popular output to be innovative and distinctive, it is not appropriate that it should achieve these qualities all the time.
- The GP states that the BBC should not in future bid for expensive foreign imports, except in certain conditions, such as that “the acquisition would clearly contribute to a public purpose”.²² This is mistaken in two ways: first, because the BBC, if it is to remain popular, must not be prevented from competing with all other broadcasters (including Channel 4) for high quality foreign popular programmes; and second, because there are clear public purposes—that is, high cultural or entertainment value—attached to most foreign imports that generate bidding wars.
- The GP also notes public concerns at declining programme standards, evident in derivative and “copycat” programming.²³ It is essential to note that the BBC has not led the way in this development in British television, which has been caused by the changes outlined above under 1.a) and b). In these circumstances, although instructing the BBC to avoid derivative programming would make some difference to the general trends, it would not reverse them in the wider industry and is likely to have the effect of pitching the BBC towards a “market failure” position—a development the Government has stated that it is against. It is, in other words, the wider structure of the industry that must be reformed if these general trends are to be reversed; the BBC alone cannot effect such a change of orientation.
- Nonetheless, the BBC’s stated commitment, endorsed by the GP, to reduce the number of peak-time repeats and derivative programmes is clearly to be welcomed.

Dr Georgina Born BSc Hons, PhD

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Memorandum by Martin Cave²⁴

This paper seeks to make some abbreviated points about two aspects of the Charter decision—the need for a long term approach to the licence fee which takes account of the radical consequences of digital switch-over, and the need to deal with concerns about the BBC’s ability to behave anti-competitively.

²⁰ See Born 2004, Chapter 10 and Epilogue.

²¹ GP pp 8–9 and p 28, 1.19 and 1.20.

²² GP p 29, 1.24.

²³ See GP p 29, 1.23.

²⁴ Warwick Business School, University of Warwick.

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1. THE ROLE OF THE BBC IN A COMPETITIVE BROADCASTING MARKET

After the analogue switch-off, the restriction on channel capacity which has characterised broadcasting for nearly a century will come to an end. This will, as Ofcom has acknowledged in its Public Service Broadcasting Review, take the sting out of the market failure argument for PSB. The natural conclusion to draw is that, subject to the vigorous application of competition law and certain required forms of *ex ante* regulation, the need for public intervention is diminished, and should correspond with that in other media sectors. Ofcom has, paradoxically in my view, drawn the conclusion that public intervention should increase, in the form of a BBC of broadly the same size as now and a new Public Service Publisher (though this is combined with diminished PSB requirements on ITV).

The attainment of these citizen benefits is justified by the assertion of perfectly legitimate goals, such as promoting education and learning, but the transmission mechanisms assumed are often vague and the links are universally unquantified.

These arguments based on high level goals are supplemented by market research data which seek to distinguish between consumer valuations of BBC services and (incremental) citizen or public value. The worries about such approaches are:

- (i) that they may reflect the “warm glow” effects associated with generous hypothetical valuations, widely acknowledged as a problem in the literature on contingent valuation of environmental goods; and
- (ii) that they may embody genuine but misleading altruism, which may (in a 2-person world) lead A and B to express a willingness to pay for the other to see a programme, which neither has any intention of watching.

Having expressed a degree of scepticism about “public value” or “citizen benefit” claims for PSB, I now want to set out an alternative approach to the licence fee, consistent with a smaller role for public intervention.

This starts from a conjecture about the likely outcome in the UK of a competitive television broadcasting market. I argue that a competitive broadcasting market would be characterised by a combination of:

1. mass audience advertiser-financed channels offering programmes (including news) appealing to a variety of tastes;
2. high cost subscription services offering sports and movies; and
3. a range of low cost niche channels, financed by a combination of advertising and subscription.

Moreover, the choices made by broadcasters over whether to generate revenues by advertising or subscription would roughly correspond with those that would minimise the detriments to consumers of either source of finance sub-optimal programme choice in the case of advertiser finance (where the firms tend to offer “lowest-common-denominator” programmes to maximise the total audience), and the exclusion of viewers unable to pay the price of viewing in the case of subscription. I suggest moreover that with efficient bundling and “windowing”²⁵ of programmes, broadcasters would be able to offer viewers many programmes at a zero marginal price.

To reach this position many (or most) programmes would have to be subject to conditional access or digital rights management procedures through the incorporation of the appropriate components in set top boxes, integrated digital TVs, and the increasing range of fixed, portable, nomadic and mobile devices likely to be used for viewing video programming.

If this is the hypothetical competitive future, there may still be a case for carefully calibrated public intervention in programming, but it is unlikely (in my view) to be on the current scale. For this reason I support the view taken by the DCMS’ independent panel (the Burns panel), recorded in the Green Paper;²⁶ that “a ‘mixed funding’ model, combining elements of licence fee, advertising sponsorship and subscription, may be workable beyond the next 10 years”.

It is important to maintain the flexibility to achieve this outcome, rather than commit to policies now which will make it impracticable or difficult. As a first step, this entails a limitation rather than an expansion of the BBC’s licence fee financed activities—which is in any case justified by the rejection of the market failure argument. In the second place, steps should be taken to encourage, or to resist the impeding of, the spread of conditional access or digital rights management capabilities necessary to support subscription services. New generations of devices, including those for receiving mobile video, are in any case likely to have such

²⁵ The release of content through progressively less lucrative outlets, such as cinemas, DVDs, pay TV, free to air TV etc.

²⁶ At paragraph 4.26.

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capabilities, but the limited presence of pay TV (and conditional access) on Freeview is a worry. A mid-period review of the Charter would be an appropriate time to consider further the scope for extending subscription arrangements for the BBC or its successor in 2016, in place of the licence fee.

2. COMPETITION ISSUES

Public firms have different goals, such as output or employment maximisation, than the goals of maximising shareholder value which typically applies to investor-owned firms, and this is likely to make them behave in a more aggressively anti-competitive fashion than private sector equivalents. The consequent problems find expression in the relations both between the BBC's licence fee-funded activities and its competitors' offerings, and between the BBC's licence fee-funded and its own commercial activities. The latter include:

- arrangements for the exploitation worldwide of the BBC's programmes;
- the purchasing of production facilities;
- the on-air trailing of commercial products; and
- the sharing of costs (for example of news broadcasts) between licence fee-financed and commercial broadcasts, such as BBC News 24.

The BBC's Fair Trading Commitment seeks to deal with such issues, and the Green Paper²⁷ notes its controversial nature, and the problems associated with allegations that the BBC Governors have not upheld it vigorously enough.

In the accompanying article, we argue that structural remedies—ie selling off the BBC's commercial subsidiaries—are the cleanest way of dealing with the problems of discrimination. Moreover, vertical separation does not in this case appear to cause the increased transaction costs and failures of investment co-ordination likely to found, for example, in the structural separation of BT.

As a second best, it would be desirable to reform the system, in the way raised by the Green Paper, by leaving matters of external regulation, including enforcing adherence to the Fair Trading Commitment, to Ofcom rather than the inevitably less experienced proposed Trust. The BBC's activities overall, and not just its commercial services should also be regulated in this way.

3. SUMMARY

This note has argues that:

- given the absence of significant market failure in the broadcasting sector in the future, it is desirable to make plans in the course of the next Charter period for the subsequent phasing out of many BBC licence-fee financed activities, by limiting the size of the BBC and encouraging the capability of households to receive subscription television; and
- responsibility for enforcing a broader Fair Trading Commitment should be switched to Ofcom.

Examination of Witnesses

Witnesses: PROFESSOR MARK ARMSTRONG, Professor of Economics, University College London; DR GEORGINA BORN, Reader, Social and Political Sciences, Cambridge University; PROFESSOR MARTIN CAVE, Director, Centre for Management Under Regulation, Warwick University; and DR DAMIAN TAMBINI, Head of Programme, Comparative Media Law and Policy, Centre for Socio-Legal Studies, Oxford University, examined.

Q1049 Chairman: Good afternoon to you all. We are very pleased indeed to see you to help us with our deliberation. As you can imagine, we are mainly seeing people who are involved with the whole sector or indeed the receiving end, the particular groupings who have a specific point of view, and the value of course, apart from your individual contributions, is very much that you are looking at it as academics

from an objective stance, so we shall be very interested in following that one through. I wonder if you would be kind enough to introduce yourselves, exactly where you are now and where you come from, and then we will take the questioning from there.

Professor Armstrong: I am Mark Armstrong, Professor of Economics at the University College London.

²⁷ At paragraph.

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Professor Cave: I am Martin Cave, Professor at the Warwick Business School, the University of Warwick.

Dr Tambini: I am Damian Tambini, and I run the Programme in Comparative Media Law and Policy at Oxford University.

Dr Born: I am Georgina Born and I am a Reader in Sociology, Anthropology and Music at Cambridge University and a Fellow of Emmanuel College.

Q1050 Chairman: Well, let's move straight to the governance of the BBC. Do all of you think that the proposed BBC Trust and Executive Board are a necessary and appropriate change to the governance of the BBC?

Professor Armstrong: Well, I am probably not the most authoritative person to talk about this, but when this came out a couple of months ago, my reading of it was that it seemed to be in danger of having some conflicts of interest, which is a fairly common point of view, that the Trust appoints the Executive Board and yet you do not normally want regulators to appoint the people they regulate, so that seems to be a fundamental problem. You do not necessarily want the Chief Executive to be Chairman of the Executive Board and again that just seems a blurring of roles and goes against the sort of last couple of decades of trends in their corporate governance, so I think the BBC would be the only big company that was run in that way if that system went through, so I think there is a big danger of conflicts in the way it was spelt out in the Green Paper.

Professor Cave: I think I broadly agree with Mark, that the key element for me is the separation of the regulatory function from the management and the strategic function and there does seem to be a concern that there might be some blurring of those things. I would think it appropriate, for example, for the management actually to make the strategy. I think there is provision in the Green Paper that that strategy might be approved by the Trust, and I am not sure that is a good idea because regulators do not normally approve the strategies of the organisations which they regulate but come down like a tonne of bricks on them if they make a mistake, and this kind of *ex post* monitoring is probably much more healthy.

Dr Tambini: I agree with Martin, that I am concerned about the separation of managerial and regulatory responsibilities. I think it is going to be very difficult if the regulator of the BBC has any ownership of the strategy and the delivery to regulate effectively, but I think that there are some broader questions which we need to address to do with the flexibility we are introducing into the system with these reforms. There are a number of proposals on the table, including the public service publisher and including some potential

changes to the funding of public service broadcasting which could come into play within the next ten years, and I think that the proposed trust structure should be flexible and its name and role should reflect that. I think I agree with Ofcom that there could be a different name for the Trust, such as the Public Service Broadcasting Commission or it could be called the Trust. I would go even further than that, given the public service publisher proposal, and say that maybe we need a Public Service Communications Commission. A lot of what is being proposed in terms of on-demand services and on-line services is not broadcasting, so maybe we need a structure which allows for some development within the next ten years.

Dr Born: I am going to restrict my comments more narrowly than on questions of regulation and governance and say that I think it is a necessary, and also at the moment the best available, option. I should have mentioned that I have researched the BBC for the past ten years and in fact wrote last year a book which was based on the most extensive inside independent study ever made of the BBC, so I base my understanding on that research. I looked very carefully at what was going on inside the BBC over several years primarily in the late 1990s, but also since, and took the view very strongly in the book that it has yet not achieved the separation between executive and regulation that it should have achieved and it was a great problem. I think that the proposal does that; it achieves this crucial separation between the executive and regulators, as Martin put it, and I think that will ensure both greater accountability and a stronger independence for the BBC. I have other detailed little comments to make on aspects of the way the Trust is envisaged to be accountable if they are appropriate at this moment, which is to say that what concerns me in the details that are at least drafted in the Green Paper is that what we are looking at possibly are excessive instruments and a rather naïve conception of how public accountability could be assured in the Trust. It seems to me that there are proposals down in the Green Paper to make public every member's voting record on the Trust, to put them through external appraisals and replace members with a particularly poor appraisal, and one might ask according to which criteria and judged by whom? It seems to me that this is a worrying road and it exhibits a kind of excessively plebiscitary conception of how the Trust might operate. I think that appointment to the Trust is the crucial process in which public accountability has to be accomplished and that is a very important and crucial issue, but that once Trust members are appointed, they are, as it were, expert delegates for the public; and it does concern me, these details

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about excessive controls and continuous appraisal of those people who have been appointed to Trust membership.

Q1051 Chairman: Perhaps one could press you on your comments about the Board itself in the paper you presented because you were concerned that the role of the non-executives has not been spelt out. Perhaps you could expand on that and others might want to come in.

Dr Born: Thank you, yes. I really do not have a lot more to say since in the end I have to admit I am not an expert on corporate governance. I think rather that the case has to be made for them and that the different roles of non-executives and Trust members have to be clarified, presumably the former for governance and the latter for regulation, because otherwise, as others have pointed out, there is a potential conflict between these two tiers, as it were, of external roles.

Q1052 Chairman: Are you really saying that you cannot see a role for non-executive directors?

Dr Born: No, I sincerely mean that I think that really has to be detailed: why should they be there, what is their function on the Executive Board; and for a non-commercial operation of this kind, I do not think that is self-evident.

Professor Cave: Can I make a very brief remark because it seems to me that a minority of non-executives on the Board chaired by the Chief Executive will inevitably have a rather limited attraction and I would see it as potentially useful for the company because in a sense it is a kind of cheap form of consultancy which they can get at the very top of the organisation, but I would not regard it as a very strong element in the governance.

Q1053 Baroness O'Neill of Bengarve: Each of you in your opening statements equated the Trust with a regulatory structure and this could seem a little surprising. I think Dr Born then moved over to talk about accountability to the licence fee-payer, but I do not think that any of the rest of you saw it as central to what the Trust or some version of the Trust would do. I just find this a little puzzling because although I am aware that regulation is increasingly used in such a capacious sense that it will cover all forms of governance and accountability, it seems to me that those who have proposed the Trust may have had something rather more specific in mind and I wondered whether that sparked any thoughts.

Professor Cave: I guess my immediate reaction is that regulators are accountable in various forms. Traditional Ofcom-type regulators are accountable to Parliament, but I take it you are regarding that as an entirely different form of accountability.

Q1054 Baroness O'Neill of Bengarve: Yes, the regulators are accountable, but you were talking about the accountability of the BBC to regulators, not the accountability of regulators, so the question is, I think, whether you are seeing this as a form of governance. After all, we do not call corporate governance a form of regulation. Many companies fall under various regulators, but that is distinct from governance, and I had perhaps misunderstood the proposals for the Trust as being about governance and not about regulation, so are you just covering both with the term "regulation"?

Professor Cave: I guess my answer reflected my view, that one of the main roles of the Trust, possibly the main role of the Trust, would be the regulatory one and, in essence, to ensure that the separate Executive Board and the BBC itself satisfied the duties which had been imposed upon it.

Q1055 Chairman: And to some extent more accountable to the licence fee-payer than it has been in the past?

Professor Cave: I am sure that would be a benefit and would be more practicable given that they would not have the same kind of relationship with the Executive Board itself.

Q1056 Lord King of Bridgwater: So the Executive Board would not have any responsibility to the licence-payer?

Professor Cave: For setting the licence fee?

Q1057 Lord King of Bridgwater: You said that the responsibility to the licence-payer would be the responsibility of the Trust.

Professor Cave: Well, precisely how the obligations of the Executive Board were configured, I would not be quite sure, but it could be an indirect form of responsibility to the licence fee-payer via the Trust or it could also be, and I am sure it would be in practice, a direct form of responsibility by the Executive Board.

Q1058 Lord King of Bridgwater: The reason I ask the question is that it seems to me that the BBC has to have a dual responsibility, and I made the point to Sir Christopher Bland, just like any board of directors. They do not have a single responsibility to shareholders or a single responsibility to their customers or a single responsibility to their employees; they have to balance out the interests of all those. You are making some very important points about it all being very unclear and I think, "Join the club", if I may say so on this. If I can put the broad proposition that this has arisen out a very embarrassing moment in the history of the BBC and

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these proposals came forward and people felt something had to be done and they had to show willing and all of that, there are one of two of us who actually believe that this is more change for the sake of change and actually if you have got the right governors charged with the right kind of objectives, sacked if they do not carry them out, and to be properly publicly accountable, that avoids all this problem which otherwise you would start to describe as replacing one problem that needs to be tackled with another which would be a conflict of interest and actually an institutionalised conflict of interest, which is what I actually think the proposals are talking about. For the benefit of this Committee, having come rather late to the proceedings, the water has calmed a bit since then, but a bit of common sense may be possible to apply, so can the House of Lords bring its great wisdom once again to these important problems? Discuss.

Dr Tambini: I would just merely point out that there were experts long before Hutton, saying that there was a problem in the governance of the BBC in terms of the separation of the management and regulation. I do not think the parallel holds up with the accountability or the responsibility of boards of directors to shareholders. I think that there is a difference between them. All boards of directors are accountable to their shareholders and to their various stakeholders, but they are also regulators, and I think the difference is that the BBC did not have the same separation between its regulatory roles and its executive roles.

Q1059 Lord King of Bridgwater: But neither has Ofcom.

Dr Tambini: But it does not have responsibility for those aspects of the BBC governance.

Q1060 Lord King of Bridgwater: Might that be the answer?

Dr Tambini: Potentially, yes.

Q1061 Lord King of Bridgwater: Two bodies instead of three?

Dr Born: I would like to come in and say that I think there is some complexity here: one of the factors in the crisis recently which you have not mentioned, and which in fact predates that crisis, and I think is far more an issue for concern than that crisis, is the continual stream of interventions, checks, reviews by government which seem to have sprung up in the last decade. It is at that level of stemming this flow, this tide of reforms and reviews, that I think one of the arguments for setting up the Trust as the regulator is aimed. I would like to come in too on your point about public accountability and say that it is not a question that this is in one place or another. The

point is that the BBC is founded as an organisation which has an ethic of public service which is very alive in its practices, day by day, week by week, month by month, imperfectly, but nonetheless. The management and the Executive Board will, needless to say, be overseeing the public interest in that sense of the continual practices which the BBC engages in. However, what the serious problem has been historically, as Damian said, is that lack of ultimate separation between management and regulatory oversight. In some of the submissions to your Committee, I noticed the proposal for an interesting clarification of the Green Paper: the idea that the Executive Board should have the function of publisher, as it were, finally have the legal responsibility, and that the Trust does not have that, but it should be then in the proper role of regulator. I think there is another argument you have raised about Ofcom, which is about regulatory pluralism or merging the two and we can come on to that, but I think it is worth mentioning this point in that context.

Q1062 Lord Holme of Cheltenham: I wanted to address my question to Professor Cave. In your evidence you talk about the need for public intervention in the broadcasting market by a state-funded public broadcaster and the need for that diminishing. First of all, I need you to help me to understand what it means. Are you talking about the BBC? Perhaps I should ask the other part of the question. The state-funded public broadcaster is the BBC, so are you saying that the need for the BBC will diminish? Is that how I should understand it? Then two supplementaries. Is it right just to think that they pushed the question to this Committee of broadcasting as a market? Is it just a market or does it have other qualities which are non-market qualities, the ecology of British broadcasting? The other question is that I need help in understanding what the circumstances are in which you think the need for the BBC will diminish as I am not quite sure I have got it.

Professor Cave: Well, I was really thinking of the whole of the broadcasting sector and the degree to which it was able actually to meet the needs of viewers, their current needs as consumers of broadcasting products. What underlay my claim is that it seemed to me that the kind of market failures that have characterised broadcasting in the past 100 years or so since it began, or I suppose 80 years more realistically, have now diminished in a very important sense since I see there as having been two problems in the broadcasting sector. The first one was that there was room for only a limited number of broadcasters because of spectrum scarcity and this made it quite reasonable to try and ensure that the

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needs of all types of viewers and listeners were actually satisfied, so you did not have programmes which only satisfied people in the south of England or children and so on, and that justified to my mind quite a substantial degree of intervention in the market even to the form of actually having a public firm which does the broadcasting. Now that will go. I am not quite sure what the Government plan at the moment is with the analogue switch-off in about 2012, but just about everybody will have, for television purposes, a very large number of channels available to them. That does not solve all the problems. It does not turn the broadcasting market into the market for hotels or foreign holidays or bread or something like that because there is still another problem and it is the significance of this which I think is highly debated. It is one of the peculiar features of broadcasting that for somebody else to watch a programme already made does not cost anything and, therefore, it is desirable, since it does not cost anything, that people should not pay for it because otherwise you get people deprived of the opportunity to see things which they would benefit from. Obviously with advertising, that solves that problem in some ways because they do not have to pay, but when you revert to subscription and making people pay, then there is going to be some exclusion. So really the debate which I think is current is the extent to which the exclusion of viewers which is associated with subscription is harmful and whether that justifies putting a lot of money into the BBC to provide free programming. Some people, like myself, think that there are other ways around it and you can actually get the money from subscription by clever pricing without excluding too many people. Others, on the other hand, think that is not possible and subscription would be disastrous.

Q1063 Chairman: Can I just come in here because you were talking about consumers and their needs being met, but what about the citizen?

Professor Cave: The citizen aspect is there on top and I acknowledge that that is another possible justification for having public intervention, so that is fair enough. I am a little bit sceptical about the extent, to which public service broadcasting does deliver citizen benefits, but my remarks were really only focused on consumers and I was suggesting that market failure is diminishing and, therefore, the standard arguments for some kind of intervention were also diminishing.

Q1064 Lord Holme of Cheltenham: I suppose one of the difficulties of thinking of the BBC as an intervention in a market which was imperfect, but becomes more perfect for the reasons you have given is a rather sort of theoretical economist's point of

view in the sense that we have got the BBC, it is there and it is part of the broadcasting ecology, so the idea that it adds intervention in the market is rather curious when it is a large part of the market we have got, so you will forgive me for saying that I understand what you are saying, but it seems slightly theoretical.

Professor Cave: Obviously before the birth of ITV, it was the only game in town, but what has happened since then is that the balance of spending in broadcasting has moved in favour of the commercial bodies and it has ceased to be a monolithic public activity and we now have side by side the BBC some really tooth-and-claw commercial players, but the balance is constantly tilting and probably will tilt more in the future as more players come into the market.

Q1065 Lord Maxton: But that is entirely within national terms, whereas the BBC are internationally recognised as a broadcaster with a potential enormous market out there for the growing, English-speaking middle-class which wants high-quality television right throughout the whole world. It has two benefits: first, that there is a market out there which we can make money from; and, secondly, it actually plays a major role in Britain's art in the world and its role in the world. Are you not limiting yourself just to this rather narrow view of broadcasting within the national confines?

Professor Cave: Please do not misunderstand me; I am not proposing the euthanasia of the BBC. All I am proposing is just in essence something which we may come on to later which is how you should fund it.

Lord Peston: I felt, Martin, in your paper that you were proposing the euthanasia of the BBC, but maybe I have misunderstood your paper. Surely the problem here is that the BBC is offensive to the mindset of economists. Dr Born pointed out that this is an ethical body which is meant to be self-regulating because of its ethical standard and that is not something economists can cope with at all because they prefer the consumer model and the product model. Peter Steiner, as you know, wrote a paper 50 years ago, and it was a very classic paper, pointing out exactly what we have now would happen if we opened up the market. What you get, if you open your *Radio Times*, is a vast number of channels and no choice whatsoever. Day after day, hour after hour, despite all this capacity, there is nothing worth watching, particularly if you are intelligent. When we expand, as Peter Steiner again predicted, we will expand all the not-worth-watching things because there is no market for what is worth watching without the BBC. What I do not understand about the position you are taking is that you do not seem to recognise the intrinsic value, and this is Lord

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Maxton's point, of a body like the BBC. Its main problem is that it is not something that economists like and it just does not fit within our way of thinking about things, an ethically based model.

Q1066 Chairman: I think Professor Armstrong wants to say something.

Professor Armstrong: I am sure we all do, but I am not sure I like the sense that economists are a different kind of species from the rest of humanity, but maybe that is the outside perception. The Steiner paper, which is just a bit of insider talk here, was done indeed to show that there would be massive problems with an unregulated broadcasting market and the reason was because it was funded out of advertising and that one of the big changes which Martin is talking about is that we no longer have to rely on advertising being the only commercial source of funding for broadcasting and that just changes the whole landscape entirely. It pushes us more into what almost used pejoratively to be called a 'market', like newspapers, citizenship issues as newspapers, and there is nothing different about newspapers and broadcasting, in my opinion, so I think we are now in a world where there is much less need to intervene in the market. Intervention is not about the BBC. Intervention is in the form of state subsidy for certain programming. It is not the BBC. The BBC will carry on from strength to strength regardless of whether the licence fee is changed or not.

Q1067 Lord Peston: Are you saying to carry on with the licence fee?

Professor Armstrong: Well, I think the BBC claims that 80 per cent of its viewers would pay the licence fee as a subscription service and a lot of the remaining 20 per cent would be better off without having paid because they do not want to watch it and they do not want to pay the licence fee.

Q1068 Lord Maxton: What would that subscription be for?

Professor Armstrong: It would be for the BBC channels.

Q1069 Lord Maxton: But the BBC is not just the BBC channels; it is also a whole range of radio stations, so you would be subscribing to them too?

Professor Armstrong: The World Service is funded out of public funds, so it seems a good model of things you cannot fund directly out of subscription.

Q1070 Lord Maxton: So it would just be things people do not really want to watch which the BBC will pay for?

Professor Armstrong: No, they are a brilliant broadcaster and they would be able to charge people to watch fantastic things, but there was one other point I wanted to make which is that first of all we have discussed why the rationale for intervention has diminished in the last few years and another reason is that it is going to be very hard to make people watch programmes that you want them to watch. Okay, we have got 200 channels out there now and we have worthy programmes that you think you want to encourage people to watch, you want people to watch more news, you want people to watch better drama, whatever it is, but you are not going to be able to force them to do it. In the old days you could just have organ recitals on BBC radio and people would just listen to that or whatever they could listen to, but now they will just switch off if there is something they do not want to watch and that means that even if it is desirable to make people watch certain kinds of programmes, it is very hard to achieve that.

Q1071 Bishop of Manchester: I would just like to clarify something you said there because you have used the verb "watch" quite a bit in this debate and it is very important that we do remember the hearing side as well, not least because the number of people listening to radio has increased considerably over the last few years and in some respects part of the viewing figures have gone down. I just want to make absolutely certain that within your own argument you are not forgetting that part of the BBC's main duty is in fact to provide radio broadcasts and that the licence is needed for that or have you got another way of producing the economic theory?

Professor Armstrong: No, thank you for reminding me to say that. Personally I think the radio output is a much more distinctive part of the BBC than TV, so I am a great fan of radio. At the moment there seems to be little scope for subscription radio and it does not seem to be working. It is starting a little bit in the US and I do not see any reason why that could not work, but given that it is not, the alternative of advertising-funded radio seems to be falling as the only source of radio, so in that case I would be keen to see some form of public subsidy going to advertising-free radio.

Q1072 Baroness Gibson of Market Rasen: Can I just ask for clarification because I have read your paper very carefully and I am particularly interested in the bit about poor households. You do seem to be advocating pay, pay, pay all the way through and I do not accept your analogy that, "Worries about the adverse impact of a change to subscription on poor households could be mitigated directly (like over-75s are currently)". Well, you are either 75 or you are not. One day you are not and then the next day you are 75,

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but that does not always apply to poorer households. How are you going to actually bring in some kind of analysis of who is poor and who is not if you are going to have all these paying channels, either radio or television?

Professor Armstrong: Well, there are lots of ways. If they are on some kind of income benefit, that could be one way of channelling it. There are lots of ways. Income is monitored by government all over the place?

Q1073 Baroness Gibson of Market Rasen: And it is often argued about too.

Professor Armstrong: Yes, it certainly is.

Q1074 Baroness Gibson of Market Rasen: But if you are 75, you are either 75 or you are not 75 and that is a concrete thing.

Professor Armstrong: That is right, but you are either unemployed or you are not unemployed as well, you could say.

Professor Cave: But is it not worth saying that everybody pays at the moment?

Q1075 Lord Holme of Cheltenham: I have got one question for Dr Born and it is this question of new services offered by the BBC and there is a sort of issue first of all as to how good decisions are made and then who makes the decisions. I think in your evidence you were worried that because Ofcom was going to do the market impact assessment that the Trust would be, as it were, saying that this is or this is not within the BBC's remit, that there was a conflict there. I would like to understand that because it seems perfectly reasonable to me that Ofcom might, as it does in other spheres, do the market assessment and I do not see a problem there, but you obviously do. A related question is: who do you see making the final decision about whether the BBC has another service or does not? Should that go on being the Secretary of State, should it be the Trust in its role as the guardian of the BBC's remit, or should it be Ofcom as the market-oriented regulator? Who should it be?

Dr Born: First of all, just to take the second point first, I think the Green Paper proposes that the Trust does the public value test, Ofcom does the market impact assessment test, as you say, and then I think the idea, as I understand it in the Green Paper, is that the Trust then makes the judgment, makes the recommendation to the Secretary of State. It says in the Green Paper that if the Secretary of State is satisfied that due process has been followed, then she has no basis on which to obstruct that judgment. That seems to me, as it were, as a flow diagram, a reasonable one, and happily it does take the final decision, it seems, in most cases, if due process is followed, out of the hands of the Secretary of State. I

see that as a great improvement. What I was highlighting, in reply to the first part of your question, was the potential for conflicts in relation to the development of market impact assessment tests and the interpretation of their results. I speak here very much as one of the non-economists on this panel; but as I pointed out in my submission, what we are talking about here, given Ofcom's wonderful 600 economists, or however many there are, is actually not hard science. We are talking about forecasting, the forecasting of markets for new technologies, which it seems to me is an intrinsically uncertain business, and one of the issues at stake here is precisely the balance of power in what happens when those market impact assessment results are taken forward and interpreted. If that is, fully acceded to the Trust, I suppose I would have little problem, because I think one body has to have the right to make its interpretations; but it does seem to me that there is the potential for boundary conflicts there and I wanted to raise it. I have two examples to cite. First, I was looking at previous evidence given to your Committee by two competitors, Mr Duffy, the CEO of NTL, and Mr Youlton, Chairman of the Digital Television Group. I was fascinated to see how roundly they took the view that the BBC's R&D wing is like the UK's NASA; it underpins so much of what goes on in Britain in the technology of images, production and transmission technology and so on, that it is one of the only major research facilities left in the world. Now, it seems to me that what is worrying here is that the current mindset is so attuned to potential negative market impacts of what the BBC does that there is a risk that it inhibits the BBC's capacity actually to develop new markets not only in public services, but in the commercial interest. One example given by the media analyst Matthew Horsman is the development of the digital radio market in Britain in which the BBC played a crucial role both in infrastructure, in transmission and content, so that seems to me a very important question. The second example I will give is this interesting proposal that in fact Greg Dyke developed which is to release the BBC's archives on to the Internet, the Creative Archive. I was struck in the Green Paper by this strange little paragraph where the possibility of doing this was queried in the interests of those who may want to buy or sell the rights to Internet content, and this was given as the basis for subjecting the Creative Archive to a market impact assessment before any decision is taken for approval. Now, once again I am not taking an absolute line here, but I am raising it and I do think it is a very strange paragraph in the Green Paper. It signals this whole problem, and I would personally take the view on this particular one that by taking that view, the Green Paper risks elevating private,

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entrepreneurial interests over the BBC's primary responsibilities to the public and the obvious public benefits of the Archive's release. I am just trying to highlight the potential here for difficulties and dangers in the future if market impact assessment is given too high a profile in this.

Chairman: I think that is a very interesting point and certainly one to bear in mind.

Q1076 Lord Kalms: I have some sympathy with that view. I was looking at Professor Cave's comments on the impact of competition and he makes an extremely interesting statement. He says that public firms, such as the BBC, are more likely to behave in an aggressively anti-competitive fashion and that "structural remedies" are necessary. Of course anyone who is aggressive is anti-competitive, so you do not have to say that. The very nature of being aggressive is to hurt the competition. Unless I have misunderstood, if you are really saying that the BBC with its enormous profile, its process its structure must not be aggressive, well, that is neutering that great organisation. What is worse is that you are saying that if it is aggressive, we are going to snip bits off of them, so I think, turning to Dr Born, I had sympathy with her view to this, that we have this great organisation and you are telling us now here that it must not be allowed to act with market forces and it has to act as if it has one arm clipped back behind it. Can you explain your statement or clarify it for me?

Professor Cave: I am afraid that it is, I think, rather badly expressed. There is aggressive behaviour, there is anti-competitive behaviour and there is aggressive anti-competitive behaviour which is a particularly gross form of anti-competitive behaviour, such as has often been practised, for example, by, say, post offices in Europe whenever they have been faced with a competitor when they have just cut the legs from under it by particularly anti-competitive and, as it subsequently turned out, illegal activities. There is always a tension, I agree, if you are a big player in the market, between the public interest in you keeping your prices low and being innovative and so forth and, on the other hand, the fear that, as a big player in the market, you might actually swish your tail and all your competitors will leave the market and in the long term the consumers will suffer. That is what I am really referring to. It is really a kind of competition law point. The OFT is not designed to encourage competition, but to inhibit or prohibit aggressively anti-competitive measures.

Q1077 Lord Kalms: Professor Cave, if there are other fish in this water, I think you have to be very clear because this is at the very heart of what the BBC will be doing. If you tell the producers to produce, are

you telling them to produce at a fast speed? One of the complaints we have heard from, I think it was, Sky is that there is competition between prime time and so on where if one of them puts a programme on; the other one puts the same programme on at the same time. Are we going to inhibit that competition? Are we going to say, "You, the BBC, must behave like gentlemen, stand back and doff your cap and never swish your tail"? You cannot move into this field surely without being precise or you do not come into it at all.

Professor Cave: Well, "anti-competitive" does have a precise meaning which is that it is in breach of competition law and an example of anti-competitive behaviour is particular forms of cross-subsidisation or predation which are in fact unlawful.

Q1078 Lord Kalms: I am not talking about that.

Professor Cave: You are talking about what seems to me to be perfectly legitimate competition. You would expect GE or Hewlett Packard to behave in an aggressive way in competitive markets and that is exactly what you want people to do, but you may not want them to do it if they are dominant and clearly the BBC plays a very important and probably dominant role in a lot of free-to-air broadcast markets, but you do not want them to overstep the mark and possibly leverage their dominance into other adjacent markets, for example, by use of the licence fee to undercut competitors. That is the kind of behaviour which I was impugning.

Q1079 Lord Kalms: Well, I do not think it is fair at all and it is important to get it clear. Do you not think we have enough structures in existence now with the Monopolies Commission or the Competition Commission? Are there not enough structures in the system to deal with what you consider to be the abuse of power without, for instance, pre-empting it by saying, "You have got to sell off some of your subsidiaries"? For instance, that is not appropriate punishment for being anti-competitive. You tell them not to be anti-competitive, but you do not take things away, so perhaps we could challenge this and put it in our report, but I just want to test you.

Professor Cave: Well, if you had asked Sir Christopher Bland a similar question, he would have replied that one of the options which Ofcom is considering proposing in relation to BT is precisely to require it to divest some of its assets in order to prevent it from behaving in a persistently anti-competitive fashion, so these remedies do exist. I think that they may be particularly germane when you have an organisation which is funded by a licence fee and is simultaneously trying to walk the other side of the street and operate in commercial markets as well, because then the means and the motive actually

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to cross-subsidise are likely to be really quite intensive and, in those circumstances, the question which you may have to ask from a competition point of view is: are the remedies which we have available sufficient to deal with the problem which we have identified? Now, at the extreme end of the remedies is structural separation which we might need, for example, requiring the BBC to sell off BBC Worldwide, but there are others as well. One is an approach which Ofcom has advocated in its response to the Green Paper which is that it be given powers to deal on an *ex ante* basis when complaints are received with the BBC in precisely the same way as under section 316 of the Communications Act, it has those same powers in respect of licensed broadcasters, so whether you actually have to go the whole hog and go for structural separation is an issue of judgment and you probably would want to look at a persistent pattern of behaviour before you adopted that point of view, but I certainly would not rule it out. The intermediate step is some kind of *ex ante* competition power.

Dr Tambini: I think we are running together some actually quite separate issues here. We started talking about the framework for approving the new services, the market impact assessments and public value tests, and we have moved on to the general competition framework and fair trading of the BBC. I just wanted to mention, before we leave the framework for new services, a couple of examples because I think it is very important that we do acknowledge that there is a balance here to be struck. We will all be familiar with the general problem of creating some kind of certainty and predictability to encourage investment in the market. If you are developing an arts channel, for example, and the BBC suddenly develops a channel which pretty much matches your commercial proposition for that channel, you will feel fairly upset about that and you are going to see that as an unfair encroachment on your potential market, and this has happened. It has also happened in the case of, for example, developing on-line education services and there is a general sense, and I think it is justified, that some sort of framework should be developed which does not create the uncertainty which actually diminishes the incentive to invest in those markets. At the same time, however, I have to acknowledge, looking at other countries dealing with similar problems, like Germany and Japan, that there are some benefits in having a system which does not work particularly well. We have a marvellous BBC on-line service and Germany does not have such a good public service on-line from its public broadcasters precisely because BBC on-line in a sense got in underneath the radar and developed very effectively, and in Germany, the KEF, the commission which deals with the funding of public service broadcasters,

every year, being very close to the remit of the general public service broadcaster, said, "They cannot do that". However, I think we are in a situation now in which the development of the general remit of public service broadcasting and its purposes in the Charter does need to reflect clearly that the overall purposes of the BBC include things like on-line services and that the framework for new services in a sense will actually be changed by developing the overall remit.

Q1080 Chairman: Just thinking back to what you said about obviously the commercial side being pretty miffed if the BBC comes along and copies something, is it the same the other way round, if the commercial side comes and copies something which has been developed by the BBC? It is just a comment, but there is one other aspect I would very much like to question you about because in Dr Born's paper, there is a comment there about innovation and the benefits of innovation being benefits and not necessarily detriments to the commercial side. We have just been to Bristol where I think one has seen a very good example of that because there has been a lot of investment over time in *The Blue Planet* and that sort of activity and expertise in dealing with wildlife and suddenly there they are, well ahead of the game on high definition which is a very important development. Now, all of that could be seen to illustrate the point Dr Born was making and I would be interested in your comments.

Dr Born: I would just pick up that Damian quite rightly raised the issue of predictability and I very much remember when Mark Thompson was Chief Executive of Channel 4 a few years ago and berated the BBC and raised the whole question of predictability and, therefore, the problems for competitors knowing where this big beast was going to move. It does seem to me that that is a legitimate question even if we do not buy the whole package of issues that my colleagues here are putting on the table. However, I would also add that that is precisely what will become possible when this very public set of reviews, for example, Ofcom's market impact assessment tests, are in place because this stuff will be going on in the public eye, whereas similar strategic decision-making will not be going on in the public eye amongst commercial competitors. Therefore, it seems to me that imminent in that development is the institutionalisation of a certain kind of foreknowledge for competitors and that probably is one way of allaying some of the carping and criticisms coming from the commercial sector. However, I do think it is ironic, and I come back to the arts channel example, that what is interesting on that one is simply that there is the BBC which, along with other commercial PSBs, has been providing very good arts programming, irregularly perhaps, over

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decades; so the interesting question is: why now is one of the arguments that people coming in with new arts channels should themselves be protected from competition? It is in a sense the reiteration of your point, and one could say that it represents plurality. It seems to me that the irony here is that the real problem, and here I am so sorry to come back with an argument to the economists, is an economic one. The economic problem of digital television is that there is a lack of a sufficient revenue base to sustain a large number of new, high-quality channels. In other words, one of the main problems facing digital television in Britain, as has been evident over the last seven years with a number of new channels folding fast, is surely this whole question of the revenue base being able to support high-quality competition. At that point, I leave it to the economists!

Lord Peston: I do think that this takes us back to what Professor Cave raised about unfair competition. We are told that plagiarism is the essence of everything and it is vitally important, but the point about the arts programme which disturbed someone, I think it was actually Channel 5 rather than Sky, but anyway it is not that the BBC copied it, but that they put it on at precisely the same time and when they shifted, the BBC shifted. Now, that just struck me at least *prima facie* as a very good example of abuse of power and riches. To compete with them is one thing and even to copy them is one thing, but to put it on at the same time, if I were looking for an example of unfair competition, I would say that that looks to me like unfair competition. I think that is the point that we were trying to get out of you, that there are forms of competition that demonstrably the powerful are using against the less powerful.

Chairman: I think we will come back on that because I want to bring in Lord Maxton.

Q1081 Lord Maxton: I must say, I do not take this rather dismal view of all this lack of programmes with the public service worth in the multi-channel world. If I put on my Sky or cable television, I have a range of what I would call public service broadcasting channels. There is 2, 3, 4, Discovery, National Geographic, the history channels, a whole range of them. Now, you may say there is not the revenue to sustain them, but they seem to survive and they seem to keep going. How? How does Discovery keep going on an audience maybe at any one time of 2,000, 3,000 or 4,000 people? Does anybody have an answer—the economists?

Professor Armstrong: That is not the prime market. It does not cost anything to supply it to Britain and you get a bit of extra money when you do.

Q1082 Lord Maxton: Okay, UK Gold which, like all the UK channels, all the best of them, is entirely UK-based. They may be watched by people outside, but

they are UK-based. They are in partnership with the BBC, I accept that, though I do not know to what extent the BBC subsidises them, and they have relatively larger audiences than the others, but they have still relatively very small audiences.

Professor Armstrong: I would tend to agree with you and I do not think there is any contradiction. A paid-TV model would generate a lot of high-quality programmes.

Q1083 Lord Maxton: That is not pay-per-view though. That is paying for one set—

Professor Armstrong: It is a different way of pricing.

Q1084 Lord Maxton: Yes. It is rather like the BBC licence, is it not? You get a whole package by paying the BBC licence and if you pay for Sky, you get the whole package.

Professor Armstrong: That is right.

Professor Cave: But I think that is exactly what you get in a competitive market. You get some blockbuster premium channels, basically soccer and movies, and—

Q1085 Lord Maxton: I have to say in Europe of course the Performance Channel is a subscription channel which is not in this country.

Professor Cave: That is right, and then moving into advertising-supported channels. You get a whole bunch of niche channels appealing to people with particular interests and basically they are done on a shoestring because there are not many people who share those interests.

Dr Born: On a point of information, the UK Gold channels are archive-based and they recycle existing programmes, so they do not cost much.

Lord Maxton: But as a result they do have the largest viewing of all those sort of channels, do they not, much more than Discovery or anything else because that is what people want? I watch it. If I am, like Lord Peston, flicking through and I cannot find anything to watch, if *Porridge* is on or *Only Fools and Horses* or something else is on UK Gold, I probably would sit back with the family and watch it and have a good laugh.

Chairman: Now, I think we have gone quite a long way, but we are really running out of time. Did you want to say anything more on the plurality of public service broadcasting as it is one of your subjects?

Lord Maxton: Not really, no, I think that is enough. I do think that a public service broadcasting plurality which is much wider than just the five terrestrial channels is being provided by the Sky package and various packages, so I do not think we are destroying plurality.

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Q1086 Lord Peston: Again, Martin, in your paper, saying it was about time to consider the scope for extending subscription and all of that, I agree it is about time to consider it, but that does not mean that you should consider it and do it. I am genuinely puzzled. All over the world if you speak to anybody interested in serious broadcasting, they say that the licence fee is an idea of genius and they wished they had it in their countries. The only people who remotely ever suggest that we should consider any other way of doing it are some economists in our country and I find that completely bewildering. Can you not see that on a perfectly good public sector economics model the basic idea of having a licence fee, and I might add that, as someone coming up to 75, you always pay and I cannot at the moment accept the argument that people might think I ought to get my licence fee for nothing, but that is by the way, that it is an idea of genius? Even Terry Burns and his committee said that they ought to think about it, but could not come up with anything else instead. I am very puzzled when you say you do not want to destroy the BBC, but you want to convert it into a subscription service.

Professor Cave: What I envisage as a possible transition is something which will begin with analogue switch-off when everybody will then have conditional access. Conditional access would extend the possibility of subscription and you would also incidentally extend the possibility for a much more efficient and comprehensive collection of licence fees because that would be one of its other benefits which was considered even at the time of the Peacock Report in 1984, that if you did not pay a licence fee, whatever it was, you could not watch anything, so you could do it there as well. Now, the question then is: how does the balance change between licence fee-funded stuff, advertising-funded stuff and subscription-funded stuff? It seems to me that a helpful way forward would be to move gradually away from a licence fee-funded material in order to achieve a better competitive parity amongst the various suppliers which I do regard as a very grave defect in the system—that you have an organisation, like the BBC, which is given money to do what it does and then it competes pretty much directly with other organisations which are actually trying to make their way in the marketplace. Therefore, I would see gradual movement in that direction and the focus of the licence fee spending upon programmes which you would define as public service broadcasting in a rather narrower way, which might be news broadcasts, it might be programmes for minorities, like cultural programmes, religious programmes, or whatever, but it would not embrace the full scale of what the BBC does at the moment.

Lord Peston: You have a concept of a public service television programme, whereas some of us have the concept of a public service broadcaster and the two

are not the same. The point of the licence fee is to have a body which is a public service broadcaster, that is how we get that, and within that they will produce some public service programmes and that causes everybody else also to get into the public service business, but it is not about specific programmes. That is where I am lost in what you are saying. It is about having the public service broadcaster finances right. How do you respond to that? How do we get a public service broadcaster if we do not get this right?

Chairman: I would follow that one up because one of the things that puzzles me is how you are going to get the spread of programmes that would spark the interest in the educational side, if you like, of the traditional BBC remit, to create the single-stranded programmes which are now apparently available very cheaply? It will be the rising generation who get turned on by what they are seeing to a particular subject, a particular interest, a particular sport. If that is not going to be available because that is not actually what the market is giving them, I am not quite certain how the public service remit is going to be fulfilled, quite apart from not having the BBC which exists and, therefore, it has to be taken into account as something which is enormously valuable, as a lot of people have said to us.

Bishop of Manchester: Perhaps I can come in there, because we are talking a bit about programmes, on the window of creative competition area and how you think that will work with the BBC adjudicating between in-house and independent bids and whether pitching some even-handed rules is required? This is a big area to be coming to at the very end, but a quick response would help.

Q1087 Baroness O'Neill of Bengarve: Perhaps also you could slide in some comments on what lessons are to be learnt from what has already happened in the US, and I would be extraordinarily interested in the subscription/sponsorship model which has not self-evidently produced the improvements one might have hoped for.

Dr Born: Can I focus on the window of creative competition and leave the US question. In my work I looked extremely closely at the whole question of commissioning programmes within the BBC and noted a rather destructive drift over the later 1990s. It is a crucial issue about how commissioning operates within the BBC which I obviously do not have time to brief you on now; but I want first to point out what I put in my submission to you and which is a key logical problem. That is to say, you either have a quota, it seems to me, or you do not. We have a quota and it is 25 per cent. Beyond the quota, it means simply that there is everything to bid for. So if, as the Green Paper quite rightly suggests, and as an

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important organisational question, you have a commissioning system which allows for open, fair and fully meritocratic commissioning, then why does one need in addition this interesting and open 25 per cent WOCC? Because if competition is operating, then competition will operate, and it may be above 25 per cent or it may be less. So I do not quite understand the justification for this WOCC. What worries me most of all is that this idea seems to be being advanced as the reason behind the proposed cuts that the Director General has been pushing forward recently, and the notion of a 60 per cent ceiling on the BBC's in-house production. There is a very important question here about where the best conditions for high-quality and creative programming are coming from which I address in my submission and will not now. It seems to me that, therefore, the whole reasoning behind the window of creative competition is very strange. Yes, the BBC must be the adjudicator between in-house and independent bids. Why? Because that is the core of its creative decision-making and that is when programming gets decided, so there is absolutely no question that it can ever sit anywhere else.

Q1088 Baroness O'Neill of Bengarve: You made that point strongly in your paper. Dr Tambini?

Dr Tambini: Do you want me to sum up entirely?

Q1089 Baroness O'Neill of Bengarve: Yes, your theory, as it were.

Dr Tambini: I think that what seems like a promising idea, I am not sure that reviewing it every two years, as the governors are proposing, is enough to ensure that those issues of conflict of interest might be resolved. On the US point, broadcasting policy since year one has been conducted in this country in terms of the comparison with the US, but these are very different markets. The US does have a success story in subscription with HBO, but we are a very small market in comparison to the US. One thing that I did want to mention which was in a sense neglected or maybe just not given enough emphasis in the Green Paper was the new forms of public service communications which the BBC is experimenting with, for example, the creative archive and the media player. I think that this is an area where the technology in the marketplace, given the penetration of broadband, could move relatively rapidly. Studies are showing that when people have access to more on-demand services, they tend to use them. Public service looks very different in that kind of world and I think that an ecology which provides an archive, an array of publicly available, publicly usable and publicly shareable material will be a great asset to this country and if that is not supported more strongly, particularly the creative archive, then it will not have

the emphasis that it needs in the next ten years and it will fail to grow. There is a big challenge in the BBC in terms of clearing rights and actually making the creative archive compelling and I think that a mention in the Charter and in the report of this Committee of the archive would be a boost to it. In terms of the broader comments that Martin has made, I have to say that Martin's description of competition and so forth I find very, very compelling, but based on a set of assumptions which I do not share. I think that the BBC is the envy of the world, not because it has been in a competitive market, although competition since the 1960s has been very good for the BBC, but I think that the excellence of the BBC is really based on the culture of the organisation and that is related to the structure and funding model. I do not think you can change the funding of the BBC without fundamentally changing that culture and that organisation, so I am afraid that I do not follow Martin with that. I think that the current proposals for some kind of review of the funding of the BBC within a reasonable period seem to be reasonable and I would not go any further than that.

Q1090 Chairman: Thank you very much indeed. Professor Cave?

Professor Cave: I am really talking about shifting the balance between different forms of funding and different contributions made by the BBC and other types of broadcaster. What we have seen over the last 25 years has been a complete sea-change in the way in which the broadcasting industry is organised. Many more players have come in, so there is a very large subscription sector and there is a great deal more choice for viewers. The question is how one can sort of capitalise upon those benefits and yet at the same time achieve the advantages which many people, including me, can see in having the BBC. That would seem to me to entail some kind of rebalancing of the regime and a progressive movement towards bringing the BBC output, which is essentially based upon audience maximisation rather than upon the meeting and achievement of particular public values, bringing that part of its activities into line with the ordinary forms of commercial funding which apply to the rest of the market, so that is why I favour this kind of gradual transition, possibly no expansion and perhaps a diminution in the extent to which the BBC is funded by licence fees.

Q1091 Chairman: Thank you. Professor Armstrong?

Professor Armstrong: The point has been made, but maybe it is just worth saying that Britain as a whole is very good at creative things generally. Our newspapers are to some extent the envy of the world, our novelists

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Professor Mark Armstrong, Dr Georgina Born, Professor Martin Cave
and Dr Damian Tambini

are the envy of the world and that kind of thing, so I do not know whether it is just purely to do with the state subsidy making broadcasting, and the BBC obviously is not the only company making good programmes, so that is one thing. The second point is the window of creative competition, and my understanding is that the BBC has regularly fallen short of its 25 per cent quota and that makes it seem like a rather unreliable source for judging this kind of thing, so I would look at past evidence for that. The final point which you made is, I think, a crucial one and it is one I did not make very well early on which is about how you get people to watch things that they eventually will come to love, and I think that is increasingly going to be difficult.

Sky has got, when I last counted, 19 children's channels on it now and it is going to be very hard to stop. School education is compulsory and that is why we can teach children things, but with TV it is no longer compulsory to watch good programmes and that is going to be a problem.

Chairman: Well, on behalf of all of us, our very grateful thanks to you. Your papers were stimulating and we knew it would be a very stimulating session on any view of it. The difference of view between you is also helpful, if I may say so, as it sparks off the different ideas that we have among this Committee, so we are very grateful to you for your help. Thank you.

TUESDAY 28 JUNE 2005

Present	Armstrong of Ilminster, L Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Gibson of Market Rasen, B Howe of Idlicote, B Kalms, L	King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Examination of Witness

Witness: MRS THERESA MAY, a Member of the House of Commons, Shadow Secretary of State for Culture, Media and Sport, examined.

Q1092 Chairman: Welcome and thank you very much for coming. As you know, we are looking at the Government's Green Paper and we intend to put in a report to them in time to be taken into consideration and that means at the end of October, which gives us not very much time as it happens; a number of things have intervened, including a General Election, which featured you rather more than us.

Mrs May: Which some have found more helpful than others!

Q1093 Chairman: You have been Shadow Secretary for Culture, Media and Sport for a very short time; I just wondered whether you are taking the opportunity to review policy in this area, or whether everything as set down before remains policy?

Mrs May: I think most of the statements I make this afternoon in response to questions will clearly flow from the policies that have previously been set by my predecessor, John Whittingdale. However, we have had an opportunity in the last couple of months, perhaps in a number of areas, to develop our thinking on that policy.

Q1094 Chairman: Can I then go to one of the things that your predecessor did say, which goes slightly to the heart of the BBC. He said in the debate in March, "I have always believed that the only justification for having a state-owned and state-financed broadcaster is if it does something distinctive and different that would not otherwise be available from the market—in other words, public service broadcasting". He said that the BBC must concentrate on high quality, education and informative programming, and should not basically chase ratings. Does that mean you see the BBC as doing things that the other broadcasters do not do?

Mrs May: I believe in the concept of Public Service Broadcasting, but I think Public Service Broadcasting is only going to continue to be supported if it does things which are of high quality, with impartiality and integrity and, yes, does do things also which are distinctive and different from commercial providers. I think if the BBC, or indeed

anybody providing Public Service Broadcasting, was simply aping commercial providers and doing things they could do perfectly well there would be no argument for them having any degree of public funds in what they are doing. I do not think in those circumstances they would be delivering what we perceive to be Public Service Broadcasting. I think the need to be distinctive and different can be perhaps exemplified in a number of ways. If I may show one example where I think they are not perhaps distinctive and different, and another where they are. On the negative, if you look, for example, at a channel like BBC 3 and take the opportunity to look at the programming for BBC 3 for this week I think virtually a day is taken over by covering the Live8 concert but, apart from that, they are showing 15 episodes of a 10 year-old American documentary called *The Brothel* and nine episodes of *Two Pints of Lager and a Packet of Crisps Please*. I am not sure actually there is an awful lot distinctive and different in that programming. On the other hand, if you look at children's programming, CBeebies and CBBC, they are definitely producing channels that provide children's programmes, not just cartoons, and without adverts, which of course parents find valuable. That is a good example of where they are distinctive and different, but I think there are some other areas where perhaps they have been losing their distinctiveness.

Q1095 Chairman: If you go to BBC One, which is obviously the most viewed BBC channel, would you still expect the BBC to provide popular programmes, preferably good programmes but popular programmes which do not really come into the category of educational but are well watched and enjoyed?

Mrs May: Yes, I would but I think the key to it is that they are producing a variety of programmes, some of which will be challenging, some of which will be innovative and will be looking at things perhaps in new ways and using new techniques; but if you are going to develop the brand I think you have a core of popular programmes. If the BBC was only to

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produce programmes that were unpopular then people would soon object to paying the licence fee.

Q1096 Chairman: The principle of the BBC and the position of the BBC is one that you support?

Mrs May: Indeed, yes. I support the concept of Public Service Broadcasting. I think a strong BBC is important both for the UK and indeed for the broadcasting industry; because I think it can set high standards to which others can be encouraged to aspire and attain. The BBC has a unique position throughout the world. It is not simply enjoyed by those who watch and listen in the UK, there are many throughout the world who trust it and believe that the BBC has a reputation for and a name for a certain degree of quality and integrity that they can trust when, perhaps in some areas, they are not able to trust other broadcasters. To do that, to maintain that trust, to maintain that support as a public service broadcaster, it is absolutely essential that they are providing quality programmes, and that they are providing that degree of impartiality that is expected of them. In that context I think there are some real questions about what the Government is proposing in terms of the regulation of the BBC.

Chairman: We will come on to the regulation. Could we just deal with one or two questions before that starting with the funding of the BBC.

Q1097 Lord Armstrong of Iliminster: I think the first question is whether you and your Party are content with the licence fee as the method of financing the BBC; and, if you are, how you think the level of finance of the licence fee should be set?

Mrs May: I think the challenge here is that over the next few years—as broadcasting changes and we move to complete digital switchover and the BBC's share of the market will undoubtedly fall as it has been falling, as people are able to access a wider variety of channels—I think, as the Government does, there is a question mark as to whether in that environment the licence fee is the appropriate way to continue to fund the BBC. There are a number of options that could be looked at in relation to that: obviously some form of subscription for some parts of the BBC; maybe a combination of some smaller licence fee and subscription. These are things which need to be looked at. I think in that environment it would not be right to move to advertising. I think that would start to, if you like, destroy the purpose of the public service broadcaster as something that is distinct and different. In the interim I think we continue with the licence fee. I believe that the pace of change though is so great that really the Government needs to be looking at a review of the licence fee and funding arrangements sooner than it is suggesting; and it is suggesting that it waits until the next Charter Review. Given the pace of change, at the rate of

which people are moving to digital channels, I think actually we need to start that review somewhat earlier. In relation to how it should be set, I would prefer to see an independent body recommending the licence fee. I think it is important for people to be able to see that a proper and clear assessment of costs has been made, against a very clear remit for what the BBC should be doing. I think everybody needs to be able to see absolutely clearly what a public service broadcaster should be providing and, against that, a real assessment of its costs and, therefore, a recommendation on the licence fee, but an independent body which I would like to see undertaking some other functions as well—hence my reference that you may be coming onto regulation later but that is where I would be looking to see that independent body being involved as well.

Q1098 Lord Armstrong of Iliminster: In the Government's proposals, the Green Paper, the BBC Trust and the new body to be set up is supposed to be particularly answerable or accountable to the licence fee payers. Would you think they were the right bodies to set the licence fee?

Mrs May: No, because I do not think they are independent. I have some real difficulties with the proposal for the BBC Trust.

Lord Armstrong of Iliminster: You may not be alone in that.

Q1099 Bishop of Manchester: I was going to ask you about the independent body that you referred to. Had you any thoughts about how such an independent body might be appointed?

Mrs May: By definition if you have an independent body then it is almost going to be appointed by Government and there are obviously always questions about that process. What is important, of course, is that there is an open process for that to take place, so that people can see how Government has made its decisions and why those decisions have been made.

Q1100 Baroness Gibson of Market Rasen: You have mentioned regulation once or twice. Perhaps you would like to expand a little bit more on what you were just saying about the BBC Trust, and if you are not keen on a BBC Trust how would you go ahead and what would your proposals be?

Mrs May: I am afraid, looking at the proposals for the BBC Trust, it seems to me almost just to be the BBC Governors in a different building. I really cannot see the distinctiveness about the BBC Trust as it is being proposed by Government. I was particularly concerned in the Green Paper, when Government was looking through a variety of proposals that could be looked at for this, to see a reference that they made, page 70, paragraph 519:

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“The effective oversight of the BBC at the highest level requires an understanding of and ability to influence the culture of the organisation”. Yes, there needs to be an ability if change is to be made to influence the culture; but I am really not sure that the oversight at the highest level needs to understand the culture; because it may very well be the culture does need to be changed and being too close to that culture I think is a recipe for not making the change that may be necessary. I prefer to see an independent body and my own preference would be for a Public Services Broadcasting Commission—as indeed was proposed by the independent panel. Although I know there are those who feel that Ofcom may be a suitable body to take this role on-board, I think we need something that is clearly separate from the BBC; that is important in restoring trust so that people can feel if a complaint is made that it is not being investigated by the BBC themselves.

Q1101 Lord Maxton: Given you have said that not all the BBC does is public service broadcasting—it is public broadcasting, it is providing programmes for people—would you suggest that your Public Service Broadcasting Commission would only cover those programmes which are public service, or would it cover all BBC programmes?

Mrs May: It would cover the generality of programming by the BBC. I would also like it to be looking at some of the issues around the sort of commercial services the BBC would be providing as well to ensure that those are services that would be appropriate for the BBC; but once a decision is taken not then regulating the input of those commercial services.

Q1102 Lord Maxton: Would it be a content regulator as well, or would it just be on the “who does what” if you like in the broadcasting field?

Mrs May: I think it needs to be a body that can look at content as well to ensure that the BBC is meeting its remit. I see it as a body whose task essentially would be to ensure that the BBC, and any other body that was providing some element of Public Service Broadcasting, was clearly delivering against their remit as to what Public Service Broadcasting should be: so delivering on the impartiality, the integrity and the high quality and standards of the sort of programmes they were putting out.

Q1103 Baroness Howe of Idlicote: Before we come on to my question particularly about content, I think the Green Paper, and indeed anything that Ofcom has said and done, is pretty light on regulation, and particularly as far as content is concerned. Does this concern you, not least because the whole relationship with the licence fee payer and, indeed, the BBC seems to be being highlighted as something important?

Should they have very strong views about content? How would you look at that side of it?

Mrs May: Yes, indeed, I think this is an element that could be within the remit (as I have just indicated to Lord Maxton) of the Commission that would be overseeing Public Service Broadcasting. Obviously at the moment the issue of decency is one that Ofcom technically is responsible for; although if you look at some recent cases obviously most people assume that it is just the BBC and the BBC Governors who are responsible for what happens at the BBC, and do not perhaps realise that there is in existence an external body that can look at this. To the extent that the BBC has a responsibility to be distinctive and different, we do not want to be over-shackling the BBC in terms of the sort of programmes that it can produce. Having said that, I think there is a need for them to be aware to a much greater extent, as long as they are being publicly funded, of the requirements of the public in what they are producing. There are so many channels now which will produce all sorts of programmes which cover all sorts of content that some members of the public may wish to see. I think the BBC does need to be very aware of the requirements that the public have.

Q1104 Baroness Howe of Idlicote: On plurality of Public Service Broadcasting, you certainly seem to be in favour of Public Service Broadcasting as such from what you have said. There have been ideas floated of top-slicing the fee and giving it in appropriate levels to other public service broadcasters, and obviously one is thinking of Channel 4 as the major one. What are your views on that?

Mrs May: I think there may be some merit in a certain percentage of the licence fee funding going to other public service broadcasters. I think the real question (looking ahead to the post-switchover age) in that digital era is, how do you provide for others to continue to produce Public Service Broadcasting? I think it is important that there is some variety in the arena of Public Service Broadcasting—things like news and current affairs. Indeed there are some very high quality programmes that are produced by other broadcasters under their Public Service Broadcasting remit. I think that plurality is important; but once you have moved away from having benefit of access to an analog spectrum then I think the whole question of how you fund that Public Service Broadcasting for other broadcasters comes into play. Although top-slicing the licence fee may seem perhaps attractive at the moment, of course if the whole funding arrangement has to change then that may not be available in due course. It is one of the reasons why looking into the funding should start sooner than the Government suggests.

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Q1105 Baroness Howe of Idlicote: Just thinking about ITV—with the consent, some would say, of Ofcom—it seems to have been prepared to pretty well opt out of its Public Service Broadcasting remit in the immediate future: how would you deal with that situation if you wanted to encourage them back? Are you saying there might be a need to review this whole situation (and I think this is what you have said but perhaps you can confirm it) at an earlier stage than the 10 years, and perhaps even before digital is in?

Mrs May: Yes, I think it is necessary to look at it earlier than the 10 years. I say that because, although there is a set date for final digital switchover, people are moving to digital at an increasing rate, and the BBC has had a role in that; and Freeview has encouraged far more people to move to digital. We have a situation now where 60-odd per cent of people have access to digital services, so that the market is changing faster than the timetable set by the Government recognises and that is why we need to look at this somewhat earlier.

Q1106 Lord Peston: I am rather lost about the logic of what you are saying. What one does is one sets up a body called the BBC, which is a public broadcaster and a public service broadcaster, and gives them a remit. Then I assume, which we have done, you appoint people there to do that and achieve those aims which, although the BBC is less than perfect, is regarded worldwide as the nearest to doing the job properly. I then do not see the logic of why you want to set up an outside body that then does the job you set the BBC up for in the first place. I am completely lost as to why you would assume these outside people would do a better job of setting the standards than the BBC in the first place, given that the world recognises that the BBC is the one place that does achieve these standards?

Mrs May: The reason you set up an outside body, I believe if you have a structure where the BBC is effectively regulating itself, is that body (indeed, almost by definition the Government is suggesting it should) can become part of the culture of the organisation. I think it is important for somebody to be set back from that and to be able to take a more independent and external view of what the BBC is doing. I think that would be to the BBC's benefit in terms of the impression given to the public. I think there are many people who do feel when complaints are made that those should be looked at by a body that is different from the BBC. They believe the BBC Governors (and I believe in due course the Trust will get into this position) are simply seen as part of the BBC and not as separate and independent.

Q1107 Lord Peston: I did not have complaints in mind because I assume Ofcom deals with that. If the BBC has got the right culture in the first place, which

many people believe it has, why would you think an outside body could improve on that? This is separate from the complaint question.

Mrs May: I think the important thing is to have a structure so that people can see there is proper external monitoring of what is being undertaken by the BBC; and that includes that culture and the remit against Public Service Broadcasting. The situation we have had in recent years is that there have been a number of questions raised in Parliament, and elsewhere of course, about the extent to which the BBC has been continuing to fulfil its Public Service Broadcasting remit. The argument about the dumbing-down of programmes is the obvious example. The BBC has responded in some areas on that, but I think there is a greater confidence if you have an external body that is able to look at the BBC and say, "We believe you are or are not in this area meeting your Public Service Broadcasting remit", and the BBC then reacts to that; rather than simply there being a feeling that sometimes the message does not get through because the body governing the BBC and regulating it is, of itself, part of the BBC.

Q1108 Baroness Bonham-Carter of Yarnbury: You suggested that you would consider top-slicing. I would be interested in what your response is to the concern that this breaks the immediate link between the public and the BBC and, conversely, the fact that it may be that would undermine Channel 4's independence, in that it would be getting money from Government?

Mrs May: You are right, of course, that there is a unique link between the public and the BBC through the licence fee. I suspect there are many members of the public who do not realise there have been Public Service Broadcasting obligations on other channels. I think it would be useful to highlight that in a way, to show that there are other channels which are, in a different way, (because it is only specific programming), providing Public Service Broadcasting in its proper definition. Therefore, I see no problem with saying that some of the money that is provided by the public should be covering that. As I say, there has to be some way of providing for that in an environment where a channel like ITV no longer has the opportunity of a reduced premium in relation to the analog spectrum because the analog spectrum is not there and is of no value to it because of digital switchover.

Q1109 Lord Armstrong of Ilminster: We have talked about Public Service Broadcasting, and both times you have used the phrase you have qualified it, given its proper definition. I wondered what you thought a proper definition was?

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Mrs May: As I tried to set out earlier, I think it is broadcasting that does inform and educate; I think it can entertain at the same time; but it is broadcasting that is of very high quality and high standard, and a high degree of integrity and clear impartiality. I think those are the key aspects of Public Service Broadcasting.

Q1110 *Bishop of Manchester:* Reference was made earlier about the fact that Ofcom has released ITV from some of its public service obligations. I wonder if you have got any comment about that; and whether you feel that this is a pattern that could continue into the future and, therefore, whether or not that really is going to be helpful or otherwise to your concept of the BBC and its role in the PSB?

Mrs May: As I indicated earlier, I think it is useful to have a plurality of Public Service Broadcasting and, therefore, I think it is of concern that we have seen this being pulled back in relation to ITV. The problem (and this is why I was saying earlier I believe we need to look at this whole area rather earlier than the Government has suggested) is that the marketplace is changing so significantly, so quickly, that other channels are having to adapt to an entirely different marketplace in terms of advertising, funding and market share obviously with a multiplicity of channels; and it is against that background I think this reduction in Public Service Broadcasting has taken place and hence the need to look at these whole issues of licence fee funding of Public Service Broadcasting and how you support Public Service Broadcasting as a whole.

Q1111 *Chairman:* Just one point on the licence fee—as I understand what you are saying, you do not set your mind against top-slicing the licence fee for the use of other public service broadcasters, but does that mean a licence fee at its current level or do you envisage an increased licence fee so that money can be taken in that way?

Mrs May: I was certainly not intending to sit here and suggest that we should put the licence fee up in order to do that; but that that would take place against an environment where further decisions—I am not suggesting it happens immediately, I think this is part of the debate but it may be that the licence fee had changed in any case and that in any review of the licence fee (if it was going to be the case that top-slicing would take place) obviously that would have to be considered within what was being done. What I also think is important, when the licence fee is being set, is there is a very clear assessment of the BBC's costs against the remit of Public Service Broadcasting. I think there have been many questions in the past about the BBC's cost-efficiency and cost-effectiveness against the licence fee requirements that are being made on members of the

public. The licence fee is not ideal, if I may just say that. I suspect there are many people who do not feel it is an ideal way of funding but at the moment, looking ahead to the broadcasting arena that there will be in a few years' time, it is difficult to see exactly what the best way of replacing it is, if that is the case.

Q1112 *Lord King of Bridgwater:* This is a point about access by the NAO, in which, I think, John Whittingdale thought it was a good idea if they had full access.

Mrs May: I continue to believe what John did, which is I think there should be full access. This is public money and I think it is important that the National Audit Office has that opportunity to be able to investigate and consider what is being done by the BBC with that public money.

Q1113 *Lord Maxton:* I want to go back a little bit to the concept of broadcasting. You have defined what we mean by “public service broadcast”; can you tell us what we mean by “public service broadcaster”?

Mrs May: Yes. This is indeed, in my mind, linked to the question of the digital revolution because there is an argument that the question, I think, is whether a public service broadcaster is one that simply provides, develops and produces programmes which have that public service content or whether, in addition to that, it actually has channels identified through which it delivers those programmes. I think that it should have channels through which it delivers that programming, and I think there are a number of reasons for that. First of all, I think, if we believe public service broadcasting is a public good then we want to make sure that it is available to people, and if you do not have a public service broadcaster delivering it through a specific or a number of specific channels then there are all sorts of questions about how you then ensure that those programmes are provided through other channels and other broadcasters.

Q1114 *Lord Maxton:* This is linking into the digital revolution, in that once we have the digital switchover, however that might be achieved, then there will be large numbers of what one might term public service channels on that digital platform, whatever that might be—whether it be Discovery, Performance Channel, providing arts channel—and they will develop and grow over the next few years. So would you see, when you top-sliced, some of that money available for those? If we then move to the next stage, which of course will be internet broadcasting, would you then allow internet broadcasters to apply for some of this money? If we start doing that it seems to me we are stretching the licence fee so far that it becomes impossible. What

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right have we to say, “Only ITV or Channel 4 or Five, should have it”?”

Mrs May: What I envisage is more an environment where there is a remit set for a certain amount of public service broadcasting which is outside that which the BBC provides, so that one is not saying simply that any channel that provides something which could be classified in some way as public service broadcasting can apply to have a slice of the licence fee. The public service broadcaster who will continue to provide the vast majority of public service broadcasting is the BBC but I think there is scope for, as we have had in certain areas, other broadcasters being able to offer public service broadcasting within a very clearly set remit as to what that should be. It is through that means that they might have access to the licence fee, or some other funding arrangement should that be the case in the digital world.

Q1115 Lord Maxton: Something like the History channel, parts of which are available on Freeview (and that will be the first to access on digital switchover), is entirely public service broadcasting; it is not like ITV where it has some programmes—the whole of its programmes over the whole of the day is, basically, public service broadcasting, because it is educational; it is providing people with knowledge and information which otherwise they would not have. Why should not something like the History channel have money out of the public service licence fee?

Mrs May: You can push it to a point, obviously, as you were indicating in your initial question, where you could say there is a whole variety of channels who suddenly will say: “We are only producing this sort of programme”—the Biography channel or National Geographic, or whatever it is—“these are plainly in the public good because they are educational, therefore suddenly we should have access to all this licence fee money.” I do not think that that is the case. I think a public service (and this is back to the issue of public service broadcasting and public service broadcaster) broadcaster, like the BBC, is a broadcaster who is producing a variety of public service broadcasting which meets the remit of public service broadcasting but does so in a number of different ways. Because it is doing a number of things and producing, also, the popular programmes (as I said in answer to the Chairman’s earlier question) then it is providing that public service broadcasting to people who otherwise might actually not be watching those sorts of programmes—the person who will not switch on the History channel, because actually they do not think they are interested in history, but when they see Simon Schama on BBC, will watch it. Therefore, there is a public good that

comes about, providing that through a public service broadcaster.

Q1116 Baroness Bonham-Carter of Yarnbury: I wanted to ask about the BBC’s proposals for a Window of Creative Competition. The Conservative Party, in a policy statement, “Action on Arts and Heritage”, has said that you would require the BBC to source at least 50 per cent of programmes from outside the BBC. Do you think, what is now known as, the WOCC responds to this request of yours?

Mrs May: I think it is a step forward but, of course, it could be the case that the WOCC would either meet the requirement that we set out in that action paper of 50 per cent or it might actually only produce 25.2 per cent because, obviously, 25 per cent of programme is going to be up for this competition, and therefore it will be competition between in-house and external production. I think we welcome the fact that the BBC has come up with a proposal that takes us forward but I am not sure it is going to necessarily meet the requirements that we have set. I would simply comment that, of course, although in the last year the BBC will have hit its current target of 25 per cent, it has significantly failed to do so in other years.

Q1117 Baroness Bonham-Carter of Yarnbury: What is your response to the argument that for the BBC to retain its position as a trainer of talent and producer of programmes of merit there needs to be a critical mass? I think some would argue that 50 per cent of in-house production is necessary for that.

Mrs May: Yes, I accept the argument that if you are going to be able to provide that training ground then you have to have critical mass, and I think 50 per cent would be the limit that I would set on that. If I may say, I think there is some merit in looking at a requirement in terms of the percentage of out-of-London production and regional production, as well, in order to try and stimulate independent producers in other parts of the country. I think sometimes people feel the BBC’s use of external production is very London-centric and that actually there could be more done, not only for the BBC itself to be producing in-house in other parts of the country but, actually, for other independent producers to be stimulated and encouraged in the regions.

Q1118 Lord Kalms: I wonder if you could clear up some points about competition. Mr Whittingdale suggested, some time back in the House of Commons, that the BBC should go on further in disposing of its commercial operations. I am not quite sure that he means further; you either believe it should have commercial operations or it should not. If you believe one or the other then you do it completely, not partly. I wonder whether you have

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thought about it sufficiently, because is it right that the BBC should be stopped? If you tell them to dispose of everything they will not start anything, and they are the most creative of all the broadcasting institutions. Some of their work is pioneering and is quite unique; in fact, this week they sold a big chunk of it to Australia—it is really pioneering work. So I think there is a slight ambivalence in your point of view. I would suggest that they should be allowed to develop and use state-of-the-art techniques. If you are telling them they have to sell it as soon as they do it, they will not start. Perhaps we can have some clarity on competition, as you see it, with these commercial operations.

Mrs May: I hope I will be able to persuade you, my Lord, that the approach, I believe, is a balanced approach, which is not perhaps as absolutist as you are suggesting the two positions can be. You are absolutely right, of course, that we want to encourage the BBC to be pioneering, to be innovative, to be producing state-of-the-art programmes, to be using new techniques and pushing broadcasting forward in that sense. I believe it is right that they should be able to have some commercial operations—selling rights to programmes, for example—but I think there is a point beyond which the commercial operations cease to be part of what one can describe as within the remit of a public service broadcaster. I am not convinced, for example, that the large number of magazines that the BBC produces are necessarily part of its role as a public service broadcaster, and it is in those sorts of areas that I think there are still some commercial activities that could be disposed of. I think there has been a natural tendency, perhaps, to constantly expand what the BBC is doing and, almost, a belief that by definition if the BBC is doing it therefore it is right that it is expanding in that way. I think that actually there are times when we have to say, “No, let us make absolutely clear what the remit is and what should be done within that remit.”

Q1119 Lord Kalms: You would make it clear?

Mrs May: Yes; I would not say, “No commercial operations”, as I indicated, because obviously there are some aspects that the BBC should be able to do, particularly if they are going to be encouraged to innovate, as you suggest.

Q1120 Lord Kalms: Would it be arbitrary or do you think you could define that more clearly, because if I was working in the BBC I would like to know very specifically what I can keep, what I have to sell and what I can develop in the future. Do you think, at some stage, this could be absolutely clear? Working in the BBC, with my future ahead of me, I need clearness of direction.

Mrs May: I hope it would be possible to provide clearness of direction, and this would be a role one could look at giving to the Public Service Broadcasting Commission in terms of setting the sort of parameters that would be available. I would hesitate to suggest that it would be as clear to a worker in the BBC what they could and could not do as it might have been to a worker in Dixons.

Q1121 Chairman: Just to take Lord Kalms’ points further, if you are producing gardening programmes—and they are excellent gardening programmes—and you then, as a spin-off of that, you run a magazine (if you like, on the back of it, as a derivative of it) is that wrong?

Mrs May: So long as it is something which is promoting and sort of following up what the BBC has done within its broadcasting, I do not think that is wrong. I think if you just produce a general magazine that has very little link to what you have actually been doing in terms of the—

Q1122 Chairman: Hello! or a magazine of that kind?

Mrs May: Maybe. There are some areas that, maybe, what should be done is more selling of rights rather than the actual production. One could look at publishing some of the books attached to programmes, for example.

Q1123 Lord Peston: I am a little bit lost. On the one hand you have said you want an independent body to set the licence fee, then you are in favour of top-slicing, and then you are against some aspects of commercial operations. As a set of principles of public finance I have to put it to you it does not make any sense to me at all. Surely, what the taxpayer wants is the BBC to use all its skills to make as much money as it can, because that is to the benefit of the taxpayer. I am just amazed that you would want them to, as it were, remove from their role of operations things that would bring in—where they have the skills, you have not denied that, and where they are connected with what they do anyway, they are not artificial—money. Why would the taxpayer not put their hand up and say, “That is as good an idea as you could possibly have; that is what they should be doing”?

Mrs May: I would suggest what the member of the public wants from the BBC is for the BBC to be producing the good quality programmes that they associate with a public service broadcaster and to be focusing their resources and effort on the production and distribution through its channels of those programmes. I think where members of the public would accept that there are some aspects of commercial activity that it is entirely right for the BBC to be undertaking—for example, you have been talking about selling rights to certain programmes—

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and if, by definition, we are saying that the BBC is at the pinnacle of standards of broadcasting and quality broadcasting and innovation, pioneering work, then we want that to be used and to be sold elsewhere, and for it to be enjoyed elsewhere as well. I am not sure that the job of the BBC is simply to go out and make as much profit as it can from other activities, some of which in the past may have been supported by—initially, at any rate—the licence fee. I think it is absolutely essential that there is no cross-subsidy between the licence fee and those activities in that sense.

Q1124 Bishop of Manchester: Several times this afternoon you have touched on issues of accountability and transparency, and rightly so, because the Green Paper does make the point that the public has high expectations in those areas. I wonder, before we finish, if there are any further things that you want to say in terms of accountability and transparency, and in terms of the Trust or the BBC in general. I would just like to hear a little bit more of the things that you intriguingly touched on earlier.

Mrs May: Yes, in relation to accountability, obviously, in the Green Paper the Government was putting forward a number of proposals for how the BBC Trust could provide a greater degree of transparency or accountability. I think what has been proposed is a slightly complicated arrangement within the BBC, and there are certainly some aspects of it that I think would not provide the sort of transparency that, at first sight, the Government may have suggested. For example, the webcasting of Trust meetings. In my experience, what that means is anything really controversial or confidential, by definition, then happens outside the meeting that is being webcast. So the extent to which it is a real transparency and benefit in increasing accountability, I think, is limited. As I indicated earlier, I do not think the Trust is the right way to go. I think there will be continuing questions over accountability if the body that is seen to be highest body overseeing the BBC, as the Government defines

it, or overseeing the BBC at the highest level is still perceived to be part of the BBC itself.

Chairman: We have one more minute. Lord Peston, I cut you off in your prime.

Q1125 Lord Peston: I did not realise it! I just go back to make sure I understand what you are saying. The BBC's website, for example, is regarded as the best there is, but supposing the BBC announced it was going to produce a computer magazine, where it has got all the skills in the world. Would that be on the wrong side of the line, as far as you are concerned?

Mrs May: Yes, I think it would, because I think there are other people out there who have got equal expertise.

Q1126 Lord Peston: I am sorry, we know there are not, because, you see, if we talk about the market system, if they had the ability to do it they would be doing it now.

Mrs May: In terms of producing the magazine or producing the BBC online website?

Q1127 Lord Peston: Producing the magazine. The point is there is a gap there.

Mrs May: There are lots of computing magazines that are available and produced in the marketplace.

Lord Peston: But they are not very good. That was all I wanted to raise.

Chairman: Are there any other burning questions from anyone?

Q1128 Baroness O'Neill of Bengarve: A small one. Would you think there should be the same sort of scrutiny about cross-subsidy of any other broadcaster that receives public money to make public service broadcasting programmes to make sure they do not just cross-subsidise their bottom line?

Mrs May: Yes.

Chairman: Mrs May, we are very, very grateful. Thank you very, very much and perhaps if we have any other points we can write to you.

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Examination of Witness

Witness: MR DON FOSTER, a Member of the House of Commons, Liberal Democrat Shadow Secretary of State for Culture, Media and Sport, examined.

Q1129 Chairman: Mr Foster, thank you very much indeed for coming. I will not go through the introduction because you have been sitting there and you heard it all, in any event, and you have a rough idea, also, of what questions we might be asking. Let me start with governance. As you said in your speech, and you say in your paper, you agree with a great deal in the Green Paper but not on the question of governance of the BBC. Could you explain that?

Mr Foster: If I might just begin, actually, by saying to Lord Peston that Future Publishing in Bath produces a very good range of computer magazines that I will, perhaps, send to you. In terms of governance, the whole issue has been confused by people not being clear about the different needs that there are. It seems to us that there are three different activities: one is the issue of management, which should be carried out by a management body within the BBC; secondly, there is the issue of governance, just as for example you have the governors at a school, and then, thirdly, there is the issue of regulation. So we have proposed, as it were, a three-tier process. We began by accepting entirely the criticisms that everybody made that it was wrong to have the current governor arrangements where the governors were both the flag-wavers for the BBC and the regulators of the BBC—and I think everybody has now accepted that conflict—but we then think the best way forward is to have a management body which would have no non-executive directors on it, then there would be a governing body which we also have called a Trust (but perhaps in view of the confusion with the Green Paper we will have to come up with a different name) and, then, thirdly, a totally independent regulatory system. There, we are proposing a regulator for all of the public service broadcasters, and we called it a public service broadcast regulator, so that would be regulating the public service broadcast remit of the BBC but, also, the other current public service broadcasters—ITV, Channel 4, Five—and, indeed, if in the future some other bodies were in receipt of public funds for the provision of public service broadcasting units then they, too, would fall under the remit of this regulator. Of course, some people will say, “Surely that function can be carried out by Ofcom.” We recognise that the regulation of the BBC is going to be many-fold; it will fall under various EU regulations—health and safety and a range of various bodies—and we certainly did not believe that Ofcom would be capable of adding to the very large number of tasks that it already has the business of regulating the public service remit of all the public service providers at the present time.

Q1130 Chairman: Thank you. In essence, the first part of your solution—management and governance—is a standard plc board.

Mr Foster: Correct.

Q1131 Chairman: It is a board of directors and under the board of directors you have an executive committee, management committee—call it what you will. You would be content with that?

Mr Foster: Yes, and in addition to that you need the external—totally external—regulatory bodies that will be looking at the different aspects of the BBC’s work, and the other public service broadcasters, just as Ofcom looks at some of its activities so our public service broadcasting regulator would be looking at his public service broadcasting remit.

Q1132 Chairman: To all intents and purposes you follow Burns, or perhaps Burns follows you?

Mr Foster: I am not going to argue the genesis. We have a difference in that we have a separate governance tier, which we call the Trust, which would be looking directly at the work of the management of the BBC; for example (I can use a simpler example than yours), the governing body of a school. There they would be looking at some of the issues that clearly the regulators would also be looking at to make sure that the management is delivering those but the final responsibility for checking is with the regulator.

Q1133 Baroness O’Neill of Bengarve: The additional regulator that you propose to put in for public service broadcasting would, therefore, also be regulating a number of other broadcasters who produce PSB programmes. We have been hearing from some of them that though they would grant that, at present, they have a certain form of subsidy and it is appropriate that they should be regulated, what would be the basis for bringing them under that regulation in the future?

Mr Foster: They would be those bodies that are defined as being a public service broadcaster. We can look at aspects of ITV; the ITV News Channel is not a defined public service broadcaster so it would not fall within regulation by this particular body. So it would be anybody that has been in receipt of public funds for the provision of public service broadcasting.

Q1134 Baroness O’Neill of Bengarve: So you would have an additional body that provided funding to broadcasters other than the BBC for the provision of—

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Mr Foster: We may come on to that later and the big question, of course, is: are there any funds available and where might they come from? Were there to be such funds, perhaps, from the release of the use of the analogue spectrum at the present time or from other innovative sources, then we believe there should be a body that would take responsibility for the delivery of those funds to people it then established licence agreements with. One of the things that we think is very innovative in the thinking of the BBC is that the BBC is now accepting the need to establish licence agreements for each of its activities, and this is something we would want to go further with and enshrine within the Charter.

Q1135 Baroness O'Neill of Bengarve: If I do my counting right, you have actually got five bodies envisaged, because there is the management, there is the Trust, there is Ofcom, there is the new PSB regulator and there is the distributor of funds for public service broadcasting.

Mr Foster: That would be correct, but of course it is only adding two to the ones that currently exist, and we have to find some funds to distribute, first of all, before the second of those two new ones comes on stream.

Baroness O'Neill of Bengarve: I have now got the architecture clear.

Q1136 Lord King of Bridgwater: There are some of us on this Committee who think the present proposals are not terribly clear, so you have certainly struck an original note. I must say that it seems to me a recipe for chaos. One of the criticisms we know is that at the moment people do not know who complain to, who is really responsible, and it seems to me that this proposal adds to the public confusion as to who is really responsible. It would certainly add enormously to the potential for conflict between the various bodies. Lord Peston (I think you were here) made the point to Theresa May that the BBC, actually, apart from a particularly unfortunate and maybe unfair recent episode, has over many years, on many occasions shown that the governors understand they have a dual responsibility: they have a responsibility to see that the management operates effectively and, if they are being unfairly criticised, to stand up for them and, at the same time, to uphold the standards of the BBC and to maintain their duty to the licence payer. That can be done internally, not webcast around the country, and more likely to be done effectively and quickly. I do not think you have costed these proposals or estimated how much confusion would exist while all this organisation is set up. I do not want to be unkind, and you have been doing the job before the election as well as after. So discuss.

Mr Foster: Discuss is quite simply we must agree to disagree. The Chairman has rightly pointed out that our model is one that is in common use. We are proposing—

Q1137 Lord King of Bridgwater: Not with three tiers on top of it.

Mr Foster: We are not adding three tiers, with respect, my Lord. I have suggested that if there are some additional funds to be given out, and that is an issue that I think is a matter for very significant debate, we have to have a means for giving it out. I could propose that it become part of the Arts Council and that may be a way forward. So that might reduce one of the ways forward. The basic model of governance, as it is called in the jargon that I am describing, is one that is very common at the present time. With respect, the BBC, in terms of its governance, already is responsible to very many bodies; you were talking earlier about the role the NAO might play; you have to acknowledge there is a significant role with various bodies within the European Union. We are currently talking about proposals coming out of the European Union in terms of broadcasting without frontiers—the implications that will have for the BBC. So there are very many regulators that impact upon a large number of bodies, and we are used to that happening. We are equally used to there being a management structure within an organisation and a body that checks what that management structure is doing. So I do not think, with respect, I am proposing anything that is particularly uncommon. Indeed, I think the vast majority of people who commented on the current arrangements do find it very difficult to separate out those different functions that the governors currently have because they believe that there is an inherent contradiction within the range of activities that they have. I fear, beyond that, we will just have to agree to disagree.

Q1138 Lord Maxton: I must say I am not at all clear in my own mind exactly what this new regulatory body is going to regulate.

Mr Foster: Each of the public service broadcasters at the moment has, in one form or another, a licence agreement. They agree what it is they are going to deliver in return for the things that they are provided with. We will perhaps later be discussing how that is going to change as we move into the digital era, but at the moment there are clear licence agreements with ITV, with Channel 4, with Five, and we have the equivalent of a licence contained within the Charter for the BBC. Part of the current role of the governors is to ensure the delivery of that licensed-type activity solely for the BBC. There is a degree of self-regulation with some degree of checking by Ofcom for the other three. We are proposing a simpler model

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where the public service broadcasting remit of all the public service broadcasters is checked, is regulated by a single body.

Q1139 Lord Maxton: So if we go back a couple of years to the dispute on ITV about the timing of their news, which is obviously a public service remit, you believe that should not be a matter for Ofcom but should be a matter for this new public service body?
Mr Foster: That is absolutely correct.

Q1140 Lord Maxton: Why?

Mr Foster: Because it is part of their remit. Their remit required them to deliver a range of activities within the licence, and the question of whether or not they were meeting that licence is a public service broadcasting remit and it would be the responsibility of the regulator to check whether or not they were delivering it, so that is the body it would go to.

Q1141 Baroness Gibson of Market Rasen: It seemed to me we are getting rather complicated. This is about your proposals in relation to the BBC Trust, which are not exactly the same as those proposed so far. You say in your response to the Review of the Charter: “The Trustees would be selected and appointed by a joint committee of both Houses of Parliament. This process would be regulated and monitored by the Commissioner for Public Appointments and the joint committee would reflect the party political balance in both Houses.” How does that help any feeling about independence of the BBC? It would seem to me, just looking at your proposals on paper, that that would sort of tie them into the political system in a way that the BBC is not tied in at the present time.

Mr Foster: I think all of us have a difficulty in deciding who should serve on a range of public bodies. At the moment the arrangement is one whereby the Government of the day makes the appointment by proposing that it be a joint, if you like, select committee making the appointment. We felt that that was moving away to some extent from that link directly with the government of the day. So it is an attempt to move away from that very problem that you are describing.

Q1142 Baroness Gibson of Market Rasen: You would not go as far as, for example, Theresa May, talking about much more independence?

Mr Foster: We want to see the BBC being strong, independent and well and securely financed. That does mean that it is independent of government; that does not mean to say that the bodies that regulate the activities of the BBC are not going to be appointed by somebody on behalf of the people of this country. The question then is whether that is by Government or by a rather wider body. We are proposing a wider

body under the Nolan rules and using a joint committee.

Q1143 Baroness Howe of Idlicote: Following up that point about independence and the idea of having a rather more obviously independent group selecting the board and so forth (whatever you end up by calling it), I can see the point of that, as a way of ensuring that there is not too much parliamentary, government-of-the-day, influence. It has been suggested to us that an awful lot of leaning on the BBC, particularly, goes on (and I go back to the recent Hutton scenario, and so on). Might there be a case, do you think, instead of having all this stuff done behind closed doors (and we gather it happens in all parliaments and with all parties, when in opposition as well as in power) to actually insist that all those sorts of discussions go on in public, in the sense that they have to be published and made direct to the Trust rather than to the Board of Governors in the first place?

Mr Foster: Both as a Liberal Democrat and a keen proponent of all of the legislation on freedom of information, I am tempted to say yes immediately, but I have to say, since I speak merely for myself in one sense, I have some reservation about doing that. The sort of hearings that we see in America, for instance, about major appointments, I think, cause me at least to pause and reflect on your suggestion rather than give an immediate response.

Chairman: Can we go back to the question of financing of the BBC, and the whole funding issue.

Q1144 Bishop of Manchester: I think I am right in saying that the Liberal Democrats are in favour of an inflation level licence fee. You have already referred to the need to get money for funding switchover and you are on record, as well as saying it this afternoon, as talking about meeting those costs from the projected spectrum sale (?). I gather that would achieve more than 85 per cent cover with limited exclusion digitally, and you might want to talk about that limit and the level of it in a moment. Can I ask you, in general and then in detailed terms, to defend your particular policy about the inflation level licence fee? In the long-term future there may well be other major issues that arise which require greater funding.

Mr Foster: Yes, and thank you for the question. I said earlier that we want to see a strong, independent and well and securely funded BBC, and we think that that is very important. Like all others, we have considered the alternative forms of funding and what they might be—direct government funding, sponsorship, advertising, or indeed pay-for-view subscription—and have concluded for the reasons that, I think, all others have concluded that the licence fee is probably the least worst option available to us at the present time. I entirely agree with Theresa May, and, indeed,

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the Government's Green Paper and Ofcom's response, that in due course other ways may well become available. In terms of the final decision on the licence fee, which we do believe—perhaps slightly contrary to something earlier I was saying—that that must be set by the Secretary of State after wide consultation, including, we would argue very much, with our public service broadcasting regulator. We think it is important that when a decision is made that there is a very clear specification of all the various extras over and above the delivery of programming that is expected from the BBC. So, for example, I think we need to be much clearer, and the Government needs to be much clearer, about exactly how much money from the licence fee the BBC is expected to use in the furtherance of the move towards digital. I think we need to be clear precisely how much support in financial terms it is going to be expected to give to Channel 4 and how much it is going to give to training. One of the things we constantly say that is so good about the BBC is the universality of broadcasting. We know it has made a commitment to increase its funding on training from £5 million to £10 million, but I think we need to hold them to that. So that needs to be clearly stated. For example, we need to be much clearer about the requirement of funding for supporting S4C (and there, incidentally, I think some significant changes are needed). So we need to be clear that all of those are going to be listed; we need to be clear what sort of income we might reasonably expect from the commercial activities that Lord Peston and Lord Kalms were talking about earlier, and we need to be clear about what efficiency savings we might expect. When all of that is taken into account and we also look at what the public's view of the sustainability of the licence fee is, it is clear to us from the figures that we have looked at that the current level of the licence fee is both at about the top level the public would be willing to sustain, together with inflation, and would equally meet the requirements for all of those various activities as well as programme delivery. So that is how we came to the figure of the current level plus inflation.

Q1145 *Bishop of Manchester:* Do you think that is likely to be a sustainable formula in the years ahead?

Mr Foster: Clearly, it would depend on what other requirements are placed upon the BBC. If we added, within the Charter, a number of things over and above those I have referred to, then clearly the figures would have to be looked at again. The one thing I do not think would be possible, having heard the evidence from Theresa May, would be to take that current level and then to top-slice that current amount to use for other purposes within public service broadcasting as I simply do not believe that the BBC will then be getting sufficient levels of

funding to sustain itself at the sort of size I believe would be necessary to deliver its programme delivery, notwithstanding the changes proposed in terms of the WOCC.

Q1146 *Chairman:* Therefore, if you did need extra resources, extra money, where would that come from?

Mr Foster: If we are then going to look at the issue of: are we going to in the future need to provide funding for, say, Channel 4 (I think most people would acknowledge they do not need it in the near future but they make a case that in the longer term they are going to need it) if you wish to sustain Channel 4—and I would argue we do need to have competition in public service broadcasting—then I think we have all got quite difficult questions to answer as to how we are going to find that money. I confess I do not think there is an easy answer; I do not think a case has yet been made to the public to persuade government to give more direct government funding for it, although I think a case could be made. So the only sources that we can currently look at, as I would see it, is making use of the receipts from the ending of analogue (and we have seen from the Ofcom report the figure of approximately £500 million a year might be made available from that) but then there are possible public good uses we wish to make of it—other ones—so that might be a difficulty, but that might be one source, and then of course there has been spectrum charging and a range of other proposals that have been made. However, I am afraid we have no clever solution to that problem at the moment.

Q1147 *Lord Peston:* I am a bit worried about the economics of what you are saying. If the licence fee at present is correct and is then indexed by the rate of inflation, in a growing economy wages are rising in relation to the rate of inflation, so I think what you are announcing is that the real resources available to the BBC will diminish through time, approximately, according to the share of labour and costs. Why would you want to argue that cutting the resources available to the BBC is the optimal strategy? Surely you need a weighted average as the correct way of doing it.

Mr Foster: I have not given the full picture, and of course when we take into account the increased number of households that are anticipated, especially if the Deputy Prime Minister's plans go ahead as he predicts, then very significant additional sums would come into the BBC because of the increased number of households.

Q1148 *Lord Peston:* That is possible. Can I ask one supplementary on that? If this is an automatic formula, then of course we do not need an outside body to fix the licence fee; we simply announce that

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from now on, for all time, the licence fee is fixed. Is that right?

Mr Foster: No. I think, first of all, we are currently debating what should be the licence fee for the next licence fee period.

Q1149 Lord Peston: But you said it was okay.

Mr Foster: I am suggesting that that is the sort of figure that if I was asked my advice is the figure I would give; it is not, as I suggested, for me to actually set it. I am also accepting what has been recommended within the Green Paper and by others, that there would be a midpoint review of the figure, and I have also accepted that I do not necessarily believe that the licence fee is going to be the way forward after the next 10-year period of the Charter, because I think all sorts of things will have changed by that time.

Q1150 Lord Maxton: First of all, can I suggest you need some extra money on the licence fee, over and above inflation, over and above what we are doing at the moment, to digitalise the archive. That is absolutely essential because some of it is already decaying, it needs to be digitalised and it is an expensive proposition to carry that out. Secondly—and only someone who is not elected can even suggest this (though I have done before)—I think the licence is the best way to fund the BBC, but the licence itself, as it stands, is a very unfair way of doing it. A single, old-aged pensioner under the age of 75 (like me—but I am not single) actually has to pay the same licence fee as somebody who has five or six televisions in their house, has radio in two cars, and has a whole range of devices, including their computer, around them—and, of course, that is without mentioning the commercial operations of hotels, boarding houses and all these other organisations. Why is not some good body like yourselves thinking about multi-fee licences so that you might have a single basic and then add-ons for every other device you have in the house?

Mr Foster: I could make your suggestion even more complicated, my Lord, because I am very conscious that we are going to have all sorts of modes of delivery. I am going to be getting my television through my broadband on my computer so I might charge for that, and I am very soon going to be getting high-quality definition television on my mobile phone, so I could charge for that. So we did give thought to adding simply a small sales tax to every form of device which could receive, or have the ability to receive, television or radio pictures. Incidentally, I am delighted you mentioned radio, which I do not think we talk enough about in these debates. However, we concluded that it was far too complicated and that we have something, regressive though it is (and, as I said at the beginning, it has a number of faults), but we thought it was simplest,

and we have the discount for the over-75s. I think we do have to look at the issue of discounts in respect of elderly persons' homes, where I think there are particular complications that need to be resolved, but it is relatively simple, it is relatively easy to collect, even though currently that is costing us £150 million. That can be reduced. So it is clean, it is simple, it is relatively easily understood and people know what they are getting for it, so we concluded it is the least worst of the options, notwithstanding the difficulties that many have described.

Q1151 Chairman: You do not like his idea to have some kind of multi—

Mr Foster: I think in 10 years' time, my Lord Chairman, we are going to be doing all sorts of exciting things; we are going to be being charged for used of all sorts of services that we get on a one-off basis. It was suggested to me very recently that the most obvious way forward was to set up a system similar to water metering. The problem with that is that it does not give security of funding for the BBC and it also fails to recognise that there are huge benefits to television and radio listeners who themselves never watch BBC programmes or listen to BBC programmes, because they do get a huge benefit. So the contribution to that benefit to all, through a single, easy-to-collect, easy-to-understand, payment, struck us as the most sensible way forward.

Q1152 Baroness Bonham-Carter of Yarnbury: You, along with everybody, say that the BBC needs plurality and competition on the PSB front. As you know, this week ITV has threatened to abandon its commitment to public service broadcasting because it feels it pays too much in its licence fee. How do we, in the future, ensure that there is competition on a PSB front? I know Five, who, like you, does not agree with top-slicing, suggested there should be a new compact which involves where you are on the Electric Programme Guide. I wonder what you think about that.

Mr Foster: Firstly, if I can respond to the statements by ITV, it is hardly surprising that they said what they said at the time when they are just finalising their negotiations with Ofcom, and they are clearly going to threaten these things, and it is understandable. At the end of the day, the first question, I think, that has to be asked is: are we absolutely clear what the benefits of being a public service broadcaster are? Clearly, the calculations have now been done by Ofcom in relation to the benefits of prominence on the EPG and, even in the digital world, of access to that digital world. They have calculated, and I am certainly not in a position to gainsay it, that is worth something like £25 million a year at best, and maybe falling over time. We therefore have to ask the question: what is the benefit to anybody of taking

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on the commitments of being a public service broadcaster (other than the BBC, who are going to get £2.7 million and rising for doing it, so it is pretty obvious to them what the benefits are)? For the others, I think they are going to ask those questions, and that is why I was raising earlier the issue of where is the additional money going to come from if we are going to provide financial support to them to continue to be public service broadcasters to provide that much-needed competition to the BBC. As I said, my Lord Chairman, I am afraid like the vast majority of people while I have ideas I simply do not have the solution to that, other than the ones that are being talked about. I cannot, therefore, at this stage, give you a better answer than I was giving earlier. However, I recognise that in the situation where what we are providing public service broadcasters with is diminishing then they are, understandably, going to be asking the question: why should we continue to take on a degree of onerous responsibility? On the other hand, as was pointed out earlier, many other channels that do not get any benefits—the History channel was referred to—do seem to be able to find that the provision of the sorts of programming that we would consider meets the public service broadcasting remit do seem to find that there is some benefit to them in doing it in terms of the advertising revenue or sponsorship revenue that they can get. So I do not think we need to be quite as pessimistic as some people are.

Q1153 Baroness Bonham-Carter of Yarnbury: The position on the Electronic Programme Guide is something that you see as a potential?

Mr Foster: The position on the EPG, I personally think, is rather more significant than Ofcom gives credit for. The reasons for that being, as we move towards the increased use of PVRs (Personal Video Recorders), where Personal Video Recorders predominantly are going to be based upon the EPG, then I think the position on the EPG is going to be quite significant. Indeed, some research that was carried out by ITV when they were arguing the case for the need for a new Ofcom review illustrated that, but I do not want to overplay that because I think the sums of money that we are talking about are in the tens of millions, at most, and certainly not, well, whatever figure Ofcom comes out with for ITV, which will be in the region of a hundred million, perhaps, or that sort of order of magnitude.

Q1154 Baroness Bonham-Carter of Yarnbury: Should one of the required characteristics of BBC programmes be that they are distinctive and different from those on commercial channels?

Mr Foster: No, not necessarily. I think Ofcom has come up with a very good list of both the characteristics and the purposes of public service

broadcasting. The Green Paper, I think very sensibly, says that not every programme that appears on the BBC is going to meet all of those, but it should at least attempt to be achieving one of them, whether it is originality or creativity or whatever. I am very happy with that. If you combine that with the test of public value that the BBC has set for itself, then I think we have got some very clear tests against which we can look at each and every programme. That becomes difficult. There is currently a debate as to whether Radio One—some people would argue—no longer meets those requirements. Therefore, some have suggested it should just go off and raise money through advertising and so on, with commercials. Yet when you analyse what Radio One provides in comparison with the commercial radio stations, you see it is doing a much better job of bringing in new music, has a much greater variety of music and, of course, its news programming within it is attracting audiences that other radio programmes do not address. So when you begin to analyse things against those criteria, I think, it is fairly easy to make a decision: are they meeting the remit or are they not? Of course, that would be the job, much derided by Lord King and others, of our public service broadcaster regulator.

Chairman: Lord King, I was going to bring you in but I was not asking you to respond, necessarily.

Q1155 Lord King of Bridgwater: I was going to ask you about (it is interesting the statement you make here) the metropolitan bias, and that that ought to be reduced. However, you go on to make the point that merely making some of the output coming from the regions—“Regionally-produced programmes must be of the same standard as nationally produced programmes”—you have got to have a critical mass of capability there. We all know on these Committees that the Chairman of the Select Committee, Sir Gerald Kaufman, the Manchester MP, is powerfully represented here by the Lord Bishop of Manchester. You and I know that Manchester is not the beginning and end of all the problem and the solution to it, but how many places, do you think—you talk about it as though this can be widely spread—how many, realistically, can be centres of real excellence spread in the region? What is the capability? Is it just Manchester and Bristol? Is it Glasgow? How many?

Mr Foster: If I may, I would not answer it in quite that way, because I am not convinced that it is by having centres of excellence, other than the specific genre of programming (and Bristol, for example, is extremely well renowned for its work in natural history programming and so on); I think the important thing is to find a mechanism whereby we are using the large, creative talent that exists in all regions and nations of the country. I think, equally, we have to find ways of ensuring that we are

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representing on national programming the culture, if you like, of each of the nations and regions. That is the task that I think we have, and I do not think we necessarily do it by simply saying, “We are going to move a large chunk of the BBC to Manchester.” I apologise to the Bishop, but the decision has already been made so I am not going to affect it. So, in a sense, it is more about finding other imaginative ways of using that talent. It is probably a trite example to suggest, but there are very many talented comics from Scotland, from the North, who find the ways of finding the stages wherever they might be, retaining their accents, and retaining their Northern or Scottish humour. With modern technology operating at a distance I do not think it is just about creating centres; I think there are much more imaginative ways of doing it. That is what you do in setting the parameters for the BBC and for the other public service broadcasters and for them to find ways of doing it. At the end of the day, we know already there exists this problem of brass-plating; it is very easy to just have a brass plate and say you are an independent production company from Blackpool when, in fact, most of the work is taking place in London. So it is about finding more imaginative ways of using that creative talent.

Q1156 Lord King of Bridgwater: So Birmingham, Newcastle, Liverpool, Glasgow, Edinburgh, Aberdeen and Cardiff?

Mr Foster: And people from small villages, and so on. Within my own constituency of Bath there are some amazingly talented people who are making very significant contributions to public service broadcasting that is done in London by hardly ever going to London.

Q1157 Lord King of Bridgwater: Your suggestion is that the opportunities should be positively spread right across the country?

Mr Foster: Yes.

Q1158 Bishop of Manchester: I recognise the point that is being made geographically but it seems to me a more difficult issue in relation to this is both cultural and structural. I know, for example, from the BBC’s experience in Manchester that those who are based there find it really quite a disadvantage to be away from the corridors of power, if you like, in London. I am very well aware that when the proposals were made by the BBC to move more people up to Manchester, *Aerial*, the BBC magazine had to go into top drive to try and persuade people in the south that Manchester was not filled with Eskimos and that it is quite an attractive place to live. It seems to me there are a whole number of issues here which go way beyond just saying “We will move to various places around”; it is a sort of sea-change culturally that the

BBC requires. I wonder if you have got any ideas about that.

Mr Foster: As a Lancashire lad, first of all, can I say I think Manchester is a wonderful place.

Q1159 Bishop of Manchester: I thought you seemed all right, too!

Mr Foster: I agree, to a large extent, and I think I would just be repeating myself if I said much of what I said to my Lord, Lord King. The one other issue that I think needs to be thrown into the pot is that we keep talking about the regions as if there is some clear belief in the regions, at the moment, and the truth is that following the failed voting that went on for regional assemblies I am not convinced entirely that regionalism is something that people feel very committed to. Localism, I think, is something that is much more powerful, and that is why I was pleased that reference was made earlier to radio, and the power of local radio and the importance of local radio reflecting communities. What I think is very exciting in the BBC’s own submission is the role that they wish to play in the development of local television. I think it is through local radio and local television, rather than just thinking in terms of the region, that we may well find part of the answer to my conundrum as to how we make use of the diversity of talent that there is right around the country, and, equally, how we will find some programming that can be reflective of a particular locality on to the national scene. I do think that the whole issue of localism is something that deserves far greater prominence than has been given, and is one of the reasons why I believe radio needs to have a far greater prominence in our deliberations than has currently been given.

Q1160 Baroness Howe of Idlicote: My questions are relatively quick. The first one is on local radio. In fact, we have had the contrary view put to us, that by the BBC going out and getting involved in local radio that, again, is cutting across competitive forces on the commercial side. It would be interesting to have your comments on that. Just following up slightly the point about regionalism and localism—whatever you like to call it—certainly one of the advantages (I think we saw it very clearly displayed in Bristol) was the extent to which it is not just talented people, it is people within the area basing themselves and looking around and then reflecting that in the sort of programmes that are made. Would you (I think you said you would) be expecting that sort of thing to be reflected? I happen to have seen a rather good programme on in Bristol on its role, in previous centuries, in slavery, which was very illuminating because it was involving the schools and things like that.

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Mr Foster: I would entirely agree with you, and I think Bristol is a very good example of the way in which there is developing—not just within the BBC and the specialisms particularly in terms of natural history but within the creative media industry within that area—a coming together, a sharing of talent and then a working to put in bids for programming through the BBC’s WOCC proposals and the current 25 per cent. So I entirely agree. However, if I could just respond to your earlier point about the commercial radio stations (I suspect that is who was making the comment that they did—they would say that, would they not), I think one of the things we should all be aware of is with the growing consolidation within commercial radio, and we have seen a number of recent takeovers, and then look at the impact that that is having—just, for example, in terms of music, where the play list of local radio, commercial radio, stations is increasingly being standardised whereas that is not what is happening with local BBC output. So I think that there is a real role to play for local radio, particularly now in the light of that consolidation and, secondly, because, of course, on the whole (not entirely true but on the whole true) many of the commercial radio stations are music-based whereas we get much more speech-based output from the BBC radio stations. So I think there is a difference anyway, and I think it is important that both are reflected.

Q1161 Lord Peston: Very briefly, because I think regulation of competition has been implicit in what you said earlier, but following Lady O’Neill, of the many possible regulatory bodies, if you were worried about fair trading, which one of them would be the one, in your mind (and there may be more than one), who would say “That is unfair competition”?

Mr Foster: I listened with interest to your discussion with Theresa May, and my answer to the question you asked her, which I think will help answer your question to me, is where there is a direct connection with the programming that is being produced, then it seems to me perfectly legitimate; where it is the development of an activity in relation to their public service broadcasting remit then that is perfectly legitimate commercial activity. *Cross Stitch Crazy*, the magazine that the BBC, until recently, produced and has subsequently got rid of, I can see no justification for it doing; it had no relation to any programme and so it went. So I think where there is a clear connection with the development of their activities and their public service remit. The question is then if a new activity was being proposed by the BBC which could be seen to be cutting across competition (and we must always remember that we have very deliberately agreed that the BBC is there to distort the market—that cannot be denied) then we would argue that our public service broadcasting

regulator—in the Government’s Green Paper it would be the Trust—should be the final arbiter of that, subject to seeking advice from Ofcom. So Ofcom would advise the regulator (or, in the Government’s case, the Trust) who would make that final decision as to whether that new activity is one that was accepted. Does it meet the public service broadcast remit that has been agreed for the BBC? I think it is as simple as that.

Q1162 Lord Peston: I should have been clearer in my question. It would not be the competition authorities?

Mr Foster: No. Ofcom has that responsibility in relation to broadcasting; we believe Ofcom should make recommendations and the final decision should be with the broadcasting regulator as opposed to Ofcom.

Q1163 Chairman: It is not just new activities; it could be existing activities which kind of verge over into—

Mr Foster: Yes, and how they are developed. We were talking earlier about ways of raising money. It is very clearly on record that the BBC has the most trusted website in the entire world, yet there are many people who are highly critical of the way in which, particularly, the news content of that is freely accessible and has diminished the opportunities for other news organisations to develop their website. That became subject to an independent inquiry that judged that it was, broadly speaking, okay; that they have done what they should do, and that seems to me the appropriate way forward for existing ones, every so often, to be tested in terms of whether or not they continue to meet the remit while not excessively distorting the market.

Q1164 Lord Maxton: That is going one stage further than the BBC website. At the moment you can listen to any radio programme, be it by the BBC, anywhere in the world, which means it is not just competing with radio stations in this country but it is competing with radio stations everywhere. Some of them—most of them—are excellent. The next step beyond that, particularly as broadband gets more and more popular and gets bigger, is of course that the BBC will start putting its television programmes, recorded, on to its website, which then would be recordable on to the PVR which you talked about. So, again, anybody round the globe will be able to watch BBC programmes, basically, for nothing. I do not mind that but I am sure the commercial stations, not just in this country but throughout the world, might be objecting to it.

Mr Foster: I think that in the longer-term scenario that we were talking about in response to one of your earlier questions, the time may come when we have

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the facility to be able to make decisions to charge some viewers and not others. So, for example, we make no charge to anybody for the BBC World Service. That is one of the most listened-to programmes in the Third World but it is equally listened to in the developed world as well. The time may well come when we might make a decision that those, for instance, in America should have to pay for it or for access to the website, whereas those in Africa do not. That is the type of thinking that has got to be considered. That would then put it on an equal basis, and that would then have implications for the review of the level of the licence fee, because that would assume an increase in the commercial takings of the BBC. Equally, it means we have to discuss (and you mentioned it in an earlier question) the issue of the

creative archive and the need for the restoration of much of the archival material. There is, equally, a very important question to be asked about whether or not charges are going to be made for the use of that material, and what the impact is going to be on the various rights issues that relate to it—something that, incidentally, I do not think the BBC have yet fully thought through.

Q1165 Chairman: Mr Foster, thank you very much indeed. We are very grateful. You have spent a lot of time here, both listening and giving evidence. We are very grateful to you, and if we have any further questions perhaps we can write to you about it. Thank you very much.

Mr Foster: Thank you very much.

WEDNESDAY 29 JUNE 2005

Present	Armstrong of Ilminster, L Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Gibson of Market Rasen, B Howe of Idlicote, B	Kalms, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Examination of Witnesses

Witnesses: MR JOHN HUMPHRYS, Presenter, the *Today Programme*, MR KEVIN MARSH, Editor, the *Today Programme*, MR NICK ROBINSON, Previously Political Editor, ITV News (Appointed as Political Editor, BBC on 20 June 2005) and MR ADAM BOULTON, Political Editor, Sky News, examined.

Q1166 Chairman: Good morning. Thank you very much indeed for coming. As you know, what we are doing is reviewing the Government's Green Paper on the BBC Charter and we are aiming to get our response published by the end of October so that it can be taken into account for the White Paper. I think, frankly, we know all of you. Kevin Marsh, editor of *Today*; John Humphrys, presenter of *Today*; Nick Robinson, changing channels at the moment.

Mr Robinson: Yes, I'm in limbo. I have been appointed BBC political editor but not taken up the job.

Q1167 Chairman: And Adam Boulton, political editor of Sky. The purpose of this morning—entirely non-confrontational—is to try to identify if there is anything special about the BBC in its journalism, to understand some of the pressures on you as producers and as journalists, and to understand also how you manage to preserve balance and fairness. We are not here to replay old, far off interviews. Although, having said that, Mr Humphrys, I do remember doing an interview with you on television and afterwards coming out with one ear hanging off and you saying, "That was fun". I think I have quoted you correctly. You enjoy a good argument.

Mr Humphrys: Yes.

Q1168 Chairman: I do not criticise that. I worked for 15 years for a lady who enjoyed a good argument, but you will argue with anyone regardless of party or belief and on an entirely independent basis.

Mr Humphrys: I would go further than that. I will argue with anyone about anything, regardless of what it is. It is one of the great joys of life. However, there is a serious aspect to it when it comes to doing my job, so I both enjoy it and take it seriously.

Q1169 Chairman: That is the preserve of an independent voice, independent journalism.

Mr Humphrys: If I were not doing that, yes, it would be disgraceful. I think it is not just desirable but absolutely essential that we have people—whether I

am one of them or not is for others to judge—who hold people in power (especially people in power) to account for what they say and do. That is our job and it may mean that we need to argue with them to develop that. Holding to account is a clumsy way of putting it but that is the essence of it, yes.

Q1170 Chairman: Let me try at this stage to bring you all in. It would seem to me, having operated on both sides, that one of the greatest pressures against independent journalism is from governments and from political parties. I just wonder, so that we can get the scale of it, how common it is for political parties to attempt to influence coverage, reporting and, more than that, what is appropriate pressure and what is inappropriate pressure.

Mr Marsh: Pressure of sorts is pretty dangerous, actually. It depends what you mean by pressure. There are many different kinds of pressure. For instance, if we asked for the Home Secretary to come onto the programme and for some reason the Home Secretary cannot but a junior minister can, is that pressure? It probably is not; it is probably part of the day to day business. However, that can easily reach over into areas where someone who is trying to present a government policy or a government department in its best light is pushing slightly harder. That is a kind of daily pressure; it is part of the job and it can escalate in various ways. The number of examples of pressure at the extreme, the kind of thing that I think you are thinking about when you are talking about pressure—demands that a programme behaves in a particular way accompanied by threats for instance—are remarkably rare and I think the line does probably exist towards that extreme end if you are professionally or organisationally threatened, or if someone who is genuinely in a position to exert power over you threatens to use that power, then I think that is an inappropriate kind of pressure. The other kind of pressure is the sort of pressure that I think in the business of politics and journalism most of us would recognise as being trying to get one's argument across or trying to put one's argument in the best possible light, or trying to set out ground

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rules so that an interview is presented in the best way. It would be very difficult for me to think of that as inappropriate.

Q1171 Chairman: Nick Robinson, what do you feel?

Mr Robinson: I would start off by saying that it is not just about politics and politicians. If you had here a sports journalist and you asked them about the management of Chelsea, Arsenal or Manchester United they would tell you about pressure. Any organisation with power will seek to ensure that they get their say and they get their hearing and they get what they regard as their fair due and that applies to politicians. I would stress to the Committee that I think it applies to a lot of people beyond politics as well and the tactics are very similar. What is appropriate and what is inappropriate I agree with Kevin Marsh. What is inappropriate, it seems to me, is if you are personally being threatened—I do not mean your safety but in other words your survival as a journalist in some way, you will not be able to get X or Y or someone will write to your boss and tell him to sack you—or if organisationally you are being threatened. We know that a great weakness of broadcasting is that all broadcasters are constantly after legislative favours in the sense that the broadcasting regulations are constantly moving on with technology, there are constant revisions of broadcasting acts. I just picked up Robin Day's memoirs this morning to remind myself about an argument about a party conference interview: "Wilson threatened in effect"—wrote Robin Day—"that if the BBC did not mend its ways the government would see that it did". What he meant by that was the government regulations. I could have given examples about Eden or about Thatcher. It seems to me that is inappropriate. Just to say finally, that is very rare in my experience. For example at this general election there were no examples of that.

Q1172 Chairman: That is post-Hutton, is it not, in a sense?

Mr Robinson: In my role at ITV I did not have any experience of that sort. I can think of one complaint. "You are looking at this the wrong way; you have not understood that; why are you not reporting this?", that is daily, that is hourly in the heat of the campaign but I would be amazed if they did not do it and I think they would not be doing their job if they did not.

Mr Boulton: I have to say that when I read your outline of questions: "Do you have experience of political parties attempting to influence your coverage or reporting?" I thought a bit of the proclivities of popes and bears in the sense that is our job and we have to be sponges for that type of influence. I would make one point, I do think there is a difference between independent organisations and

the BBC in as much as I think the BBC's elaborate management structure means that it is much more difficult to respond to pressure. Either it has fallen over backwards as in the notorious case of Peter Mandelson's sexuality or it has over-reacted the other way as it clearly did in the whole Hutton affair. I do not think private organisations that are accountable to markets and shareholders can afford to behave in that way nor, indeed, do they behave in that way particularly since we have an independent regulator. I would make one final point which is that the greatest influence that any political party has is in the providing or the not providing of guests. This goes on on a very regular basis and certainly I, on the programmes I present and I know John (because he has talked about it before) with certain individuals have gone through very long fallow periods indeed, particularly with government ministers who appear to prefer softer or easier options. I do think there is a disease common amongst ministers of whatever party—which I term "governmentitis"—which is, after a period of time they are so busy rushing round to meetings, chairing this or that committee and doing this or that that the component which actually got them elected and got them forward as politicians, ie communicating what they want to do and why they want to do it, they regard as a little bit of a nuisance and I think that is unfortunate.

Q1173 Chairman: One bit of counteraction could be that if a politician—a minister—took exception to a particular interview or the way he had been interviewed he would simply not make himself available.

Mr Boulton: To give one example, at the time of John Prescott's punch I said I did not think it was conduct becoming of a depute prime minister and he has not done an interview with me since. That is just one example, a personal thing, but I think at a political level you get that as well.

Q1174 Chairman: Yes. John Humphrys, do you want to add anything on that?

Mr Humphrys: Yes, I've obviously had exactly the same experience as Adam in that sense, ministers who have declined to be interviewed by me for a very long time for reasons best known to themselves. Although sometimes it is fairly obvious, they are usually not stated. Where I disagree a little with Adam is when he talks about the BBC's elaborate management structure, it is more difficult to do it with that. That would not matter, only—in my terms of the BBC doing the job that I do, and I can really only speak for the job that I do, I am not a suit—if pressure were being put on me directly to ask the right sorts of questions, that would matter, but it would matter only if it were coming from my bosses. It does not

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matter if it comes from the politicians. As far as I am concerned, if I am not big enough, old enough and ugly enough to deal with that, I should not be in this job. I have had—as we all have—a bit of pre-emptive pressure (if you can have such a thing), that is to say politicians from prime ministers—quite literally—down, ringing up before an interview and saying, “We would rather like to talk about this” or “We wouldn’t like to talk about that”. I do not find anything improper in that at all. If they want to put in a bit of special pleading that is absolutely fine. Where I do take serious objection is if a BBC were to say to me, “We really ought to go easy on Joe Bloggs because we’ve got this bit of legislation coming up and the BBC’s a bit sensitive at the moment, so give him an easy ride”. I have to say it has never happened to me in my entire career with the BBC. If it were ever to happen I would be out of the door that morning.

Q1175 Baroness Bonham-Carter of Yarnbury: I am interested in the fact that you all seem to say that you have not experienced pressure. Of course you are all big beasts. What about lower down? Certainly that was my past experience.

Mr Humphrys: I think that is an important point but I think this is much more to do with, let us say a young lobby correspondent whose career depends on getting stories and if, let us say, a press secretary with the prime minister, for instance, were to issue veiled threats—“Get that story in the way I gave it to you or you don’t get another story”—that would be improper. I understand that that has happened in the past and that is to be condoned.

Mr Robinson: I think there are two points in answer to that. There is the point that John makes which is people who are more junior, as it were—we, at an earlier stage in our career—and the incidents that I have had and which I would regard as improper pressure happened when I first became a reporter. There were briefings to the effect of: “I know the director general; we’re not happy with your reports and we’re going to let him know”. That is not an explicit threat to your job, but it is pretty close to being an explicit threat.

Q1176 Chairman: That is pretty standard stuff, is it not? I remember a long time ago when I was a journalist seeing a letter of complaint, having rather idiotically submitted an article, to the editor of my newspaper. Does that not come with the territory?

Mr Robinson: It is standard stuff as long as you and your employers treat it and regard it in that way. If there is a few days’ silence, a bit of muttering behind closed doors, the odd meeting to see if this complaint is correct, then it stops being standard stuff and becomes quite intimidating to someone who is quite new in their career. The second point which I think is

very important is about broadcasting and comparison with the press is that it is much more of a team effort. John’s and Kevin’s guests, as it were—it applies less to me in a news jobs—they are booked by a whole serious of people often late at night without consultation. There was one particular incident I had when I was a junior reporter and appearing on the *Today Programme* quite regularly which produced a row. I do know that one of the quite junior producers was phoned up and was told her career would be at an end if she put me on again the following day. That is the sort of pressure that happens. I stress, that is many, many years ago and I cannot remember an incident since, but it happens.

Mr Marsh: In response to your question I make the comment that I am talking about the people on the ground. My chair is in the middle of the production office where I can hear everything going on around me. I am aware of all the light pressure, moderate pressure and major pressure. We do have to be aware of that kind of pressure and to enable people to respond. The most important thing junior people have to do is to take a step back and think, “Journalistically what is the right answer to this situation?” and to go ahead with that and to deal with the pressure as purely and simply part of the job.

Mr Boulton: There is a difference between print where people are much more reliant on favours and stuff they are told off the record and continuing contacts, and broadcasting where effectively people are not prepared to say it on camera or microphone. There is that sort of interest in that and therefore any broadcasting organisation where people work together ought to be able to resist this sort of stuff pretty easily. I would also make the point that we talk about pressure on junior reporters or producers but very often the people who try to throw their weight around are junior press officers.

Q1177 Baroness Howe of Idlicote: Coming back to the business of complaints, we all hope that another Hutton is not going to happen but nevertheless it may. The BBC is very much paid for by the government, by all of us, and we have heard already the pressure is quite considerable or can be quite considerable. Do you think it would be a good idea if complaints had to be made public so that in fact any ringing up, anybody writing a letter had to, as it were, issue it like a press release? Would that be a good idea or would it be molly coddling you?

Mr Marsh: I think we would end up with volumes of these things. The word “complaints” covers a multitude of different communications with the BBC. At the very top level you have a handful—and it really is a handful—of very serious complaints in the course of a year that are dealt with in the way that

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people come to be aware of because they are published or whatever.

Q1178 Chairman: On your programme what does “a handful” mean?

Mr Marsh: Very serious complaints, probably two, three or four a year. Complaints that require, if you like, the top level of dealing with, the sort of complaints that the new complaints structure deals with, it varies hugely but between five and twelve a week. Those complaints are usually dealt with by a single response, the complainant is satisfied, end of story. However, beneath that are many, many tens of thousands of communications that we get from listeners. Very often during a programme, we get two or three hundred e-mails for instance, which are not complaints as such but what they are are their comments on the programme, what they want to say to the programme, things they think we have got wrong. If they are right and we have got them wrong we can correct them on air because a lot of the time listeners know more than we do about things. What I think the public is aware of is the tip of this iceberg and the iceberg is huge under the water and because we take what our listeners say to us very seriously this has a real influence on the way we go about our programme. To come back to your question, if you made it a stipulation of lodging a complaint and it was made public I think you would have to decide quite carefully, you would have to calibrate quite carefully, what level of complaint you are talking about. Actually the kind of things that I suspect are in your mind are probably the ones that end up being made public through a judgment or a ruling anyway.

Mr Humphrys: I once discovered a complaint had made against me and had been sort of upheld when I read about it in *The Guardian*.

Q1179 Lord Maxton: I wonder if I could turn the question round a little bit. You are, of course, the link between the elected government of the day and other elected representatives and the public. I would be quite interested to know exactly what your role is, particularly considering what you said, Mr Humphrys, in saying that you believe you have a job to hold to account the elected representatives of this country. Surely that is the job of other elected representatives who take an opposite point of view to the government of the day and, of course, ultimately to those who elect them. Why is it your job?

Mr Humphrys: It is my job on behalf of . . .

Q1180 Lord Maxton: Who elected you?

Mr Humphrys: Nobody elected me.

Q1181 Lord Maxton: Then why do you think you have that job?

Mr Humphrys: I have the job because I have been appointed by the BBC to do it in the most simplistic sense, but it is my job, on behalf of my listeners, and that is the important bit of the sentence if I can finish that point . . .

Q1182 Lord Maxton: Oh, I see. I am allowed to let you finish but you do not let anybody else finish. Thank you very much.

Mr Humphrys: If you wish. It is my job on behalf of the listeners—on behalf of the listeners, I repeat—to hold people in authority and power to account, to ask those questions in other words that the listeners themselves might want to ask and it can only be a matter of judgment and frequently of course I will get it wrong—or we will get it wrong—but what we have to do if we are doing our job properly is to ask those questions that the public would like to ask of their elected representatives or the people in power but cannot because they do not have the sort of access that people like me have. I would be failing in my responsibility if I did not ask the questions they wanted asked.

Q1183 Lord Maxton: Why do you not let them make the arguments? In other words, why do you constantly interrupt to try to make them answer a different point from the one you originally asked, or to make a point about yourself about it? You often, to be quite honest, express opinions about what they are saying. That is not your job, surely.

Mr Humphrys: Well I reject your assertion entirely.

Q1184 Lord Maxton: I heard you this morning doing it.

Mr Humphrys: Did you? The example?

Q1185 Lord Maxton: Yes, when you were doing the interview with the junior minister about music licensing for pubs. He was about 10 seconds into an answer and you interrupted him with another question.

Mr Humphrys: Really?

Q1186 Lord Maxton: Yes.

Mr Boulton: Your supposition is that our noble elected representatives always want to answer the question which they clearly do not. Basically, as I see it, what we are doing is we are reporting what people are saying, why they are saying it and we are trying to establish whether that argument stands up all within a relatively short period of time and you must know perfectly well that most ministers—or, indeed, politicians—regard the most successful interview as one in which they say nothing because that would not in any sense challenge or destabilise their position and therefore what we have to do is to try examine the

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line taken and get round it. I did hear but I do not think I took in the interview this morning on *Today* but quite often politicians routinely do not answer the question and what is more they do not fool the viewers or listeners one bit.

Q1187 Chairman: That is a bit sweeping, is it not, to say that ministers of any party actually want to say nothing? Actually what they really want to do is to get over their particular case, get over their particular point.

Mr Boulton: Yes, but they do not want to advance the argument beyond what their stated position is.

Chairman: Yes, okay. Lady Gibson?

Q1188 Baroness Gibson of Market Rasen: I am very interested in that answer. If you genuinely believe that, why do you ask them on in the first place?

Mr Boulton: Because we think they are doing relatively important things which affect people's lives or affect arguments about how the country should be run. That is what we do, we provide people with the information on which they can come to their own conclusions.

Q1189 Baroness Gibson of Market Rasen: If you genuinely that whoever you are asking—a minister, opposition spokesperson—is not going to answer the question that is not really helpful.

Mr Boulton: What we have to do is get them to answer the question.

Q1190 Lord Peston: One thing that I do not understand, as someone who listens to news and watches it, is that it is obvious a lot of the time, whether it is ministers or opposition spokesman, that they do not want to tell you the truth. That is so obvious that I wonder why they think they get away with it. When I watch, if they answer a different question, my immediate inference is that they have something to hide. It makes me no sense to me why, if they are interesting in informing the public, they make it very clear they have something to hide. Do you have an answer to that? There is not doubt that they are trying to hide something.

Mr Humphrys: I am not sure that I have an answer to that or I would not presume to offer an answer to that, but if that is going on it is our job to illuminate.

Q1191 Lord Peston: I am puzzled as to why they do it rather than you doing your job.

Mr Boulton: When you are interviewing people I have found that you constantly have to shift your style because one approach may be very successful then people work out a way how to deal with that and then you have to move onto something else. I think the disciplined, kind of Stalinist approach to interviews,

particularly when the public was on the side of, say New Labour during its rise, it worked. However, it runs out of steam and becomes obvious.

Q1192 Lord Peston: I would like, if possible, to broaden this away from just politics. I am told by journalists that there are at least two sorts of areas where you get other enormous pressure, one is religion—not just you specifically but the whole operation—and the other is that favourite subject, the Middle East. I wonder whether you can comment about that. My own view is that if both sides are complaining you must have got it right, but nonetheless I do feel that there is an enormous bias. The Middle East is the worst example.

Mr Marsh: I am not sure that proposition is necessarily good because all three could be wrong. I think it does touch on something else, however. If you have a very sincerely held complaint from one side backed up by facts and observations and another sincerely held complaint from the other side, then I do think you have the right to ask the one side, “Hang on, how come he’s come to that view?” and the other side, “How come he’s come to that view?”. The Middle East is peculiarly fraught. This is one of the reasons the BBC spent some time in the course of last year looking very hard at balance within and fairness within our Middle East broadcasting and why have now appointed a Middle East editor. It might just well be a fact of life that both sides bring their own history to the debate and that when I get quite a major complaint which I had recently from an Arab/Palestinian lobby group which accused us of persistent pro-Israeli bias and I had a meeting with the Israeli embassy just last week about the same point but from the other end. We might just have to accept that there is never going to be any resolution here and that the BBC has a duty to explain to its listeners that objectivity, fairness, balance does not mean finding a middle ground upon which all these people will agree. That really is not what objectivity can ever mean.

Q1193 Baroness O'Neill of Bengarve: I would like to turn it the other way. You spoke of your role as holding people with power to account. That is a really good thing, but a lot of people would ask yourselves what systems to you work with to hold yourselves to account? How do you use the producers' guidelines within the BBC or equivalent guidelines elsewhere? What do you do when one of you has made a mistake or perhaps got over-enthusiastic and actually far from holding power to account has put a personal opinion forward or has been disproportionately rough with a perhaps less experienced person they are

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interviewing? What are the mechanisms of self-governance within the group of senior news presenters and producers?

Mr Humphrys: If I overstep the mark he tells me. Amongst others.

Q1194 Baroness O'Neill of Bengarve: And?

Mr Humphrys: It depends how seriously I have overstepped the mark.

Q1195 Baroness O'Neill of Bengarve: Do you think there is any case for the sorts of formal duties that people in politics or business or charities would have declarations of interests and standing down wherever one has an interest?

Mr Humphrys: Yes, I do, and we have those rules; we absolutely have those rules. An example is that complaints were made about me—and were taken very seriously by the BBC—that I had organic farming interests a few years ago. As it happens I did not; I had dispensed with them. I had an organic farm or a piece of farmland I was attempting to turn into an organic farm many years ago and a complaint was made because of an interview that I had done on GM. It was a serious complaint; it went all the way to the board of governors as I recall and was dismissed because I had no financial interest. You could of course argue that I was more vehement than I would otherwise have been had I not been sympathetic to the principles of organic farming, which I am and which is no secret.

Q1196 Baroness O'Neill of Bengarve: You would not regard that as a reason for saying to a colleague, “I’d like you to take this interview because this is an area where I should stand down”?

Mr Humphrys: It would not be for me to say that. I think I would say to my editor, “Do you think I should stand down?” and it is then the editor’s decision and I have done that on a number of occasions on different things. Sometimes the editor has thought it appropriate that I should not do the interview and sometimes he thinks it does not matter. The point I would make is that although I have an acknowledged interest in and enthusiasm for organic farming, I would claim that I give as rigorous an interview to supporters of organic farming as I do to its opponents. That is not always a defence in this area.

Q1197 Baroness O'Neill of Bengarve: In other walks of life it is not a defence.

Mr Humphrys: Well . . .

Mr Marsh: There are a number of points worth making here. Firstly, there is a clear and explicit bit in everybody’s contract about conflicts of interests. They are not specifically aimed at journalistic

conflicts of interests but they do, nevertheless, cover that area. I think if there were serious conflicts of interests that would be something I would be very interested in. However, I think if you overlook the strength with which people who work for the BBC work for the BBC because they buy into the BBC values (which are summarised in documents which are made public like the editorial guidelines and so on and so forth) it would be wrong to underestimate how much people feel bound by, if not necessarily the letter of those commitments, but certainly the spirit of them. Frankly, you do not work for the BBC unless you want to be bound by that kind of commitment. I think the strength of that is very often misunderstood. There is another point that I would make. You talked in one of your Reith lectures about accessible and assessable communication and I think one of the huge differences between broadcasting and the press—which is why our trust is above 70 per cent and the press is below 20 per cent—is that those communications and those conversations are assessable. As a listener you can hear whether John is being, in your view, fair. You can make your own judgment and assessment about it. I think this is a really, really important point. You are right, there is no formal mechanism. There are formal mechanisms which, from time to time, you tap into to measure that, but this is a daily thing. Six and a half million listeners daily make their own minds up about whether we are being fair. I think if you ignore that part of the way in which we operate then you are missing a very important part of the picture.

Q1198 Chairman: Nick Robinson, do you want to come in there?

Mr Robinson: Well I was nodding because I have just had to fill in a BBC declaration of interest form and as you were speaking it made me challenge myself about what should and should not have been in that form. It is a pretty formal thing to do with financial and business interest conflicts, perhaps with a spouse who might have some sort of business interest that would count. Would it be appropriate—if I could just pursue where your question might be going—to then say, “Well, Robinson happens to favour Manchester United” or “He likes this” or “He has this in his background”? My argument would be that that would not be strictly comparable with business. Clearly the financial declarations of interest and the direct conflict of interests are comparable and are already there. I think if you started to mine into people’s private views—what they said in the bar, what they tell in their family, what they did or did not say five or 10 years ago—that would not help the viewer or listener. The key test, surely, is whether that journalism is objective, whether the journalism appears biased. The second test is, if and when it is

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found wanting, is it corrected quickly and is there a clear and open process whereby that is done?

Q1199 Chairman: Just help me on one thing. You can be doing objective interviews throughout the week and then on Sunday write an article which actually sets out your real views. Is that incompatible?

Mr Robinson: The BBC takes the view that that is and I took the view, for the Committee's interest, as political editor of ITV when I had a column in *The Times* that there is nothing I would write in that column that I would not say on air and vice versa. I set my own rule and my rule was that I must maintain credibility with the audience for my day job, as it were. Watchers must believe that they can trust me. They need not always agree but at least believe that that is what I am striving to do. It would be absolute madness to then put something in print or to say something at a meeting or to attend some sort of function that directly contradicted that, which is why there are all sorts of events I have turned down that would be interesting to go to and there are things that I would quite like to write and say but I do not and so on.

Mr Boulton: I think so far as written journalism our broadcasting commitments of impartiality are such that it would not be acceptable to write a column in which one expressed a political opinion. It would be possible to examine a question or pose questions about a particular line of policy; I think one can do that. In a sense what we are doing now is expressing our opinions one way or another which I see as part of accountability which is what we should be doing, willing to explain what we do. As Kevin Marsh said, I think by and large the need for complicated apparatus to deal with complaints is not necessary because people can see or hear what is going on and, indeed, the most appropriate way to apologise or to correct yourself is often for us to do it ourselves in the course of the work which we do. I would simply pose one question if you go too far up this interest line. As it happens doing what I do I find the most comfortable way of dealing with it is not to vote; I never vote because I just think that would be something which could conflict me. I know most of my colleagues do not do that and I in no sense question their integrity, it is just that you have to exercise personal judgment.

Q1200 Lord Kalms: We have had a lot of interviews with members of the BBC and they are very resistant to any criticism. They are very self-defensive. I am pretty comfortable about the interviews except where there is an excess. It was interesting just now the code said that if John overdoes it he will tell him, "You've overdone it" and that is the end of it. You do not do

what some of the media do today, publish an apology the next day. So, you have had a criticism, you have overdone it, you have stepped over the mark, you have attacked someone perhaps excessively or you expressed a view which perhaps you should not have done; whatever it is the interview has not gone according to the way it should have done according to the rules and guidelines. Your boss has said to you "You've overdone it" and that is it. Is that right? Should the radio media not have the same standard as the written media today and the next day publish a correction? The BBC has a complaints department which takes excessive time to meet and then there is a correction and then the correction might come weeks, months, a year later where in between the inconsistencies or the incorrect views continue to be expressed. Can that process be sped up?

Mr Marsh: On one of your earlier points, I hope we never adopt the values of the press certainly so far as accuracy goes. I can just read a couple of lines here from the BBC's editorial guidelines: "Our commitment to accuracy is a core editorial value. Our output must be well sourced based on sound evidence, thoroughly tested and presented." PCCs (a similar paragraph): "The press must take care not to publish inaccurate, misleading or distorted information." "Take care"; that is the length and breadth of the obligation. What you are talking about is a much more open system which is a way that parts of the American press has gone recently and is a route I personally have some sympathy with. I think there are problems with the kind of openness that you are talking about because I do not think that everybody observing us and viewing us would necessarily do so with the kind of benign intent with which we would be entering into that contract with our licence payers. However, I think if you are proposing the kind of system where every editor's criticism of a presenter or every editor's criticism of the way a story has been developed, you would have to help me here with where you were going to draw this line. Are we talking about very serious criticism such as when we thought Barbara Plett overstepped the mark when she talked about shedding tears at Arafat leaving the Palestinian territories? Or are we talking about misdemeanours much further down the grid? I do not know. I think in general principle I have some sympathy with the whole notion and it picks up Lady O'Neill's point about the assessable nature of what we do and being much more open about not just what we are doing but how we are doing it and why we are doing it. I think if we could ever build on this link of trust with our listeners it would be a very important trust area to exploit.

Q1201 Chairman: It is not exactly a new point, is it, that if you have something factually wrong, it should be corrected? When I worked on *The Times*—a long

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time ago—they actually had a correction column and that was introduced by William Haley.

Mr Marsh: It is not exactly a huge column though, is it, to be honest?

Q1202 Chairman: No, it is not a huge column. On the other hand, it is better than no column.

Mr Humphrys: We correct things when we get them wrong. Lord Kalms' point is, if I may say so, slightly confusing two things. Giving somebody a hard time in an interview is not the same and is not on the same level of seriousness in my view. I happen to think giving someone a hard time in interview, whether it is justified or not, is entirely fair because they are pretty big boys and girls whom that happens with. This is maybe not a perfect metaphor, but if there is a train crash and you do three interviews resulting from that train crash and one is with an eye witness, one is with a victim and one is with the secretary of state for transport, they will be three very, very different interviews. One of them will be a tough interview; the other two will not be tough interviews. It is very, very difficult to judge whether an interview has been too tough or not. I have come out of interviews thinking that I have been too tough and the politician involved has said, "Why did you give me such an easy ride?" and vice versa. It really is a desperately difficult thing to judge this and it is in the mind of the beholder. The other thing you said was stating a view, stating an opinion. That is, as it were, easier to judge and if one does that it is reprehensible. I am not entitled and I take issue with the claim—as I did earlier—that I state my views in interviews; I do not. I frequently put views into the interview and I will attribute them to somebody else or I will say that there is a view that X, Y or Z. How else do you conduct an interview? What I do not do—even if I am doing interviews about organic farming—is to say, "I happen to think that the use of that particular fertilizer is ridiculous". I would need to have a bit of evidence for that and I would have, I hope—being a competent interviewer, if I am—that evidence. There is a big difference between stating views and asking tough questions.

Mr Boulton: To come back to the Green Paper, we at Sky would take the view that the mistakes that took place over Hutton and the BBC dealing with complaints internally and responding as an institution rather than to the issues which are directly germane will be perpetuated if the Government has its way with this White Paper. There is no external regulation of the BBC. The BBC Trust is still required to be the cheerleader and the regulator of the BBC and I think we would argue strongly that both are in the interests of a genuinely competitive broadcasting environment. More importantly if you are concerned about complaints and mistakes which are made in the news area, to perpetuate a system

where a BBC body is still the ultimate port of regulation for the BBC will simply mean that it will happen again because one of the reasons why at Sky—and I suspect at ITV—organisations put their own house in order is because there is a consequence of an external appeal which would force them to do it in any case. To me it beggars belief that the DCMS are taking this strong position that you can consider everything about their Green Paper except the BBC continuing to be self-regulating. That is the kernel of the issue of what we have been through over the last two years. It is not being addressed in the Government's proposals.

Q1203 Bishop of Manchester: I think that is a very important point that has been brought up. I think the cultural of complaints which we are in is going to increase over the next 10 years. We have talked a little bit this morning about how internally within particular programmes complaints may be dealt with, but I suspect the BBC is going face an increasing issue here and it has, as you know, through the Green Paper and the BBC's own response backed the idea of an improved internal regulation. So on the back of the points that Adam Boulton has made I would like to ask first of all what you feel about these proposals for an improved internal regulation system in response to complaints. Then I would very much like to hear what you want to say in response to the points that Adam Boulton has made about the need for external regulation.

Mr Marsh: Could I start with that point because I think it is an interesting one? There are two quite important points to remember if one wants to use Hutton as a reference here. First, it was not until the row had progressed quite some way that we were able to define exactly what it was that the Government was complaining about. If you recall the first complaint was that the story was 100 per cent wrong. But it was not 100 per cent wrong because we had had a government minister on the programme confirming part of it. It took a period of days before it was clear what the complaint actually was, what was being complained about. In fact, the so-called lethal words that Lord Hutton identified were not identified for several weeks by the Government in terms of its complaint. The second point is that irrespective of whether one thought the formal internal BBC complaints mechanism was up for the job or not, Alistair Campbell was invited on several occasions to put a formal complaint forward and he declined to do so. You need to convince me or persuade me that that complaint would have gone forward had it been an external body. I do not think very much would have changed to be quite honest.

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Q1204 Bishop of Manchester: You are using a particular example there. Let me put it this way, if an ordinary member of the public wishes to make a serious, intelligent complaint—and I am not talking about orchestrated complaints—is that member of the public more likely to feel that the complaint will be taken seriously and intelligently by the receivers of the complaint if the decision is made within the BBC or by an external regulator? Will a member of the public not feel that they are going to get a better deal by having a dispassionate external?

Mr Marsh: I do not think that is necessarily the case because before we get to this critical point—before we come to the point where it is either an external or internal final point—the complaint will have gone through a number of stages. It is like a funnel with many complaints at the bottom but only a small handful become the ones one which there is any kind of ruling that you are talking about. I think the complaints procedure as a whole now, which is much improved, complaints are dealt with, they come to a central point, we can all see what the complaints are, there is a computerised system which means that complaints are dealt with within the 10 days they are supposed to be dealt with and in the vast majority of these cases the person goes away if not satisfied at least knowing why that decision was made. They might not agree with the thinking but at least they have had the explanation, they can come back to us, they are invited to take it further. Whether with that small number of complaints that go all the way, whether those people—ordinary members of the public—feel cheated or not I genuinely don't know. I suspect not because I suspect that what people who complain want is to see if there is an error it is put right. We must not underestimate the number of occasions where errors are put right. There is a sort of feeling that we never put errors right; that is simply not true. Or they want to feel that they have influenced decision making or had their say or whatever. I find it difficult to believe that moving that final point of regulation around would materially affect the majority or complaints.

Mr Robinson: On regulation you will forgive me, I am going to plead the fifth rather as I am about to join the BBC but have not yet done so. However, I would just observe from my experience at ITV over almost three years that the complaints I have dealt with have been handled internally by ITN and never got to the stage of the regulators and I think there is a danger of thinking that this will transform the nature of people. That is just an observation, if it is useful to the Committee. The other thing I am just observing in the conversation is that I do think there is a danger of just talking of complaints and there is a massive confusion between different things. There is the factual error, simply and objectively wrong and needs

to be put right. There is a cultural argument which Lord Maxton is having—many people have, John Lloyd has written a book about it—which is, is politics in some way being undermined by those of us who perform in the media. That is not a formal process of complaint; it is a debate, it is part of the political debate of the country and not about who is right and who is wrong. I would argue passionately that there is a job for more than one approach to journalism and the BBC and other outlets should have complimentary forms of journalism. If it goes all in one direction or all in the other it goes horribly wrong. Thirdly, it seems to me, there is the example that Lord Peston has raised which is that you get an area in which there is a highly contested view of the facts, the Middle East is the classic example or some religious experience. If you read Robin Day's book the great attitude then was to social reform, attitudes to marriage for example. Society is on the move, some people welcome it and want broadcasters to push it further out; others want to resist it and cannot see why the BBC or any other organisation is not helping them. You really do have to separate those things out, I think, before considering what sort of process. It seems to me externally—and I stress this—there has been some progress that the BBC had inquiries about the debate about Europe. It was utterly wrong in my view to say that because the pro-Europeans and Euro-sceptics both thought the BBC was getting it wrong, they must be getting it right. That was casual, lazy, stupid thinking. There was something that both of them were actually saying to each other, "These guys don't know this place as well as we do" and to its credit—and I say externally—the BBC looked at that, investigated and has acted and thought carefully. The Middle East produces other similar things. However, if I could say gently to Lord Maxton, the right place to deal with your debate is not a complaints procedure as such, because we are debating something much bigger about the nature of politics.

Q1205 Lord Maxton: I do not want to deal with it there, you are quite right. I do not want to write to the BBC every time I think something is wrong. Can I just say that there is at least one Scottish BBC journalist who writes three articles a week in newspapers in Scotland? Can I turn now and say that I actually am in support of the BBC and, believe it or not, I do not see very much wrong with the present governance of the BBC. I think there is a good case to say, "Leave the governors as they are; we do not need this new system". Let me turn the question, therefore, to Mr Boulton and say, all right, Sky and ITV are regulated externally by Ofcom. How many complaints have Ofcom received about the way in

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which Sky handles news and, if they have, what does Sky actually do about it?

Mr Boulton: Certainly Ofcom receives complaints and certainly they take them up. I can only speak in the political field. We are currently involved in a lengthy correspondence about time allocated to parties during the election campaign. I have no problem with that whatsoever. It is not me personally who is directly handling it, but I think it is perfectly justifiable that if someone feels that they have a serious complaint—even if some of us might regard them as vexatious complainants—there should be an external body by which we know ultimately that if we take a particular course of action we have to justify it against those people who have no interest within our body. It seems to me to turn your question back on you: I have not heard anyone make a reason as to why the BBC should not be externally regulated.

Q1206 Lord Peston: I do not see this position as being remotely logical. If you are a private enterprise and not therefore by definition a public service but you involve things that affect the public at large then I can see the case for external regulation. What puzzles me about your view is that if you actually set up a body and call it Public Service Broadcasting then what you want from that body is what one might call an internal culture of public service and therefore it would follow logically from that that this body would be largely—not 100 per cent but largely—self-regulating.

Mr Boulton: Almost all the public utilities have an external regulator. I agree that most of them are now private. Secondly, it comes down to the question of accountability and whether an institution with a privileged position of being given large amounts of tax payers' money should then effectively be entitled to rule entirely on its own regulatory issues seems to me to be something which is going beyond what most of us would expect to be reasonable notions of political accountability. I will give you one example. At the time that the Government was coming out with the Wanless report which led, as we all know, to significant investment in the National Health Service, the BBC chose to have across all networks to have a National Health Service day where all the stress was laid on the merits of the National Health Service. I think if you viewed that the other way and we had decided to have a "Private Medicine Day" everyone would have said, "How absurd. How could Sky possibly do that?" What happens is that cultural assumptions override—or can override in any case, and we can have an argument now about the degree of the BBC's commitment to Africa at a time when again this is clearly something that has been pushed by the Government, by Gordon Brown and Tony Blair—and a government service institution is not

necessarily serving the public, it is getting into a position close to serving the Government. I think in those circumstances there ought to be at least an external regulator who could rule and express an opinion on those matters. What you have to understand, the BBC does not exist in isolation; the BBC exists in a pluralist broadcasting culture and the question has to be: "Why should the BBC be given exceptional privileges in certain areas?"

Q1207 Lord Peston: Because it is a public service broadcaster.

Mr Boulton: I regard myself as a public servant.

Q1208 Lord Peston: But you are not.

Mr Boulton: I provide a service to the public, providing them information. I would prefer the term "state maintained".

Lord Peston: But you are a private enterprise.

Q1209 Baroness Bonham-Carter of Yarnbury: Having been at the eye of the storm over Hutton do you feel that the status quo where governance of the BBC is concerned protected you enough? Or is there need for reform?

Mr Marsh: It is a very difficult proposition because the point at which the governance became an issue in the whole episode was relatively late in the day. I suppose the key point was the governor's meeting at the beginning of July. I am not sure that being at that eye of particular storm that it was necessarily something that was very high on my mind or anyone else's mind. The important thing which I think is often overlooked by the whole Hutton episode is this, we were trying to get this sorted out, we were trying to get it right. Nobody wanted—in spite of what newspapers and some books have claimed about the whole episode—a fight with anyone. The whole point of what happened between May and July was to get this resolved. At the shop floor people were grateful that the governors made the kind of independent—in inverted commas—stand that they made at that July meeting. What I could not give you a definitive answer on is whether I felt that that meant we were more or less protected.

Q1210 Baroness Howe of Idlicote: Following on from there a little bit, given the really crucial importance of the BBC and how it is perceived around the world—not just in this country—and the importance of its impartiality and independence, it was interesting that when Gavyn Davies gave us evidence he pointed of course to Alistair Campbell's

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comments about there being generalised anti-government bias in what was going on, but equally he quoted Cardiff University of really saying more or less the opposite, that the BBC was biased in the respect that it gave too much time and credence to British Government reports. Looking at that and looking at what we have been discussing and the way in fact the BBC should be governed to maintain that independence and integrity so that we still feel—and the world still feels—that it is totally independent, what form of governance over and above that which has already been suggested either by the BBC or by the Green Paper should there be? I am asking particularly the BBC representatives.

Mr Marsh: It is important to remember that it was the old system of governance that the Green Paper covers. It would ask for reports on the way we were covering organised religion, it would ask for reports on the way in which we were reporting the Middle East, the European Union, rural affairs, politics. If there is a notion that that kind of governance does not examine the organisation then it is quite wrong and as Nick Robinson said some of those processes led to quite severe criticism, all of which we, as managers or journalists, took on the chin and decided—and I think this answers your question—that as a result we would have to do things differently. Under the current system of governance we look at the Middle East, we think, “Not quite right, let’s have a Middle East editor” and that happens. It looks at our EU coverage, it decides that we need to have an institution to report that, a Europe editor. So that affects the way I do my job on a day to day basis and so on and so forth. There are real differences to the day to day work that journalists at the BBC do which arise from the current system of governance that we have.

Q1211 *Baroness Howe of Idlicote:* Given the fact that people are expecting greater transparency, what would be the disadvantage of having an external regulator looking at these aspects of your work?

Mr Humphrys: I wonder, first of all, who appoints the external regulator, how you arrive at that. A committee of the great and good would sit on it I am sure, but I am not quite sure who that external regulator would be second guessing. Would that external regulator be sitting in judgment on interviews on the *Today Programme* or a broad picture of our Middle East coverage or the way in which Kevin Marsh does his job and the way in which I do my job? I am not quite sure what the remit of that external regulator would be. It has never been satisfactorily explained to me how that would work better than the system that we have now. I accept that there would be the appearance of transparency. You cannot describe a BBC governor of course as being

independent of the BBC because the BBC governor is a creature of the BBC and is meant to be its defender as well. On the face of it, it looks barmy, I freely accept that. But instead of looking at the appearance of it let us look at the reality of it and, as Kevin says, over the years it has actually worked pretty well. I think it is generally accepted and acknowledged by the people who were running the BBC at the time that some mistakes were made during the Hutton episode. I doubt—particularly given what happened then—that that is going to happen again. We have learned; we have developed over the years.

Mr Robinson: I think the importance is the “what” rather than the “who”. In most of these questions the questions that are being addressed are: at what stage in a process should a grievance be aired, should it be aired publicly, how is it dealt with, seem to me the crucial questions to be dealt with. Dealing with the question that Adam Boulton put on the table at the beginning which is small organisations find it easier to do. My own experience compared with the BBC—remember I was a programme deputy editor of *Panorama* and dealing with complaints as well as a correspondent later on—there is a fundamental difference between dealing with that process and dealing with it at, say, ITV. It is partly its size. You can get all the people on one phone call, there were three of them, if there is a problem. Partly it is because the BBC is publicly paid for. Partly it is reputational that certain programmes get attention that frankly they do not deserve according to their audience level, which is a frustration with the work outside the BBC. There are stories here and there and the same story has actually been covered six weeks earlier on a competitive programme but because, as it were, the political classes do not listen to it it is not dealt with. I can think of stories I have done at ITV which would have caused a furious row had I done them at the BBC. There is a change but it seems to me the mechanism is important. To know that there is a clear sense of how complaints are aired, who deals with them, that there are multiple people dealing with them—which is where the BBC can get into difficulties—and multiple pressure points are applied at producer level, governor level, management level; clear, thin chains of command in that sense with outcomes that are defined in advance which, it seems to me, is what the BBC is seeking to do at the moment—but I am not there so I cannot tell you how successful it is at this stage—seem to me the priority.

Q1212 *Chairman:* I just want to take up that last question which you were verging on about what is distinctive about the BBC? Does the BBC in its journalism and in its reporting standards have higher standards than are achieved anywhere else in television and radio reporting? Mr Boulton?

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and Mr Adam Boulton

Mr Boulton: You have set me a hard task being here with half a table full of the *Today Programme* which one could say is one of the BBC's distinctive programmes. I would have to say no. I believe the broadcasting culture which we all enjoy grows out of the history of the BBC. I do not think the BBC has any different values except perhaps the institutional values I referred to earlier. My point would be that if you talk about the area which I know about—television news—the significant advances in television news so far as serving the public have not been driven by the BBC; they have been driven by competition. I could go all the way back to the first news bulletins on ITV, the involvement of professional journalists in news bulletins, the challenging of the 14 day rule preventing coverage of election, televising of Parliament, breakfast television (which I know about very well) and 24 hour news. All of those are spaces which the BBC at times seems to imply would never have happened without the BBC but in every single case it was actually the independent sector which drove in that direction. It does not always mean that the BBC's privileged position works to the benefit of the public. If you look back at the launch of breakfast television, for example, the BBC could have done that at any time. Instead there was pressure from Jonathan Dimbleby and Peter Jay to have breakfast television. ITV decided to licence it and, lo and behold, the BBC suddenly decided they were going to do it but what did they do? They actually went down market of the proposition which Peter Jay and John Bird had come up with. They put Selina Scott on a sofa with a tight sweater. I think this notion that it is always the gold standard, always the driver is a mistake.

Q1213 Chairman: Nick Robinson, I will leave the two present employees of the BBC, but you have experience—obviously very vast experience—of ITV and ITN, what are the journalistic standards there? Did you always feel kind of second rate, second class?
Mr Robinson: Not at all. To take Adam Boulton's point on, do people in journalism at ITN or at Sky regard themselves as in public service? It is a fantastically grand and potentially pompous word but yes, they regard themselves like any journalist as people who seek out the truth which is why people can come and go between the organisations and do not require brain transplants. The difference of course is that the BBC has both huge opportunities, there is a great reach of its programmes and it has huge responsibilities precisely because it is funded by the public. There are things it can do and should do which it is hard for others to do but the notion of the BBC as a unique gold standard as you would put it is clearly wrong. As when I do my job, you always want to aspire to be the best at what you do, at the highest

standards, to be responsive. Adam is absolutely right that there have been huge innovations elsewhere. There have been huge innovations in the BBC. The use of the internet and Radio Five Live I would point to in particular, let alone the birth of Radio Four. In those areas that is where the BBC has defined what it did. However, the area I suspect one should home in on is what special responsibility the BBC has in addition to all these other things that everyone in commercial broadcasting aspires to do because of the way it is funded. My last thought is, go between parties of ITN, Sky, BBC staff, do not talk to them about broadcasting and you will not tell the difference between the people.

Q1214 Chairman: John Humphrys, the standards being set by the independent sector, the BBC crawling behind.

Mr Humphrys: I cannot argue with a lot of what Adam has said, but that is not the issue. Maybe we were slow with some of those, of course we were, but I do not think that that is what the BBC is for. I do not think the BBC is meant to be at the cutting edge of everything in broadcasting.

Q1215 Chairman: It is meant to be at the cutting edge of some things.

Mr Humphrys: It is meant to be at the cutting edge of some things, yes, but not absolutely everything. That is for people way above my pay rate to decide. What I am concerned about is whether the BBC is trusted. The BBC has to be a civilising influence in the nation. We have to be different from others; we have to do things that the others do not do even if they are not very popular with a huge proportion of the population, even if we get tiny audiences. We have to do it simply because it is right, without any other motive than that, because we think it is going to improve the national discourse and is going to contribute to the national discourse; it is going to contribute to the national discourse, it is going to give cultural value because we know in our fibre. I have been with the BBC for 40 years and you would expect me to be passionate about it and emotional and I am. I think the BBC does a lot of things because it is right that they should do them. We are independent. Of course pressures are put upon us. I believe that we are free of institutional bias. I would not suggest that every single person who works for the BBC takes the absolute middle line with everything; of course not, it is preposterous to suggest that. However, we are free of institutional bias; we get it right most of the time because we want to get it right. We are not prejudiced. We are, I believe, a civilising influence and I think the nation would be poorer without the BBC.

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Q1216 Chairman: The acid test is whether you are trusted or not.

Mr Humphrys: That is precisely the point. The final point is trust. That is the ultimate test. It is the only test at the end and if you look at how we judge trust, we ask people whether they trust us. There is no other way of doing it; I do not know any other way. We have been around for 80 years and people trust the BBC I think more than any other journalistic institution in the land and that must say something.

Mr Marsh: I have very little to add to that. Trust is absolutely key here. We are one of the most trusted institutions in the country. I think it is right that we are and I think it is right that everyone within the organisation works to that end. Should we aspire to a gold standard? Yes. Should others? Well, that is a matter for them. So far as the BBC is concerned there cannot be any other alternative.

Q1217 Baroness Bonham-Carter of Yarnbury: I have a short question for Adam Boulton, if the BBC did not exist would Sky news be Fox News?

Mr Boulton: No, of course it would not. Sky would probably be more like the BBC I suspect if the BBC did not exist. There is a lot of talk about Fox News and we are talking about a different regulatory environment. All I would simply say to you is that a lot of people talk about Fox News without watching it. A lot of the criticism which they get at Fox News comes from people like Al Franken who are simply at the opposite end and I would put out to you—which is not something I would ever accuse the BBC of doing—that prior to the arrival of Fox News their

broadcast media was controlled by and large out of LA and New York and it failed from its view point to explain why Ronald Reagan was elected twice, why George Bush was elected; it was simply the case of a liberal elite which could be privately or publicly funded being out of touch with what was actually going on in the country. Basically Fox saw an opportunity in the market and in that market place it had won an audience. Is Fox News illegitimate as a news organisation? I do not believe so. As I have already said, I believe that we owe a great deal to the culture of the BBC, to the tradition that has given birth to the plurality of broadcasting organisations which there are in this country. There are some things distinctively the BBC does. Clearly it does radio; we have not talked about local news. I see it very difficult for people to make a commercial go of local news but on the national agenda my view is that we are all beneficiaries of that BBC tradition and we are all happy to work within that. The question is, how do you get competition in that and ensure that commercial organisations have a fair crack at the whip. I will leave you with one final thought. I am a great admirer of Nick Robinson, but Nick Robinson moving from ITV to the BBC does not change the fact that he is on television anyway. The only beneficiary is the BBC and that is because of the scale and canvas which it can offer someone like Nick.

Chairman: Competition is one of the things we will be discussing at the next session. May I thank you very much indeed. We could go on for a very, very long time on this but I am immensely grateful; you have very much added to the Committee's knowledge. Thank you very much.

Memorandum by the Commercial Radio Companies Association

CRCA

1. The Commercial Radio Companies Association (CRCA) is the trade body for UK commercial radio. CRCA members include national commercial radio stations, as well as most commercial local and regional stations. These account for almost half of all the radio listening in the UK and around three quarters of local listening. CRCA promotes the importance of commercial radio and plays an active role in encouraging conditions that will enable it to thrive into the future.

INTRODUCTION

2. The BBC provides many programmes and services that are enormously valued by listeners, viewers and on-line users. It is recognised the world over for its quality, creativity and authority. But it is also an enormous, state-funded intervention in the market which impacts on the health and wealth of other broadcasters. Commercial radio believes that, at present, the BBC is too large, too powerful, too competitive, and inappropriately regulated. This paper sets out why commercial radio is valuable, and therefore worthy of consideration when framing the BBC's future, and why we seek changes to the BBC's size, shape and scope.

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THE ROLE OF THE PUBLIC SERVICE BROADCASTERS AND THE BBC

Commercial radio's value

3. Commercial radio is the only terrestrial broadcaster not given Public Service Broadcaster status by the Green Paper. However, acknowledgement is made of the industry's considerable public service output,¹ as set out in a recent audit of over 200 stations' output conducted by CRCA.² The audit found that:

- The news broadcast by commercial radio equates to the output of more than thirteen 24-hour news services.
- Around half of all news provided by commercial radio is local news.
- Commercial radio's information services include over two million weather forecasts a year and almost 1.4 million minutes of travel news.
- The amount of news, weather and travel information broadcast by commercial radio has risen by more than 60 per cent in the past four years.
- Commercial radio promotes almost half a million local events on air every year, and a further 300,000 on station websites.
- Stations attend over 44,000 community events every year.
- In 2004, commercial radio raised £8.5 million for charity. UK Radio Aid, a unique industry-wide initiative (listened to by over 27 million people and organised in just 10 days) raised a further £3.5 million for Tsunami victims in January 2005.

4. This contribution to communities across the UK, and at a national level, is of significant social and economic value. Commercial radio's welfare and provision therefore merit careful consideration when establishing the remit, funding, size and framework for publicly funded radio.

The BBC's new purposes and characteristics

5. The Green Paper sets out six new purposes for the BBC.³ Whilst these are admirable purposes which the BBC should "strive to fulfil", the Green Paper proposes insufficient means to require the BBC to meet them. We do not believe, for example, that programmes should be permitted to avoid meeting any single one of the listed purposes so long as they are able "to justify themselves in terms of their excellence or distinctiveness".⁴

6. If all of the BBC deserves public funding, then all of it should be required to fulfil public purposes. To permit otherwise would allow the BBC to continue to compete vigorously for ratings and audience share to the detriment of commercial broadcasters (we explore this theme later in this paper).

Digital Britain

7. The committee asks whether the BBC should play a primary role in leading the process of switching Britain over from analogue to digital television. We therefore hope it is helpful if we provide some thoughts on the BBC's role in developing and promoting digital radio, and also set out commercial radio's contribution.

8. The BBC started trialling DAB digital radio in 1995. It argued that, in the Charter period now ending, it should be awarded increased public funding for digital television, radio and web activity. Arrangements were made in the 1996 Broadcasting Act that allowed the Radio Authority to advertise a single national and a number of local DAB multiplexes. The national commercial radio multiplex (Digital One) was advertised in 1999. It became clear to commercial digital operators that digital radio might enable them to compete with the BBC's national analogue dominance whereby 4FM and 1AM national stations compete with 1FM and 2AM INRs. Commercial radio resolved that its digital services needed to increase audience choice if receivers were to be sold in mass market numbers. This it achieved by launching five digital-only national services and a host of digital-only local services. The BBC swiftly followed suit with five new national services and moved to match commercial radio's 85 per cent UK coverage. Both the BBC and commercial radio came together within the Digital Radio Development Bureau in recognition that, if DAB were to be a success, both sides of the industry had their important parts to play. The BBC has been able to invest significant public funds into

¹ Para 8.9, pg 91.

² Copies of "Commercial Radio: In the Public Service" have been forwarded to the committee.

³ On pg 8.

⁴ Our Policy, pg 20.

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digital-only content while extending its brands via the internet. Commercial radio's pioneering role has been supported by significant shareholder investment of £35 million worth of analogue radio profits, mainly on multiplexing infrastructure. Development of digital radio is thus a joint rather than a BBC-led venture.

THE BBC'S CONSTITUTION

9. CRCA sees no obvious reason why the BBC should not be established by statute rather than Royal Charter. It is difficult to see, for example, in what way BBC Radio 3 is more independent than Classic FM thanks to the Charter. Radio 3's deep resources are the result of generous public funding rather than its chartered status. Statute has satisfactorily developed a truly independent regulator and licensor in the form of Ofcom. Why should it not create something along the lines of the proposed Trust with powers to license BBC services for suitable periods?

10. Irrespective of Charter duration, it is, as the Green Paper has recognised, necessary to re-examine the licence fee mechanism with a view to possible change in five years' time. The funding of broadcasting is undergoing significant change following the power afforded to consumers by media digitalisation. We are entering the age of "pull" rather than "push" media. Subscription will play an increasingly important part in this. If the State continues to provide guaranteed subscription to the BBC, it will grow while its competitors falter.

GOVERNANCE, MANAGEMENT AND REGULATION OF THE BBC

The BBC Trust

11. Commercial radio has consistently argued that securing a more appropriate model for governance, management and regulation of the BBC is crucial to the health of the entire UK broadcasting ecology.

12. To inform our thinking in this area, CRCA commissioned international corporate governance expert, Stilpon Nestor, to propose such a model. His contribution is acknowledged in the Green Paper.⁵ We are therefore pleased that the Green Paper proposes a model which achieves greater separation of governance, management and regulation, but believe the proposals for the BBC Trust do not go far enough.

13. CRCA believes there is insufficient separation between the executive board and the BBC Trust. A board comprising senior executives and non-executive directors should run the BBC. This BBC Board should have a non-executive chairman who is the champion of the management, and a supporter, advisor and confidant for the Director General.

14. The chairman of the BBC Trust should be just that. S/he should not be the chairman of the BBC. In his evidence to the Select Committee, Michael Grade said "*you cannot have two people [. . .] speaking for the BBC. You have to have a single chairman. It has to be very clear who is looking after the money*". We agree that there should not be two people speaking for the BBC; there should be one speaking for the management (the chairman of the BBC Board), and one for the licence fee payer (the chairman of the BBC Trust). They may not always agree. The chairman of the Trust should look after the money and the needs and interests of licence payers. The chairman of the BBC Board should look after the running of the BBC.

15. CRCA has commissioned Stilpon Nestor to examine the BBC Trust proposals against the backdrop of international best practice. He will report in June 2005.

Ofcom

16. We believe Ofcom should have an increased role in regulating the BBC, focusing on the "negative public interest", ie those things that the BBC should not do, rather than those which it should (which should fall under the remit of the BBC Trust). Therefore, Ofcom should apply any type of regulation which commonly applies to all broadcasters, including that relating to impartiality and fairness. External regulation of such matters will bring increased scrutiny, improve public confidence and deliver important cross-industry consistency in adjudications.

⁵ Para 5.52, pg 78.

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The National Audit Office

17. CRCA believes that there should be greater transparency in BBC accounting, with increased involvement from the National Audit Office (NAO). The involvement of the NAO need not threaten the BBC's editorial independence from Parliament, so long as its remit is appropriately drawn.

18. It is currently difficult to extract meaningful financial information from the BBC Annual Report. A body in receipt of generous public funding should be fully financially accountable to its licence fee payers, and its accounts should be presented in a wholly transparent and consistent manner.

THE BBC'S IMPACT ON COMPETITION

Ofcom's powers

19. In establishing Ofcom, Parliament invested power in, and the industry has since invested money in, a regulator with substantial broadcasting and competition expertise. This competition expertise should be applied to the BBC as it is applied to all commercial broadcasters.

20. We support the view that Ofcom should be given ex ante, not just ex post, powers over the BBC. In addition we recommend that:

- Ofcom should run industry-wide consultations as part of the process of carrying out market impact assessments.
- Ofcom should be asked to make recommendations to the BBC Trust following any relevant market impact analysis it undertakes.

21. Market impact analyses should be carried out for any substantial/material change to existing services as well as for the launch of new services.

The BBC's impact on competition for commercial revenue and broadcasting rights

22. We are concerned by the increasingly prevalent practice of BBC broadcasts giving on-air commercial value to sponsors of events. Recent high profile examples of this include "The RBS Six Nations" on radio and television, "Crufts sponsored by Pedigree" on BBC2 and "The British Academy Television Awards sponsored by Pioneer" on BBC1.

23. Sponsors like to have their events aired on the BBC because it is less cluttered with other commercial mentions than commercial channels. Event owners like being on the BBC because the sponsored presence will attract more sponsorship money to them. But this practice is taking money away from commercial broadcasters and giving it either to the event owner, or to the BBC in the form of artificially deflated rights prices (artificially deflated because the BBC is using licence fee payers money to provide advertising opportunities for commercial companies).

24. Such activity reduces the already diminishing pot of money available from advertisers for commercial broadcasters and also gives the BBC an unfair advantage when negotiating coverage rights. It constitutes advertising on the BBC by the backdoor and should be prohibited.

25. We note that in his recent review of the BBC's digital radio services, Tim Gardam stated that "*One would expect the BBC to be especially rigorous in not mentioning sponsors names, or giving other potentially valuable commercial exposure, in its coverage*". Such rigour is not currently evident and should be imposed by the Licence and Agreement.

Bi-media talent deals

26. The BBC has, in the past, locked performers into bi-media deals which prevent them from appearing on commercial radio even if they are not appearing on BBC radio. We welcome Mark Thompson's recent statement that the BBC no longer approves of the activity. However, current behavioural change is insufficient guarantee of future compliance and therefore the Licence and Agreement in the new Charter period should prevent such arrangements.

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THE FUTURE OF PUBLIC SERVICE BROADCASTING

27. In 2004, Tim Gardam wrote, “*It is impossible not to conclude that the DCMS, in framing BBC 7’s conditions, was surprisingly indifferent to a commercial service already in the marketplace, pioneering a technology that it was government policy to encourage . . . In public policy terms, it might have been better if the opportunity to engender public service competition had taken priority over the BBC’s institutional interests in expanding its own services.*”⁶

28. In the following paragraphs we set out why achieving the right balance between the BBC’s interests and those of the wider radio market is so important.

Radio Overview

29. BBC radio enjoys many structural advantages over commercial radio including an advert-free environment, better spectrum access, the obvious funding privileges, cross-media cross promotional might and an ability to invest in digital radio without risk. Given this “head start”, it is therefore particularly important that licence fee resources are used to fund output that could not be provided commercially.

30. The BBC argues that, if it is asked to meet market failure, it will be confined to providing unpopular and dull programming. We do not agree. There is a good deal of popular programming which cannot be funded commercially, and we believe that this should be the focus of the BBC’s activities. Examples of this include Radio 4’s speech output, the live music on Radio 1, and programmes which appeal to the large percentage of the population that advertisers are less interested in reaching.

31. The Green Paper states that commercial radio stations “tend to cluster towards the middle ground of taste, in order to reach the widest possible audience”⁷, but we are concerned that a similar type of central-ground clustering has characterised changes to BBC radio output over recent years. It is our clear impression that BBC radio is intent on building audience share through popular and contemporary programming targeted at an increasingly young audience. For example:

- Radio 2’s refocus has dramatically increased its appeal to younger listeners.⁸
- BBC local radio appears to be reformatting its output to appeal to younger listeners (see later in report for more detail).
- BBC 6 Music, having been primarily charged with playing music from the 1970’s to the 1990’s, now plays 45 per cent of its music from the last four years.
- 95 per cent of Radio 1’s daytime music is from the past four years.
- “New” music alone accounts for 70 per cent of 1Xtra’s tracks.

32. There is no lack of audience choice in the 15–44 demographic which advertisers want to reach. Nevertheless, commercial radio has invested in new formats (such as Capital Disney, Saga Radio, AbracaDABra and oneword) all designed to widen the industry’s demographic appeal. But such investment requires financial risk and, if at the same time, the BBC is using its inherent structural advantages to compete aggressively for audience share amongst commercially-attractive younger demographics, considerable damage will be done. As Tim Gardam noted in his review of the BBC’s digital radio services, “*The Radio 2 experience shows how effective the BBC can be when it focuses its mind—and its unparalleled resources—on increasing audience share.*”

33. At the BBC Charter Review Seminar on Radio in October 2004, BBC radio controllers continually justified competitive, populist output because it allowed listeners subsequently to hear elements of public service broadcasting. However, this analysis ignores three vital points:

- It gives the BBC licence to do just about anything most of the time, so long as it provides specific points of claimed uniqueness from time to time.
- It wrongly implies that valuable content (such as news) is not being provided on the station(s) from which the BBC has attracted its increased audience.

⁶ Review of BBC Digital Radio Services.

⁷ Para 1.4, pg 21.

⁸ Since 1999, Radio 2’s share of 65+ listening has dropped, its share of 55–64 listening has dropped, share amongst 45–54 year olds has grown by 25 per cent, share amongst 35–44 year old has grown by 60 per cent and share amongst 25–34 year olds has more than doubled.

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- By using its cross-promotional, marketing, budgetary and spectrum power to attract those listeners from commercial stations, the BBC is undermining the commercial sector's ability to invest in quality content. A strong commercial broadcasting industry is vital to plurality, competition and quality. If the BBC is allowed to continue to expand and compete without restraint, the wider communications ecology will be damaged.

34. Unless the future regulation of the BBC pays better attention to the wider market impact of the BBC's activities both in terms of new services and the character of existing services, it is hard to see how the situation which Tim Gardam observed in relation to BBC7 will be avoided in the future.

BBC Radios 1 and 2

35. The BBC has argued that, because Radios 1 and 2 provide a unique mix of speech and music (which, by definition, every different station does), they are worthy of public funding. There is no doubt that these stations are popular, but we question the extent to which they deliver the maximum public value to the maximum number of listeners.

36. For example, although the stations play more live music than their commercial competitors, this is concentrated in off-peak. Similarly, their specialist music schedules are consigned to the evenings with lower potential audiences.

37. Instead, some shows programmed at peaktime, such as "Steve Wright In the Afternoon", rely heavily on populist programming techniques. For example, over five randomly chosen days, more than 50 per cent of the songs played on Wright's show were top 10 hits,⁹ and the speech content of the programme is based on trivia and celebrity guests.

38. The public value of Radios 1 and 2 should be measured primarily in daytime output, when most radio listening takes place. These well-funded services should not simply be benchmarked against commercial radio (a predominantly local medium) but should be benchmarked against the delivery of core objectives with public purposes at their heart. Crucial to this is the extent to which their output could not be commercially funded and therefore deserves public funding.

BBC Local Radio

39. ITV's de-regionalisation, and any resulting need for increased BBC regionalisation, is not echoed in radio. CRCA's audit of public service broadcasting showed a significant increase in local informational content on commercial radio.

40. Plurality in the provision of local public service broadcasting, including the new third tier of Community Radio, will be threatened by an increasingly aggressive, and even better resourced BBC local radio unless restrictions are imposed.

41. We are therefore concerned by plans which BBC English Regions are developing for five new local radio stations in Somerset, Dorset, Cheshire, Bradford and the Black Country. They are listed in the Corporation's Statements on Programme Policy for 2005–06.

42. It has also become apparent to us that BBC local radio is seeking to refocus its local radio music output towards a younger 45–54 age group. This move has already started pre-Charter renewal.

43. For example, Mia Costello of BBC Radio Solent was recently quoted in Xtrax magazine as having overseen "a lighter, brighter, younger and more relevant station, with a new jingle package." She also says "we're now trying to attract people aged 45+" rather than the over-60 age group to which the station's appeal apparently used to be confined and the over-50 target referred to at Lord Burns' radio day in October 2004.

44. BBC Radio Bristol is playing more new and current songs than in the past. It has even started to broadcast music sweepers containing refrains from artists such as Keane and Madonna with the strap line "we pick the best of the songs from across the eras to suit any ears". This sounds rather like the post 1999 BBC Radio 2 concept to commercial radio ears.

⁹ Source: Intelligent Media (18–25 April 2005).

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45. At other stations, commercial radio programmers are noticing increased music content at key listening times, features to attract at-work listening and more music from current artists such as Joss Stone, Daniel Bedingfield and the Scissor Sisters. All of this seems to point to an attempt to attract a younger audience to BBC local radio.

46. Using such commercial programming techniques to make BBC local radio appeal to younger listeners will not only disenfranchise those older listeners whose loyalty to Radio 2 has waned with the programming changes, but, by making further audience inroads, will undermine commercial radio's ability to provide quality local services.

April 2005

Examination of Witnesses

Witnesses: MR DAVID ELSTEIN, Chairman, Commercial Radio Companies Association, MR PAUL BROWN CBE, Chief Executive, Commercial Radio Companies Association, MR PHIL RILEY, Chief Executive, Chrysalis Radio and MR KEVIN STEWART, Chief Executive, Tindle Radio, examined.

Q1218 Chairman: Welcome. Thank you very much; I am very sorry we have kept you waiting. We were having a rather lengthy session on the BBC before. As you know, what we are doing is looking at the renewal of the BBC Charter. We have to present our report by the end of October so we do not have a great deal of time as far as this is concerned but if we do that then there is some chance we might have some influence on the final White Paper. I think we have all your biographical details down here. I do not think then—unless the Committee wish me to—we need to repeat that. I wonder if I could start by asking this: You commissioned a report examining the BBC Trust proposals and I think that is just now going to come out. Can you just summarise for us what your main findings were there and would it be fair to say that one of the dominating things that concern you is fair competition? Can we go to the Trust first?

Mr Elstein: Just for the benefit of the people behind us who may not know who the back of the heads are, Phil Riley on my left is the Chief Executive of Chrysalis Radio; Paul Brown is Chief Executive of the Commercial Radio Companies Association; Kevin Stewart is Chief Executive of Tindle Radio. We try to differentiate our vocal tones so that will be of help to everyone in the room.

Q1219 Chairman: And you are?

Mr Elstein: I am David Elstein, I am Non-executive Chairman of the Commercial Radio Companies Association which is the trade association for virtually all the commercial radio companies and some of the companies have put in evidence under their own heading. We co-ordinate the commercial radios' activities on this front as best we can and we are empowered to speak on their behalf. It was CRCA's decision to invite a governance expert to contribute to the debate on governance. Given that the role of the governors was clearly in play, given that post-Hutton it looked pretty much as if there was going to be change of one kind or another, rather

than simply grind our own axes or cudgel our own brains we thought, if in doubt ask an expert. I think the Green Paper reflects the fact that Stilpon Nestor report has been a useful contribution. What Stilpon Nestor has done in the last week—and obviously copies are available to you all—is to summarise in the light of his original paper what he thinks are the ups and downs of the Green Paper decision. I think it would be fair to say, just pulling out one or two lines, that “the Green Paper is not only barking up the wrong tree, it is also making the wrong noises” and “the structure proposed by the Green Paper might even make matters worse by appearing to solve a problem which it fails to solve”. I think what Stilpon Nestor is most concerned about is the lack of clarity between the BBC Trust and the Executive Board. Like a lot of commentators—Ofcom, Howard Davies, Christopher Bland—he is extremely puzzled by the fact that the Executive Board will not conform to any good governance ideas that are available in the UK, that the chief executive will be the chairman, that there will be minority of non-executive directors, lack of clarity in who is responsible for delivery; all kinds of issues that arise out of this proposed structure. Our view is that a Green Paper is a Green Paper in the hope that it will be better by the time it gets to be a White Paper. We very much hope that this Committee's report will help clarify the situation but we certainly feel that the issue is far from resolved, that the proposed outcome does not give either the licence fee payer what the licence fee payer needs, which is transparency and accountability, or the BBC any sensible means of governance.

Q1220 Chairman: How would you improve it?

Mr Elstein: I think Stilpon Nestor's report offers several conclusions. We would not go into them all in immense detail because he goes into the number of regional representatives, the number of public service broadcasting representatives, the total numbers on the Trust, et cetera. The CRCA does not have the

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desire to drive into that kind of detail—that is why we commissioned an expert—but our general view is that what you need is clarity of the functions of the two organisations. If you are going to have a Trust it should be looking after the BBC services, approving them, testing them, ensuring that the licence fee is being spent properly on them. It should not be doubling up as a professional regulator where we have professional regulators and it should not be directly involved in decision making in terms of how the BBC goes about its business. If you created that separation what would become overwhelmingly clear is that you then need a combined executive/non-executive board for the BBC as an organisation and I think it is also fair to say that we understand some of the logic behind the Ofcom recommendations which go beyond where Stilpon Nestor finished his report which is trying to imagine a future for public service broadcasting where public funding might need to be allocated out beyond the BBC and where the BBC Trust—or “The Trust” as Ofcom recommend it be called—should be conceived in a way that would allow it to take a broader role in terms of all publicly funded PSB. That is our position. We think that what is on offer is confusing and likely to be ineffective and crossing the line between how you develop approval of services and trying to regulate the BBC.

Q1221 Lord Armstrong of Iminster: Are you in effect saying that “if it ain’t broke don’t fix it”?

Mr Elstein: I do not think there is any doubt that this is “broke”. I think the Government thinks so. The BBC has tried to reform its own governance, trying to physically separate the governors and lift them above the executive, but the Green Paper correctly, in our view, says that that does not go nearly far enough. The Green Paper sits kind of uncomfortably between a very clear separation of the role of managing an organisation and delivering value and accountability to the licence fee payer. What it instead offers is something akin to a kind of German two-tier supervisory board structure which in our view and in Stilpon Nestor’s view is both inappropriate and unlikely to work. So there is a fix to be done. It looks to a whole wide range of observers that there is a very obvious fix here which is the unitary combined board of the BBC executive/non-executives, non-executive chairman- we already have it with Channel Four and nobody argues about it in terms of Channel Four—and look to the Trust to represent the people, represent the licence payer, represent the public interest in standing outside the detailed issues of what goes on inside the BBC and try to measure whether the services that are being provided are appropriate, good value for money and the correct posture for the BBC to be adopting. What we saw at the time of Hutton—we just heard John

Humphrys refer to it—was that at the moment that Alistair Campbells’ Exocet arrived at Broadcasting House the governors lined up with the executive and abandoned their role as: “Hang on a minute, we have a complaint, we have a complaints procedure, let us deal with it” and became, in effect, part of the executive in dealing with it and that led to all the problems that we had. Once the governors had abandoned the role that they were in position to take we then had to go through this incredible, elaborate machinery of appointing a High Court judge to hold an investigation, nominally to see what happened to David Kelly but in reality to see what happened at the BBC. We know what happened. Hutton’s conclusions are not dissimilar to those of Ofcom, Stilpon Nestor, CRCA, et cetera. There is a fix available; we should take it.

Q1222 Lord Armstrong of Iminster: What role do you see then for Ofcom in regulating the BBC? Your memo says that it should have an increased role and I wondered if you could define that more clearly.

Mr Elstein: There are two separate issues. My colleague, Phil Riley, will deal with the market impact assessment issue which is a very important one and is often misunderstood. We generally see that in an age where you have a unified regulator at long last and a communications act delivers—to some people’s surprise—effective outcomes in this area. You have an expert regulator. It is puzzling to us, if Ofcom can judge whether the BBC has treated someone unfairly, why Ofcom is unable to judge whether the BBC has behaved impartially. It has to judge whether commercial radio broadcasters behave impartially and, indeed, commercial television companies, but what we currently have, despite all the efforts to deliver a unified regulator, is a position where, if you have a broadcast on Heart FM and a broadcast on Radio Two at which a particular listener takes offence saying that these are both in breach of the impartiality rules, one complaint goes to the BBC and one complaint goes to Ofcom, you can have two different standards being applied and the puzzled licence fee payer says, “Excuse me? What’s going on here?” So there are a number of issues where we think Ofcom should be given a broader remit and make sure that the licence fee payer understands what the rules of the game are across the whole broadcasting spectrum. The Communications Act kind of left it unresolved or resolved it temporarily with tier one and tier two here and tier three there. It does not seem to us that that sorts it out and if you are going to change the governance rules for the BBC anyway you should lock in Ofcom where it has relevance. We also strongly believe that you need what are technically called ex-ante competition powers for Ofcom which apply across the whole of the commercial sector—TV

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and radio—and ought to apply to the BBC. We also agree with Ofcom that the BBC's fair competition rules should be negotiated and agreed with Ofcom and although the Trust—or whatever we are going to call it—should have first view as to how they are being applied, at least we would have some transparency in what is going on. Phil, perhaps you could pick up on market impact.

Mr Riley: I think it is important to reiterate the point that Adam Boulton made earlier which is that the BBC does not operate in isolation; it operates as part of a broadcasting ecology. We are part of that ecology; we are not seeking to de-stabilise the BBC but at the same time we want to make sure that what it does does not have adverse market impact on what we are trying to do. It would be nice to think that if the BBC thought that it should exit a market it would do so of its own accord but I was scratching my head on the way here trying to think of an occasion when the BBC ever did back off from doing something once it has gone into a market and I could not think of one. It is never going to be the case that the BBC voluntarily exits a market so there must be some way of ensuring that when the BBC plans to enter a market at some point that is tested and that people know and understand what the market impact is going to be before they allow that process to go forward. Clearly the Trust are going to have to be the body that decide whether the BBC ought to be allowed to enter a new market and it ought to be right that the Trust has the power to ensure that a market impact analysis is done before the BBC decides to enter a new market so that we can see what effect the BBC entering the market will have on the commercial competition. There should be a recommendation from the Trust and that recommendation in our view ought to be backed by Ofcom completing market impact studies. One of the concerns from us is that in the BBC's response to the Green Paper they felt that the Trust and Ofcom should ask a third party to do market impact studies and we were baffled as to why the BBC felt that Ofcom could not do this. Ofcom are a competition regulator; they have the power and the skill to be able to do market impact studies and it would seem wholly appropriate to our mind that the BBC were held accountable via Ofcom doing market impact assessments.

Q1223 Lord Kalms: Can you give me an example of where you are trying to prevent the BBC from moving into a new market? You talk a lot about market impact analysis as if it were something chipped in stone from the bible but no-one in business or anywhere places total trust in a market impact analysis.

Mr Riley: A very recent example is that in digital radio—which is a very new part of the broadcasting ecology for us and where we are investing a lot of money—the commercial sector launched a new service called Oneword. It is on the national digital multiplex, it is a books, drama, plays channel. After Oneword was launched the BBC then took it upon itself to launch BBC Seven which was, in essence, its own version of a books, plays and reading channel. When Oneword was launched no-one expected the BBC to do a virtually identical service. The BBC was allowed to do it without reference to anybody else and without reference to the impact that the launch of that service might have on what was a very new, nascent channel launched by a small independent company within the commercial sector in a sector of broadcasting which itself was at a very early stage of growth. It is one example where the BBC launched something without having any reference to what effect it might have on what was already taking place in the commercial sector.

Q1224 Lord Kalms: The outcome of that was that if there was an analysis the BBC might have been told not to do it. You cannot have an intellectual monopoly, can you? Ideas must be allowed to come to fruition. You are asking, in a sense, to have an intellectual monopoly of ideas.

Mr Riley: We are not because the BBC has a market power and a breadth of coverage which allows it to enter markets and distort them in a way which completely undermines commercial competitors without them being able to respond. That was the case here.

Mr Elstein: I think it is important to remember also that what is actually being recommended by ourselves, by Ofcom and by others in terms of market impact assessment is to protect the competitive market, not to protect a competitor. In other words, what Ofcom or the OFT is looking at is the nature of the market place. In other words, keeping enough voices viable or making sure that the BBC's overwhelming weight does not crush everything else under foot. Whereas wearing our CRCA hat and individual members wearing their own hats, we would put in evidence to market impact assessment saying, "Hang on a minute, Oneword is going to go out of business if you allow the BBC to go forward". We might still, depending on who is taking the decision—and in the end it is a political decision—say, "Actually it is in the public interest that the BBC enters this arena and Oneword is just going to have to look after itself". At least ask the question first, not do an autopsy afterwards. Give the about-to-be-victim a chance to make a case. I think it is also very important to understand in this context that the logic of the Green Paper simply does not go far enough and Ofcom has picked this up. If you only have

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market impact assessments for proposed new services all that will happen is that the BBC never launches a new service, it just changes an old service. Every one of the commercial radio companies that wants to change its licence terms has to go to the regulator and ask and it is very rarely given because the basis on which they got their licence was publicly advertised and they should not be allowed to change it without everyone having a chance to have their say. What Ofcom is now recommending is that there should be market impact assessments for proposed significant changes and again it comes back to the Trust—or whomever Parliament decides—to make the final disposition. Again there is a balance to be struck between the public interest purposes of the BBC and the market place as a whole and you make a proportionate judgment; it is not an absolute judgment. Just because a competitor is going to be affected does not mean the BBC cannot enter but it may mean that you limit the way in which the BBC enters the market or you say that they can do X but they cannot do Y. We have seen some of these assessments recently. Patrick Barwise has done one; we have had one in relation to the BBC's on-line services, the BBC's new radio services. Now that we have an expert regulator well equipped to do market impact assessments we should make it routine.

Q1225 Lord Kalms: Talking about this Oneworld thing, if the regulator or whoever it is said no to the BBC are you actually creating a monopoly for your smaller radio station?

Mr Riley: No, it would not be the regulator; it would be for the Trust to decide.

Q1226 Lord Kalms: It would be creating a monopoly for your business.

Mr Riley: I doubt whether that actually is going to be the case in most instances. I think what would be the case would be, for example, in the case of the BBC and Oneworld it might be that the recommendation from Ofcom was that the BBC made its own archive of programming available to other parties to buy at a commercial market rate so that Oneworld could compete fairly with the BBC Seven service in providing archive programming. There may be a range of remedies that can be proposed to allow a market to develop but at the moment there is no mechanism to stop the BBC entering a new market until after it has happened without any impact or assessment of it.

Q1227 Lord Maxton: Briefly going back to governance a late friend used to quote a Scottish expression which was: "Good cases make bad law" and are we not in great danger with this of taking Hutton and the whole question over reporting—which I happen to believe the BBC was wrong on and

I happen to believe the governors were wrong—I am not sure that on its own, one individual case, it is sufficient to throw out the whole way in which the BBC is governed. In terms of what you are saying, Mr Riley, if you put it over to Ofcom to take that decision Ofcom is basically there and has been set up to take decisions about the commercial side of radio and television and it would judge, in my view, the BBC, on that basis. I think that would be damaging to the BBC; it would mean it would always be looking for listening and viewing figures; it would not be interested so much in innovation and that is the danger in the route you want to take.

Mr Elstein: I think, to be honest, Lord Maxton, we are well past the point of keeping the pre-Hutton arrangements; they have gone. The only issue is what is going to replace them and as we have a chance to get it right, why not? Hutton or Gilligan or Kelly or whatever you want to call it was simply the most glaring example of what was potentially going to go wrong and I can tell you colleagues sitting next to me can give you a dozen examples of how the governors failed in their job long before the Hutton affair to do what they should have been doing in managing the way the BBC runs itself in terms of oversight and regulation.

Q1228 Chairman: We seem to be listening to just two colleagues at the moment. I do not know if either of the other two colleagues wish to come in at this point. Paul?

Mr Brown: In terms of whether or not it would be helpful to have somebody other than the BBC to go to if you have a query about BBC activity, I have been working in commercial radio now for 25 years and I can assure that there have been numerous occasions when it would have been nice to go to somebody other than the BBC in order to raise concerns about what they happen to be doing in the market place.

Q1229 Chairman: These are commercial concerns, are they?

Mr Brown: These are business concerns about what the BBC is actually doing when, for example, they bring their programming down to the commercial middle ground which we inhabit. This has a huge disadvantage as far as we are concerned because they are a very, very big company. We have no-one to whom we can go about that.

Q1230 Chairman: Mr Stewart, do you want to add anything?

Mr Stewart: My radio group actually deals with small local radio stations often in rural areas. At the moment the BBC is proposing some new local services. If we take a look at those, for example, in Somerset they could be affecting commercial radio stations that are judged at the moment so marginal

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that actually a community radio station is not allowed to set up in competition with them, yet the BBC can set up against them; not community radio, that is disallowed under the order but the BBC can. BCR in Bridgwater serves just 80,000 people; Quay West Radio, 18,000 people. If the BBC opened up a service it would be like putting Tesco right next to a village shop. Frankly, with the promotion, the amount of resources that the BBC can throw into that area would destroy well-established yet fragile small businesses which actually, as a village shop, have a very similar turnover yet serve those people of that community in a very unique and very, very close way in terms of community information, travel, the weather and are very locally focused. That is part of our concern in allowing the BBC in certain areas to just move ahead with new services. In fact Pat Loughrey said to this Committee when he was answering questions that he did not really believe that he competed with commercial radio in any meaningful sense. From my point of view I see the red on the profit and loss account and I can tell you from my 25 years in commercial radio, yes they do compete with commercial radio in a meaningful sense. These are concerns and in terms of the small stations there is now extreme nervousness in the market and these are stations which actually, from the survey that we did, provide a huge amount of what we would say is public service broadcasting in small rural communities.

Q1231 Bishop of Manchester: That is a point that is made in the evidence from the CRCA to us and I wonder if you could spell out exactly what kind of restrictions you feel ought to be brought on the BBC if the point you are making were to be followed through.

Mr Stewart: First of all if a community station is not allowed to exist in a market where a local radio station exists—less than 50,000 people—then why should something much more threatening such as a BBC local service with all the resources they can put in, be allowed to exist? The community radio order was brought in for very good reasons, to protect these very fragile little businesses. Most of them do not make money and that is from Ofcom's own research.

Q1232 Bishop of Manchester: I do hear the point that you are making but nevertheless quite a few people who have been witnesses have emphasised to us the importance of the local broadcasting which the BBC does and that this is something to be encouraged rather than discouraged. I realise you are coming from a different viewpoint but I think it is quite a helpful opportunity to really spell out what you do mean.

Mr Brown: Perhaps I can help here. We obviously take a view in the CRCA about all of radio, not just local radio, because our main competitors are not just BBC local radio stations, important though they are. In our music services our main competitors are BBC Radio One and BBC Radio Two. It is extremely difficult to actually answer the question which says, if there was another body what would you say to them? I think if there was another body we would go to that other body and make our case about how worried we are. If the BBC were going to launch a radio station in Somerset I am quite sure that those people who own commercial radio stations in Somerset would be able to make a case as to the extent of the coverage of that radio station, what its activities might be; it would want to know it could turn to somebody for a second opinion that was not the BBC if, for example, they started behaving in a particularly commercial way which the BBC local radio stations have been known to do and it would be nice to go to somebody independent to discuss that and get an independent view. When it came to the bigger picture like BBC Radio Two it would be useful, when the Trust has issued its licence for the BBC, if we have some concerns that its licence is not being met, to go to someone independent who could make an independent judgment as to whether they are actually meeting the requirements of their new BBC Trust issued licence.

Q1233 Lord Peston: I am a bit lost on the facts here so I would really like some help. Normally competition in economics is about free entry. You get a competitive market and more or less anybody can get into it. I am not clear on DAB. That is not, at the moment, a free entry market; there is no shortage of digital space I take it.

Mr Riley: The digital space is currently pretty full, that which has been allocated.

Q1234 Lord Peston: There could be a lot more.

Mr Riley: There will be some more coming so there will be some more potential competition coming forward.

Q1235 Lord Peston: Would you expect entry still to be controlled.

Mr Riley: Entry will be controlled obviously by Ofcom licensing new spectrum to new commercial entrants one would imagine. All broadcasting is controlled to the extent that Ofcom issue licences.

Q1236 Lord Peston: Traffic commissioners, when they were issuing licences for groups, is that the sort of thing?

Mr Riley: Sadly you cannot just volunteer for one and get a licence. You have to wait until a frequency is offered up by Ofcom for broadcast.

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Q1237 Lord Peston: So it will not be the case ever that with digital; there will simply be no shortages.

Mr Riley: Certainly on terrestrial digital, ie the ability to listen to it on a portable device that you can carry around with you or in the car, I doubt that very much. Who can say what new technologies might come in the future but for now there is more spectrum for radio but it is still limited.

Q1238 Lord Peston: In your analysis—which obviously has to be right because you know what you are talking about—there will therefore always have to be licensing of entry.

Mr Riley: Yes, that is right.

Q1239 Lord Peston: And therefore you are always going to have to have a regulator.

Mr Riley: You are always going to have to have somebody to do it. One of the benefits that Ofcom bring, for example, to the commercial licensing is that if Ofcom were to license new digital spectrum for new digital services they are going to take account of the services that are already there so they are automatically making that market assessment with regard to commercial competitors. What we are saying is that if the BBC decides to enter that market, Ofcom ought to be capable of taking a view and passing that onto the Trust. It is clearly ultimately for the Trust to decide whether the BBC should enter a new market but they need some evidence to back up the eventual decision that they are taking and it would seem to us sensible that an economic regulator in the shape of Ofcom would be able to provide the economic background to it. Clearly there are other issues at stake and they will all be part of how the Trust comes to its decisions.

Q1240 Lord Peston: Are you saying that the BBC is not subject to any restraint on entering the digital spectrum? It can choose any bit of the digital spectrum without asking anybody.

Mr Riley: It has its own national digital multiplex on which it can choose to run whatever services it wants to.

Q1241 Lord Peston: It has that bit but it cannot go anywhere else.

Mr Riley: At the moment it cannot go anywhere else.

Q1242 Lord Peston: So to go back to your Somerset example it would have to use some of its bit to, in your view, unfairly compete with people.

Mr Stewart: They would be taking an FM analogue frequency to compete.

Q1243 Lord Peston: I understand the FM thing. Concentrating on digital, why can your people not come in in the digital spectrum?

Mr Riley: If you take BCR Bridgwater or Quay West, they are small stations and I have actually spoken to the Government because at the moment for those stations, the cost of being on the digital multiplex is £80,000. They are already loss making. There is no way that that could fit into a business plan. These are small businesses that serve small communities and that does not quite fit in with the multiplex model.

Mr Brown: It might be just worth saying that we are very keen on digital in commercial radio but the fact is that for many small local radio stations it will be many years before they can contemplate going digital simply because of the availability of spectrum let alone shortage of cash.

Q1244 Lord Peston: Just to summarise, licensing is inevitable in your view and secondly control of therefore, for instance, the BBC's market power is also inevitable if we are to have competition.

Mr Brown: Spectrum of whatever kind is a national asset. It is quite proper that access to it should be controlled.

Mr Elstein: At the moment the BBC can apportion its spectrum however it likes and there is no Ofcom role in even advising, let alone deciding.

Chairman: Thank you, Lord Peston. I think that has cleared up quite a lot. Lady Howe?

Q1245 Baroness Howe of Idlicote: I think some very interesting points have been made there, not least because, of course, in the Green Paper there is encouragement for the BBC to get further involved into local areas. Moving onto something rather different, public service broadcasting and its status, quite clearly one of the things the BBC has done over time is to instil into all of us an appreciation—even though we cannot always quite work out what it is—of public service broadcasting. In your evidence you give a long list of things which you do, all of which look admirable, as examples of public service broadcasting but at the same time saying—I think probably in a rather hurt way—that you are not in fact listed as a public service broadcaster. Does that mean you want to have a public service spectrum, where would it come from and what advantages would you gain?

Mr Brown: I think “hurt” is too strong a word, Lady Howe; we are not hurt by it. Clearly we are in the public service; we published a book about it just last year—we will be updating that very shortly—which is full of facts and figures about all the things that we do which the BBC also does which we think are valuable and useful to our listeners. I guess it is a bit of an anomaly really that first of all the terrestrial television channels in the communications legislation maintained their public service label and we did not and now we have a Green Paper where that label has now been pasted over BBC radio and we are out in

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the cold so far as that is concerned. We do not have to worry about that except that we are worried where we feel that commercial radio is being regarded as being less valuable than these other broadcasters and therefore the concerns that we have—which we have been discussing—needing every now and again to go to a third party to discuss are of no interest. So we are not really interested necessarily in achieving legislative PSB status but we do want our contributions to public service broadcasting to be understood and to be recognised. We are useful for listeners in communities. We are an important broadcaster of public service output as I have illustrated. We think we are very useful for democracy; we do think we are an alternative voice and we not therefore think that we should be weakened by over weening ambition on behalf of those that are necessarily publicly funded. We are also good for the local economy. One of the things that has often struck me as a long time participant in commercial radio, is how many people say to me, “It’s all right, but for all those blasted advertisements”. The fact of the matter is that when we get down to local radio round about 60 to 70 per cent of those advertisements—sometimes more—are local and they are an insight into the local community and they also generate local business. Having a local commercial radio station is quite a good idea for local business. We also think we are pretty good for the creative industry as a whole. We hear a lot about the BBC’s responsibility for training, for example, and there is no question that the BBC does have a very fine staff. A huge number of them come from commercial radio, quite unlikely ones: Helen Boaden, Martha Kearney and also people you would probably expect to come from commercial radio because of their music broadcasting like Chris Moyles or Steve Wright or Chris Evans. So we are actually constantly feeding larger enterprises’ demands for fresh talent. What we are looking to preserve ourselves against is a publicly funded institution which has huge cross-promotional power and, at the moment, utter freedom to develop new services—providing there is spectrum available and the BBC have their own proportion which they can allocate as they wish—in a way that we, as an industry, do not have. It has cross promotional power and the ability to do whatever it likes really when it sees the opportunity.

Chairman: I think you have made that point very clearly indeed. Lady Bonham-Carter?

Q1246 Baroness Bonham-Carter of Yarnbury: Picking up on something you said earlier about programmes, in your written evidence you are quite tough in stating that you do not think the Green Paper is strong enough in making the BBC supply public purpose in all its programmes. Is there not a

potential problem there that its programmes will then become dull and uninteresting and people will not listen to them?

Mr Brown: We think there is an awful lot of real entertainment in the kind of programming that we are running a lot of the time and we think the BBC should do more public service, but Kevin, you are the man on this I think.

Mr Stewart: I think popularity and public purpose, out of the six public purposes we do not mean that for the BBC every programme has to be all of them but it might be nice if they met one of them rather than none. Popularity and public purpose do go hand in hand. *Springwatch* on television is a good example of that, as is the Jeremy Vine programme on BBC Radio Two. Our concern is that BBC Radios One and Two are almost exclusively popular entertainment broadcasters and part of our research that we have commissioned for the Green Paper which we submitted actually threw up some surprising results even to us. For example, 71 per cent of the weekday speech output and 90 per cent of the weekend speech on Radio One makes no public purpose contribution. If we look at two commercial radio stations—Lincs FM and Radio City—they broadcast more public purpose speech output than Radio One overall and more than Radios One and Two at the very crucial and peak listening time for radio at breakfast.

Q1247 Chairman: Public purpose speech, just tell me what that means, would you?

Mr Stewart: If we look at the six new public purposes . . .

Q1248 Chairman: I see, and you are going through all the words that are used and you are saying there are six criteria.

Mr Stewart: Citizenship, creativity, building digital Britain, et cetera.

Q1249 Chairman: Thank you.

Mr Brown: It has been useful to have that defined for us in the Green Paper and we thought it would be useful to test it out.

Q1250 Baroness Bonham-Carter of Yarnbury: Radio One has been going for a long, long time; it has a dedicated audience.

Mr Stewart: It has changed enormously over the years is what I would say and the goal posts move depending on where the BBC seek to move them, whereas we are defined very clearly by our format—how much news, how much speech, what type of music we play—in the commercial sector. Both Radio One and Radio Two have moved the goal posts considerably over the years and have had an enormous effect on commercial radio’s listening figures and, of course, the knock on effect on revenue.

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If commercial radio has clearly defined programming directives, why should that not apply to the BBC as well and they should be clearly judged. If you actually look at Radio One and Radio Two they will be extremely commercially viable if they did play adverts. Our research by Carat shows that, for example, Radios One and Two will be commercially viable and very profitable. Radio Two could generate something like £74 million of revenue with costs maybe running about £41 million; that is quite a tidy profit. Should public money be going into those two radio services that could be commercially viable and, which for a majority of the time are not fulfilling any of the six new public purposes that are discussed in the Green Paper?

Mr Elstein: The public perception of Radios One and Two overwhelmingly confirms this and again that is in our evidence. What the audience hears is stations that play popular music, dependent on well-known presenters and which are entertaining and fun. If you ask how it helps you in terms of the six public purposes that comes a long way down the list. Let us be clear, we are not advocating the privatisation of Radios One and Two; we are not advocating that Radios One and Two should stop being enjoyable. We are simply pointing out that in regulatory terms they are free to do a whole range of things that commercially regulated companies are not free to do. That disadvantage is not in the national public interest. It is not in the interest of the community as a whole, let alone the licence fee payer. At any moment in time the BBC could crush any of its commercial competitors because it has just got so much fire power. You might say that is fine, let us give BBC more money and let them do the best they can; let us give them £4 billion instead of £3 billion a year and put everyone out of business and we will not have these horrible ads and we will have public purpose radio and television everywhere. That is not in the interest of society as a whole and therefore it is important that the new governance arrangements that come into being objectively assess what the BBC is spending its money on, what the public purposes of its allocation of monies are and whether those are across the board in the interests of the public and whether they have enough money, too much money, have too much impact on the competitive market, et cetera. It is not for us to say to Parliament or the Trust how much money the BBC should have and how to spend it; we just want transparency.

Q1251 Baroness O'Neill of Bengarve: You say that you find annual reports far from transparent. Can you give us some examples of what you cannot work out from the annual report and the sort of information you would like to see visible in that report?

Mr Riley: Absolutely, yes. Up to two years ago the BBC in its annual reports would split out the cost by service so we could see what Radio Four or Radio Five Live or Radio One cost. Since then they have changed their method of accounting so that large swathes of their costs—news and current affairs, for example, or marketing and promotion—are now centrally carried so that you cannot see those particular budgets allocated by service. It is impossible to even decide in terms of promotion and marketing what the split is between television and radio let alone how much of their marketing budget might be going towards public purpose broadcasting on Radio Three as opposed to promoting Chris Moyles' breakfast show in direct competition with a commercial radio breakfast show. To our mind there is a clear requirement for the BBC to be more accountable in its accounts; a clearer statement of where it is spending licence fee payers' money. Promoting and marketing is one clear area for us; the other is whether the BBC is actually distorting the market for talent by overpaying its own staff to prevent the commercial sector being able to commercially bid for them. There have also been a number of occasions where we have had concerns about the BBC overpaying for rights for sports broadcasts in a way that simply disallows the commercial sector in radio at least from bidding against it for sports. There are all sorts of areas where it is impossible to see inside the accounts of the BBC what it is spending licence fee payers' money on and therefore impossible for us to make a sensible judgment or make a sensible argument to people about whether or not the BBC is acting in an anti-competitive manner.

Mr Elstein: It is not just the CRCA's members who are entitled to this information; it is the licence fee payer. The letter in your pack which Paul Brown sent to the BBC Director of Radio asking for some fairly straightforward information, back came the reply saying, with one exception, "This information is commercially sensitive". I can imagine individual contracts being commercially sensitive but the BBC is a public organisation, publicly funded. What is the commercial sensitivity here in describing what the budget for the Radio One breakfast show might be? Or what the spend on external promotions is? Why would it be a state secret as to what the BBC spends on external promotions?

Q1252 Baroness O'Neill of Bengarve: Do you know what drove the change in the format of the accounts?

Mr Riley: We could hazard a guess that actually the lack of transparency works to the BBC's advantage. The BBC in its mindset is very commercial in terms of its desire to win against the commercial sector.

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Mr Brown: Also there are changes of personality and every two years or so there is a change of people who are responsible for doing it.

Mr Riley: One final point is that I think we firmly back the involvement in some way of the National Audit Office in scrutinising the accounts of the BBC. We cannot see any reason why the National Audit Office, suitably circumscribed, could not add value to ensuring that the licence fee payers get value for money out of the BBC.

Q1253 Lord Maxton: Mr Brown quite rightly said that the bulk of your stations are music, but nowadays the ability to listen to music across a whole range of devices from anywhere in the world and not just limited to a particular area nor even a particular country is enormous. When I am in the car I now listen to the news—normally on BBC but not inevitably—or I plug in my i-pod and listen to any of the 1,500 pieces of music I have on it. I am not dependent on a radio station; I do not need it. I listened this morning to the BBC saying that we can listen to all their radio programmes for one week on the internet after they have done it. They are now saying that not only can you listen to it but you can record it and then put it onto your i-pod and listen to it where you want and when you want. I am really saying to you, what is the future of your radio stations in that sort of global market?

Mr Riley: We talked earlier about the trust in the BBC. In fact the most trusted of any broadcast organisation is their local radio station and not just because it plays music.

Q1254 Lord Maxton: What about their local newspaper?

Mr Riley: Or their local newspaper; one of the two of them. The reason why that local trust is so high is because of the things that happen between the songs. If we were simply duplicating in the way your i-pod is no-one would bother listening to us because they could get a better selection of their favourite music from their own i-pod. It is everything we do between the songs in terms of the information we display, in terms of the entertainment the presenters and their guests contribute that makes radio the compelling, serendipitous medium that it is. It is the surprise of the next song, not knowing what the next song is that is part of that. You are right, new technology is a wonderful thing and we are happy to adapt to it ourselves. One of the stations that we own is LBC and literally last week we started doing exactly what the BBC have just announced which is allowing download broadcasts of the best of our programmes. We are having thousands of people now starting to download our programmes. We will need to find out whether that is something that is commercially

viable, how we would maintain that as we move forward. Radio and commercial radio are at the forefront of innovation when it comes to technology. I think we will find a way of coping but it is the nature of happens between the songs that makes us a compelling part of people's lives and will continue to do so I am sure.

Q1255 Baroness Gibson of Market Rasen: What percentage of the local population actually listens to local radio?

Mr Riley: Very, very high; almost 80 per cent of all local listening is to commercial local radio. The BBC local radio services are actually quite a small minority of the total amount of local radio listening and local radio listening accounts for almost half of all listening to all radio in the UK. Even though we have talked a lot about Radio One and Radio Two and Radio Four, in fact almost half of all listening is to local radio and the vast majority of that is to commercial local radio across a whole range of formats in a whole range of different markets. Local radio, which is our life blood, is actually critically important as far as the radio ecology and the radio landscape is concerned.

Mr Stewart: In terms of local radio we have a concern at the moment that I mentioned before with the shift in Radio One and Radio Two which has had quite a negative impact to our listening and revenue, we are starting to detect a shift in BBC local radio which is aimed at 55-plus but we are seeing now a definite shift younger. The editor of BBC Radio Solent recently described her station as “lighter, brighter and younger”. We are starting to hear music that we would not normally have expected to have heard on BBC local radio. BBC Radio Bristol is one of the stations where we particularly notice this change in music. Even their little jingles that they play say, “We pick the best songs from across the era to suit any years”. There seems to be now a shift younger just as we detected with Radio One and Radio Two. These new services plus changes could cause irreparable damage to the most fragile but yet in their little communities probably the most valuable. These stations, for example Pembrokeshire which is a small station has 66 per cent weekly reach of the population listening to it. The BBC has no station approaching that sort of weekly reach. Radio Borders is another top performer. These are extremely important to our local communities and we now have a genuine feeling that they are under threat from new services and from the shift that we are detecting now in BBC local radio moving younger, because there is nothing that stops them from changing their format. The commercial stations cannot change their format. If we wanted to react to this we cannot.

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Q1256 Baroness O'Neill of Bengarve: Would it be fair to say that although you say you want fair competition actually you want a bit more than that or something rather different, namely protection?

Mr Stewart: No, we are not saying that. When we apply for licences we know what services are out there. But if you change the rules maybe a year after we have started on what is a very, very tight and fragile business plan for a very small business with a turnover the size of a sweetshop and allow us to be dominated by a mega Tesco opening up down the road a year later, you are not going to survive. So I think what we are asking for is fair competition as we go into a new market so that we know what we are up against. Commercially I know what I am up against because those stations are tied to their format, but if BBC Radio One, Radio Two and local radio staff move it about, it distorts the market and can damage the most fragile of companies.

Mr Elstein: It is one of the reasons why we are so keen to emphasise the public service role that commercial radio plays. It is so easy to make the assumption that it is only the BBC that can fulfil a public service role. The public interest can be as well protected by respect for the ecology of broadcasting including commercial radio as by saying, "Oh well, the BBC only ever operate in the public interest, they can do what they like".

Q1257 Lord Peston: For intellectual snobs like me advertising is a problem because, for example, when I'm fed up with advertising I will switch to Classic FM until the ads come and then I go automatically back to Radio Three. More generally in your written evidence you raise a matter which has always intrigued me. The BBC does carry an enormous amount of advertising which it claims is incidental, but anybody who watches sport on television knows those ads are not incidental; they are there because they are going to be on the BBC. You mentioned this. The worst example used to be when they carried advertisements for Marlboro cigarettes as they showed motor racing; I do not think we get much of that any more. Having said that, however, do you have a proposal on what you would do about it?

Mr Riley: There is no doubt that the BBC gives enormous commercial value to the sponsors of external events. Again, we did some analysis of some of the recent events that have been carried on the BBC and, for example, the sponsorship rights for the Premier League cost £17 million per annum. The BBC actually pay £26 million for the broadcast rights so they paid more than the sponsors did, but BBC television alone—it is only television we can do this on because radio broadcasts are not kept for analysis—gave £29 million worth of value to Barclays in on-air mentions. That is a staggering sum but Barclays only paid £17 million to sponsor it in the

first place. One of the reasons they do this and one of the reasons commercial organisations sponsor things on the BBC is because they do it in a commercial free environment, something that we obviously cannot compete with and it is something that commercial organisations will find very attractive. The BBC's coverage of the Chelsea Flower Show was absolutely blatant. Viewers were welcomed to the Chelsea Flower Show sponsored by Merrill Lynch every 10 or fifteen minutes throughout the coverage. Or Crufts, sponsored by Pedigree. These brands are brands that are shifting money away from commercial enterprises whether it is television or radio in the case of companies like Vodafone or Renault who have been big sponsors of BBC events in favour of backing external events because the BBC have suddenly been allowed to mention those sponsor companies. What happens is that the events themselves and the sponsors write contracts and if you want the broadcast rights you have to give this amount of commercial mention to the sponsor.

Q1258 Chairman: Would that be the case with the Chelsea Flower Show? There has always been a Chelsea Flower Show.

Mr Riley: Yes, there has always been a Chelsea Flower Show but only since the change in the last Charter has the BBC been allowed to mention "sponsored by Merrill Lynch".

Q1259 Chairman: And if it did not do that?

Mr Riley: The Chelsea Flower Show would continue and I am sure Merrill Lynch would continue to want to sponsor it, but what it would not do is filter money away from the commercial sector into the BBC, it would not distort the market and, ultimately, what is the justification for it? If the justification for the licence fee is to provide a commercial free environment for listeners and viewers, why is it being allowed to be polluted by commercial messages? It is simply wrong in principle and needs to be stopped and you have the power to do that.

Q1260 Baroness Gibson of Market Rasen: Do you have proof that that is actually the case? Let us say that they cannot mention the Chelsea Flower Show sponsorship, would you get any extra money?

Mr Elstein: I will cite you the *Sunday Times* Culture this weekend, an article by Paul Donovan about the Big Summer Ticket, the biggest prize in BBC radio history as far as he can tell. At the end of the article he says, "Continental Airlines promoting its new scheduled service from Bristol to New Jersey earlier this year preferred to deal with BBC Radio Bristol—it ran a contest in which the prize was two tickets on the inaugural flight—rather than the station than has the market share in the local area of the greatest population (Real Radio, South Wales). You don't

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have to pay the BBC, do you? I love the BBC but when it is less attractive instincts take over, it is all too easy not to.” There is overwhelming evidence that the BBC voluntarily enters into these quasi commercial arrangements because they are beneficial to the BBC and accepting terms which it does not have to. I have actually sat through a presentation by the then sponsor of the London Marathon in which they added up all the exposure that they got on a three hour BBC broadcast and quantified it and compared it with what they would have had to spend to get onto ITV which was the possible equivalent. Of course it is much more valuable to the sponsor because it is an otherwise commercial free environment so you stand out, you are not in any kind of clutter. It is one of the key issues for us that this progressive abuse of its dominant position in attracting quasi advertising income and sponsorship has to be dealt with quickly.

Q1261 Chairman: The net result of it is that the BBC are getting television rights to a particular event—whether it is the Chelsea Flower Show or anything else—but they are getting it at a price below what the market price is.

Mr Elstein: Discounted because there is a commercial sponsor who wants exposure on BBC who will pay some of the costs. In terms of the Olympic Games, the fact that the BBC is showing eight sponsors, twelve sponsors, what are you going to do about it? It is a global event. In terms of showing cigarette packets driving round a racing circuit, the BBC does have a choice and chooses not to, but not because

advertising is forbidden but cigarette advertising is forbidden. We all know the examples—we could bore you to death with them—but it is the principle that counts. Again it is the licence fee payer who is being chiselled.

Mr Stewart: If I could just make a very quick point on this, small local radio relies on about 30 per cent of its revenue from sponsorship and promotion and that is growing. My station manager at a small local station went to the shopping centre celebrating its tenth anniversary. He was told in no uncertain terms, “Why should we pay you to come down here when the BBC has agreed to do it for nothing?” and there is the BBC down at the tenth anniversary of a shopping centre interviewing Mr Costa Coffee and going into all the shops. That should not be allowed to happen. That took away a huge amount of revenue and for some stations a contract like that is the difference of profit or loss for the year.

Q1262 Chairman: It makes the point perhaps that somehow it needs to be checked in an independent way.

Mr Stewart: I think definitely so.

Mr Brown: Prior to the last Charter it was prevented. It is the current licence and agreement published in 1996 which has allowed this to happen. Before that it could not have happened.

Chairman: We have overrun time I am afraid. I am very sorry about that, but thank you very much. You have given us a lot to think about. Perhaps if you any more specific points we can come back to you. Thank you very much.

Supplementary letter from the Commercial Radio Companies Association

Thank you for seeing representatives of the Commercial Radio Companies Association on 29 June. We enjoyed the session and hope that the committee found it helpful.

Lord Fowler asked for details regarding the audience performance of Independent and BBC local radio. They are as follows.

- Commercial radio achieves a 44 per cent share of all radio listening in the UK.
- Local Radio listening accounts for 44 per cent of all radio listening in the UK.
- Of this local listening, 76 per cent is to local commercial radio (ILR) and 24 per cent is to BBC local radio.
- As a general rule, BBC local radio is preferred by older listeners while ILR is preferred by younger listeners who, in turn, are those favoured by advertisers. There are, of course, important exceptions to this general rule. Saga Radio, for example, is targeted at older listeners and achieves an average share of 6 per cent in the areas where it can be heard.

In our discussions, we acknowledged our fears regarding some BBC local radio stations clear move towards a younger demographic. In addition we pointed out that ILR’s success in audience terms is not always matched by success in revenue terms. A number of small scale local services serving rural areas or small parts of metropolitan areas have yet to make a profit. Kevin Stewart mentioned the delicate situation of some ILR services in Somerset where the BBC has announced its intentions to launch a new BBC local service.

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We believe that too much expansion of BBC services and too much ratings chasing amongst young audiences by national and local BBC radio services will severely impair ILR's invaluable contribution to local life. Thus the outcome of the BBC Charter review and renewal process is important to commercial radio at large and ILR in particular.

We hope we made it clear that CRCA's members believe that the Green Paper's public purposes for BBC content are not tough enough; that the proposed regulatory and governance structures are not clear enough; that there is absolutely no justification for sponsorship mention on BBC Radio or sponsor funding of BBC activity; that BBC Radios 1 and 2 should deliver public purposes throughout their schedules; and that BBC local radio should continue to serve an audience different to ILR's.

Thank you for listening to our concerns.

4 July 2005

TUESDAY 5 JULY 2005

Present	Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Gibson of Market Rasen, B Holme of Cheltenham, L Howe of Idlicote, B	King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Examination of Witnesses

Witnesses: DR DIETER HELM, Oxford University, SIR DEREK HIGGS, Chairman Partnerships UK plc and author of the *Review of the role of non-executive directors* and SIR ROBERT PHILLIS, Chief Executive, Guardian Media Group, examined.

Q1263 Chairman: Welcome, and thank you very much for coming. As you know, what we are doing is we are looking and reviewing the Green Paper where Government have set out their plans for the BBC Charter Review. We hope to be able to give our views on this by the end of October, so we have not got too much time. One of the obviously big issues is governance as far as the BBC is concerned. I wonder if I could start in this way and take you momentarily in turn for a little and then come back to the more general. Sir Derek, those of us who are non-executive directors, chairmen in the private sector, we not only know of your work but of course we regard it totally as our bible for going forward. I wondered, first, if you could explain it very briefly and then say whether you think that the general rules of governance you set out are applicable to all organisations?

Sir Derek Higgs: I think there are some principles that are absolutely relevant to organisations, whether they are companies listed on the stock exchanges, quangoes in the public sector, charitable bodies or whatever. They are principles; they are not the specifics of how you construct a particular process. The reason they are applicable is because it is about people and behaviour—that sort of social dynamic at the end of the day—and not about prescriptive rules. I personally would point to the importance, as one of those principles, of independence in appropriate measure; to the checks and balances which sometimes naturally occur in structures, but if they are not there need to be introduced in a suitable way; and to transparency and disclosures. From those three underlying principles, you can actually derive an awful lot of the relevant and appropriate detail for different sorts of organisations. To suggest that you can just pick up the Combined Code and impose it on an NHS Trust Board or the BBC I think is missing the point. It is not the gospel; it is the encouraging of a set of behaviours and a minimum of process in the listed company sector where the objective of the organisation is pretty clear to see—to create value for shareholders in a responsible way. The BBC context is rather more complex, and you cannot look at a single objective in the BBC context; it has got to balance a number of trade-offs.

Q1264 Chairman: Correct me if I am wrong but one of the principles that you lay down as far as a Board of Directors is concerned is that they should have an independence, and particularly non-executive directors perhaps should have an independence. It is not just a matter of supporting the management—it is also a matter of challenging the management while, at the same time, being in the same team?

Sir Derek Higgs: Absolutely. I use the phrase “constructive challenge” to try and capture that. I think the Green Paper talks about “critical friend”; it drives at the same thing. It is an important position to hold of both being supportive but also able and willing to question hard. Indeed, I would see as the overriding obligation of the non-executive in a boardroom context (and I think this would apply to the BBC Trust and to the operating board) as being willing and able in a constructive way to ask questions and keep asking questions until the Director is satisfied with the nature of the answers that are provided. It is not to just resign. It is to keep probing, not in an abrasive or destructive way, but to keep testing, within the framework of a collective approach to try and get the right sort of results.

Q1265 Chairman: Just one last introductory question. You looked at both the unitary board and the supervisory board system in other European countries and you came down firmly on the side of the unitary board?

Sir Derek Higgs: I did, but that was not just a personal position. The overwhelming feeling in this country in the corporate sector was that a unitary board had clear advantages over a supervisory board structure. Part of that is, familiarity, culture and history; but that was in the context of the corporate sector with a dispersed set of shareholders.

Q1266 Chairman: We will come to you all in a moment because I am going to ask you all what your first feelings are about Government proposals and then we will open it up to the Committee, but just before I do that I will bring in the other two. Sir Robert, you as I remember, have got extensive

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experience both in Independent Television and in the BBC, and of course now in newspapers and the Guardian Media?

Sir Robert Phillis: Yes, indeed. There are principles and lessons to be learned from each, but I concur with Sir Derek's view that what might be appropriate in, say, the Scott Trust and Guardian Media Group, or what might be appropriate in a wholly commercial plc, is not necessarily transportable lock, stock and barrel to such an important institution as the BBC. I think it is drawing the relevant lessons and applying them in the context of the BBC as our major principle public service broadcaster.

Q1267 Chairman: Thank you. Dieter Helm, we sat next to each other on the Westminster Forum, I remember. You seem to advise the Government on a whole range of things at the moment. Let me ask you a basic question: are you coming before us as an independent witness, or do you feel constrained that you advise the Government on so many things?

Dr Helm: Completely unconstrained and completely independent. In my capacity as a Fellow of New College, Oxford I should be independent.

Q1268 Chairman: Just tell us your experience, because governance and regulation has been one of the things you have been specialising in.

Dr Helm: If I can bring it directly to bear on the questions I think you are interested in. The design of regulation depends overwhelmingly on what is the objective you are trying to pursue, and what is the problem to which regulation is supposed to be the answer. In the case of the BBC it is not just a competition monopoly-type question, which is the sort that an Ofcom, an Ofgen or whatever might look at. The problem is that the BBC is there to provide a public good; that public good has marginal costs of effectively zero. The right way to deliver that public good is to charge people a flat fee and then give them freedom of access. It is what I describe as a "club" essentially, and the licence fee is a club fee. The role of the trustees and the Trust is essentially to represent those club members, the licence fee payers, and see that their objectives are carried through to what the BBC delivers. Therefore, the idea that what they are is some kind of quasi regulator is to misconstrue what the purpose here is. Their role is to work out what Public Service Broadcasting is and to make sure that the BBC can deliver that. That is quite different from the traditional regulatory functions of "make sure it doesn't abuse its monopoly". As Sir Derek said, this is not an organisation with a simple and single objective to maximise profits. I think the regulatory function here is actually extremely well captured in the idea of a Trust, and trustees are the representatives of the members of that club—the licence fee payers—and their job is to interpret Public

Service Broadcasting. Therefore, with analogies like supervising board, this is not the same kind of problem; this is much more like a National Trust problem, which is to represent those members.

Q1269 Chairman: Thank you. Let us go into all this now and we will come back to that last point you were making. You have all had an opportunity of looking at the proposals that the Government make: the idea of the Trust; the idea of the management board. You have a Trust with a Chairman; you have a management board with a Chairman; you have non-executives on the management board. Sir Robert, can I start with you: what do you feel about that model?

Sir Robert Phillis: I think the principles that have been encapsulated in both the White Paper and the BBC's response are workable propositions, subject to some greater clarity in a number of areas. First of all, as far as the Trust is concerned, it does seem to me that there is a legitimate regulatory function as well as a governance function within the Trust itself. I would observe simply that I think the skills and the experience that one brings to apply to the governance part of the role are actually quite different from the skills and experience required on the regulatory part of the role. I do not think that is an overriding problem. It does say something about the way governors or trustees are selected and getting the right balance of experience and mix within the Trust itself. It certainly seems to me there could be a case, in the conduct of the Trust's business, that there is quite a clear delineation between the governance role and the regulatory role—whether that takes the form of a two-part agenda (a governance agenda followed by a regulatory objective) or whether the Trust deem to organise itself with two sub-committees to address those different roles. To bring clarity amongst the governors and the trustees—so there is a clear understanding of when they are performing their governance role and when they are performing their legitimate, internal regulation role—is perhaps a refinement that might be worthy of consideration. As colleagues have mentioned, I think the regulation of a public service broadcaster is distinct and is different from a pure commercial operation in the vast majority of its activities. I personally believe that the one area where there may be an exception to that rule is in relation to the BBC's commercial activity—BBC Worldwide. I think the commercial activities within the BBC are legitimate. Clearly it is putting licence fee funded programmes to account to the benefit of the licence fee; but if it is the case that Worldwide would remain within the BBC structure (and given the problems that are recognised about the perception of regulating the commercial activities) I believe there is a case that that very narrow aspect of regulation (BBC Worldwide and its commercial activities) could

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take a higher priority in the activities of Ofcom in order to make the distinction between the public service purposes of the BBC, on the one hand, the legitimate commercial activities, on the other.

Q1270 Chairman: Sir Derek, what about your initial thoughts about the structure?

Sir Derek Higgs: As described in the Green Paper, it seems to me a workable structure, with the only proviso (recognised in the Green Paper) that there is some detail to get right. Like Sir Robert, I would look closely at how members of the Trust are selected and, indeed, where the residual right to appoint certainly non-executive and possibly all members of the operating board actually lies in the event of some difference of view between the Trust Board and the operating board. I would certainly want to avoid, for example, having two Chairmen and a Chief Executive which would be, in my view, a recipe for a potential muddle and some divisiveness.

Q1271 Chairman: With respect, is that not exactly what they are proposing: two Chairmen and a Chief Executive?

Sir Derek Higgs: No, because the BBC, as I understand it, is proposing that the first Chairman of the operating board should be the Director General and, therefore, you have effectively a Chairman/CEO relationship between the Chairman of the Trust and the leader of the operating board.

Q1272 Chairman: So you see it as a management board?

Sir Derek Higgs: I see it as a management board. I see it as akin to a supervisory board/management board situation. I think one of the things which was clear to me from the work I did was that the social dynamic in an organisational structure is more important, the quality of the people creating that social dynamic is more important, than the narrow definition or design of the structure. Supervisory boards can work; they can fail; but they can work.

Q1273 Lord Holme of Cheltenham: Could I just pursue this area where I think we have got a slightly different version from Dr Helm than from Sir Robert and Sir Derek. If I understand what Dr Helm was saying, the Trust has a representative function but it performs, if you like, the function of an AGM for a company. This is where the owners, the licence payers, are represented to ensure that what the BBC does is consistent with what they pay their licence fee for. I think that was the version you were giving us. If I could just build on that because if I prove to be wrong you can demolish it. If that is right, I think it is quite difficult to understand this notion that the Trust becomes, if you like, a collective chairman of a quite conventional corporation, in which the board has a

collective chairman that is represented by the Trust, and then there is effectively a CEO and executive team running it. That is really rather a different version. I think a lot of the doubts about this two-tier are exactly what the top tier does and how it does it. Therefore, I wanted to ask Sir Robert in particular: the Scott Trust and the company have a not dissimilar situation. The Scott Trust represents the principles and values of the owners, and the company is operating commercially within the constraints of the principles and values of the owners. The Trust plays, in a way, the sort of role that the Helm Trust would play, and the company gets on with its business within the constraints set. I wondered if you could just explain to us how this Scott Trust/Guardian Media Group relationship works, and whether my quick version is right, or not?

Sir Robert Phillis: The Guardian Media Group is a plc but it is not a quoted company—it is wholly owned by the Scott Trust. There is one crucial distinction between the Scott Trust, GMG and the BBC and that is: in our own case, broadly speaking, 75 per cent of our operational activities are run as pure commercial entities and strive to meet best of commercial operating standards. The exception is in relation to *The Guardian* and *The Observer* newspapers, where the normal financial criteria that might apply are offset by the values of the Scott Trust in terms of independence and integrity, both financially and editorially. There is a separate trust, as you correctly say, with a separate chairman; and there is a board which, in every other respect, operates as a plc board with a separate, independent chairman. There is cross-representation. There are four members of the Guardian Media Group Board who sit on the Trust: the Chairman, myself, the Editor and the Chair of the Trust who sits *ex officio* on the board. The distinction I think between the Scott Trust, the ownership board, and the board of the plc, is the Trust is principally concerned with the values of the organisation which permeate through not simply the national newspapers but the way we try to run the business. The operational drive comes from the board of the plc which has non-executive directors of the sort that has been suggested both in the Green Paper and in the BBC's response. It does, however, focus on the linkage between the two boards in our own case. As I have mentioned, this is done by cross-representation, not of the total board but of key elements of the board. It seems to me in the BBC context before us (and I agree with Sir Derek) that the notion of two chairs—a non-exec chair of a trust and the non-exec chair of the Executive Board or the operational board—is a difficult and confusing concept; because the Director General, the Chief Executive, must have a clear accountability to one person and not two. I think the notion of the chair of the Executive Board, the operating board, being the

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Director General is the correct one. I think that the Executive Board and the operating board could be enhanced by the appointment of non-executive directors, providing one goes for quality and not quantity of those non-executives in assisting the Chief Executive, the chair of that operation. I would offer one further suggestion, because I think the linkage between the two boards is key. If the chair of the Executive Board is the Director General, and if that Director General is accountable to the chair of the Trust (which I believe to be the right organisational form) then I think (to pick up from the private sector model) the notion of a senior independent Director on the operational board, who has a specific and defined role to provide the link with the Chairman of the Trust, is something which could perhaps be built into the organisational model. That on those occasions, from time to time, when the non-executive directors on the operational board need to talk to the Trust, there is a recognised and identifiable route. I think perhaps a senior independent Director, picking up the Higgs model, could be useful in that respect.

Q1274 Lord Holme of Cheltenham: Of course the Senior Independent Director in the Higgs Combined Code does have a special responsibility to the shareholders and the owners. When Sir Robert suggests that you have a Senior Independent Director, one of the non-executives playing this role, you are back to this question of: what is the role of the Trust? Is it an outward-facing role relating to the owners of the BBC, the licence payers; or is it an inward-facing role concerned with the strategy and, at some level, the operations of the BBC? Although I very much value what Sir Robert said, I still think there is an ambiguity there and any enlightenment would help us a lot?

Sir Derek Higgs: I do not think there is a conflict and I am not sure it is ambiguity. I think there are two aspects to the role where I think one has to come to a conclusion on whether they are capable of reconciliation within a body like the BBC Trust. My own view is that they are much more complementary facets/aspects of what that Trust is there to do, and not mutually exclusive or in conflict. We are saying different, but not competing things, I think.

Q1275 Lord King of Bridgwater: There are three models on the table at the moment—the Green Paper, the BBC's amendments and Burns, which we have not discussed at all, or the question about: why change it? The issue that interests me is that you are grappling with the question that we might have two Senior Independent Directors at the moment: one who has the responsibilities to the shareholder or the public; and one who has the responsibility for liaison between the Executive Board and the Trust. It seems

to me that all these things are getting more and more complicated. Is it not well established in the past that the unitary board would recognise fully its responsibilities in every respect and be properly charged with them (and perhaps would have them restated to them so that they knew what the objectives were) and should actually avoid a lot of internal friction and enable a lot of the success of the BBC to continue without the upheaval, point-scoring and job-seeking opportunities for people which arise otherwise?

Dr Helm: I fundamentally disagree with the spirit of the question.

Q1276 Lord King of Bridgwater: What, about Burns?

Dr Helm: No, about the idea that it would be better to have it all in one body.

Q1277 Lord King of Bridgwater: Burns is the first point.

Dr Helm: What I want then to say is that Burns and the Green Paper share a fairly common understanding that there is a regulatory problem here that has to be addressed, which is that there is no objective, methodological, empirical definition of Public Service Broadcasting; that it has to be interpreted as you go along and somebody has to do that. That is a distinct function from managing a company or overseeing the efficiency of the managers of those companies. The difference between Burns and the Green Paper is that Burns wants it external and the Green Paper wants a Trust to do that. I happen to think the Trust is right, because I think the bit which Burns gets wrong is that he does not give full weight to the idea that licence fee payers are effectively club members. They pay their fee and they need a mechanism by which that goes. That is why I prefer the Trust rather than the external regulator. The internal, all-in-one, model bundles together the functions overseeing the management, supervising their activities and regulating a mode of what the Public Service Broadcasting objective is, and representing the consumers on the board. I think there is a fundamental difference between Burns and the Green Paper, on the one hand, and the unitary board, and quite a strong disagreement between myself and Sir Derek, in that I do not see the functions of the Trust as being supervisory. I see the supervising of the executives of the organisation, the BBC, to be the non-executive directors of the unitary board of the BBC; and that is a separate function from the trustees, whose job is to work out what Public Service Broadcasting is and critically (and this is the bit I think the Green Paper does get right) it is that the trustees issue licences for each of the main services the BBC conducts, and those licences have to demonstrate the public service broadcast is being

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delivered. To be as brief as I can, my own view is that that is enough for the Trustees to do. If they muddle that up with trying to work out whether it is actually being efficiently run, and whether the directors are doing their jobs properly etc, then we will get all the muddle which is the muddle between the non-executives of the Executive Board and the Trustees; and I do think that is a muddle. I like the clarity and separation. The only difference with Burns is that I would have it as a Trust representing the licence fee payers—not this Public Service Broadcasting Board or Commission he has in mind.

Q1278 Lord King of Bridgwater: What you have left out of this is that I think your comments indicated that Ofcom could only be very narrowly described as a regulator, and there are none of the functions that you might see otherwise falling to the trust that could possibly go into the remit of Ofcom.

Dr Helm: Ofcom is an economic regulator, and I am very keen that it has competition issues, which is its expertise. I happen to think it is probably quite good at doing efficiency audits, too.

Q1279 Lord King of Bridgwater: It has taste and decency as well?

Dr Helm: I think probably not. That is a line to draw finely, but my inclination is that economic regulators are not very good at taste and decency.

Q1280 Lord King of Bridgwater: It is the present remit. There are a lot of previous governors of the BBC who certainly saw as their responsibility taste and decency as well as other issues. If I may say, I know you are an expert on governance, and I respect that—an academic expert in this field of great distinction—but the thing that interests me is there is always a tendency, I think, looking at the commercial world, to imply that anybody working for a company board of directors is only interested in the bottom line and does not actually represent not only a responsibility to the shareholders and a responsibility to their appointments but a responsibility for their customers as well. In the end, nobody actually survives—the BBC will not survive—unless the board of governors has a very clear understanding that they are serving their customers, being the public, or otherwise the licence fee will become absolutely indefensible.

Dr Helm: I could not agree more.

Q1281 Lord King of Bridgwater: That is my point. Once you start to spread the responsibility around different bodies, who are the public going to complain to? Can you not give the public a clear idea of who, actually, is in charge and who they complain to if they do not like what they see?

Dr Helm: The distinction between us is that if there is a regulatory issue here in addition to the normal running of the business (and I want that separate, you might want to incorporate it), I think the trust is the appropriate place to do it because the regulatory job is not the narrow, economic regulatory job—but that has to be done as well—it is also deciding what public service broadcasting is.

Q1282 Lord King of Bridgwater: Ofcom has not been given the narrow economic regulatory role; we have just discussed this; it has a wider remit than just narrow economics.

Dr Helm: I was suggesting, I think, that I did not think that was a very good idea.

Q1283 Lord King of Bridgwater: So you want to change Ofcom's—

Dr Helm: A little bit.

Q1284 Chairman: You are limiting Ofcom?

Dr Helm: A little bit, yes.

Q1285 Chairman: Robert Phillis, you try and shed a little bit of light on this. You actually worked for the BBC; you know how the BBC governors used to work. Why do we want to change it?

Sir Robert Phillis: I am absolutely certain there is a need for change. I believe the BBC governors or trust can and should be responsible both for governance and for internal regulation of their affairs. My comment on the past and past experience is that the distinction about when they were governing and when they were applying an internal regulatory role was indistinct, and often muddled—hence my earlier comments, which I will not repeat. It seems to me that the trust has one special and unique purpose, in that it is concerned with the values and standards within the organisation, and I do not see how the trustees can be responsible and accountable for values and standards unless they understand the business itself—the operational questions of the business. So I do not find a difficulty with the governors, or the trust, being responsible for those two roles. I think it does say something about the way they organise their business (and that is a change from the past), I think it does say something about the skills set which are consciously put together of those invited to be trustees, and that says something about the selection process, but I believe if they are responsible externally to the licence fee payers and to the general public for the standards of public service broadcasting—the values and the standards—then they have to understand the way in which the organisation runs and is accountable. With the exception that I made in relation to the commercial activities of the BBC worldwide and Ofcom, I believe, whether we call them governors or the trust, they can

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perform both those roles but they need to be clearer in terms of their responsibility, and it does pose questions on the level of detail to which they involve themselves in the operation of the organisation. I think that what the White Paper and the BBC's response are feeling their way towards is greater clarity in that distinction, but I think there is clearly a little further work to do.

Q1286 *Chairman:* Who speaks for the BBC? Who is the head of the BBC under this proposal?

Sir Robert Phillis: The Director General is responsible as Chief Executive for the entirety of the organisation and is ultimately responsible for its editorial output and standards, but the Director General, the Chief Executive, must be accountable—hence governors or trustees, as we call them—and of course they must have ultimate oversight in approving strategy and approving budget. That is, actually, one aspect of the Scott Trust situation that applies. It is the Board's job to develop strategy, to present budgets and proposals, but our owners (the Scott Trust in this case) will receive and assess those in the context of the values they are accountable for. I think there is a parallel there to the BBC.

Q1287 *Chairman:* Before I bring in Lady Bonham-Carter and Lady Howe, do you have any further comments?

Sir Derek Higgs: One very narrow one. I did not suggest a senior independent director on the operating board and I probably would not, for just the reasons raised. There is some difference between Dr Helm and my own position. I think that the trust can span those three areas of strategic management, not detailed but strategic management, governance and appropriate regulation. I agree entirely more work has to be done. I think the BBC's response in terms of moving towards a sensible description and division of responsibilities is in the right direction, but I do not think anybody would suggest that it has reached the final level of sophistication.

Q1288 *Baroness Bonham-Carter of Yarnbury:* I want to pick up a point that both Sir Robert and Sir Derek made, which is about how crucial it is who actually sits on this trust and how do you ensure that you get a sufficiently diverse—to use a topical phrase—spectrum of people sitting on this trust? How would you set about ensuring that?

Sir Robert Phillis: If I refer back to my time at the BBC, which is eight years ago—so certain things have moved on—the appointment of governors was a strange and mystical process—rather like, I think, the appointment of the Pope. DCMS would pronounce and present new governors of the BBC and they were supposedly people from the great and good. I think that is totally inappropriate to such a major and

important organisation like the BBC. It seems to me that the selection of Governors/Trustees is a job shared between the trust (and, of course, DCMS will have an interest in this), but I think the chairman of the trust has to take a key role in agreeing the skills set required to have a balanced board. A balanced board is going to try to bring together people of different but relevant and complementary experience—and, for that matter different backgrounds and personalities. I do not think that can be a random: “Here's a great and good person, now fit them in and make them work”; it needs that analysis of the skills required. I believe the chairman of the trust has to be involved in that process in trying to ensure that the balance of skills and personalities on the board is correct. I think that is an area where, no doubt, I will be told that things have moved on in the past eight years, but I think we should be open and above board about it; you cannot leave it to chance to hope that these very committed and well-meaning people who are selected and appointed as governors in the past are necessarily going to bring the skills that make the governors or the trust work effectively. I would see the chairman with appropriate representation of DCMS and, crucially, an independent assessor.

Q1289 *Chairman:* Do you agree with that?

Sir Derek Higgs: Yes. I have some confidence that the Nolan process can produce sensible answers, but it is important—I absolutely agree with Sir Robert.

Q1290 *Lord Holme of Cheltenham:* That was really the point. At the moment all governorships are subject to open advertising in all the media and are subject to the Nolan rules, and there may be then a need to open up what actually happens after that. However, the actual process at the beginning is there. Can I ask you, given the opportunity, Scottish and Welsh—do we still have those sorts of governors?

Sir Robert Phillis: The BBC is a cultural institution and, as such, it must reflect British culture in its totality. Very clearly, the contribution of the nations—Scotland, Wales, Northern Ireland—and even the English regions are different and are distinct; the BBC is not a metropolitan organisation and never should be. So I think the notion of national representation is an important element and one that should be preserved, but I do not see that that is inconsistent with those other criteria I would set about relevant skills and experience to contribute to the activities of the board as a whole.

Q1291 *Baroness Bonham-Carter of Yarnbury:* I understand the Nolan point but, as Lord Holme has just said, that is about the individual person. How do you actually get the cross-section you need, the

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variety you need, the team you need? I do not think you have quite answered that, really.

Sir Robert Phillis: I apologise. I will try again. I think that the trust, the governors, should have a balance of backgrounds, experience and skills which together will serve both the governance function, the proper regulatory function internally, and the supervisory function of the management team. I think in the BBC's response they refer to it in outline rather than in detail in specifying the areas of expertise. I take open advertising as an absolutely essential requirement as is the importance of independent assessors—whether that is through the civil service or other independent assessors under Nolan can easily be addressed. One of the problems, I think, is the balance and diversity amongst the governors, or the trust. I have to say that one of the problems (a strictly personal view) that the BBC has is that the workload required of its governors, or its trustees, is huge in terms of reading, in terms of meeting, in terms of contribution. I think that, combined with the level of remuneration of governors or trustees, automatically excludes many people who might otherwise be able to make a contribution because of their background or their age or wherever. I think there is an imperfection there. I am not suggesting it is purely a financial one, but to give the time that a trusteeship or a governorship required and to give so much time for a limited remuneration does exclude people who might otherwise be able to contribute. I do not have a ready answer for that but I do recognise the problem.

Chairman: Even more so if you are a non-executive on a management board which, I think, by definition is going to meet more regularly.

Q1292 Baroness Howe of Idlicote: As I listen to all this I think back to all the years of all the various reports that have been done and, can I say also, to quite a lot of controversy over each one of them as they came out. I do not think any board of governors is ever that easy. This one, of course, is particularly difficult because of the huge tradition and background to it all. Coming back, again, to the trust and the whole business about the chairman's role (I am thinking very much of Sir Derek Higgs' comments about the chairman not perhaps being too involved in the board actually selecting the non-executive members of the board). How difficult is it going to be to get a really independent process given all the background that we have had recently and complaints from government and complaints from opposition? It has gone on forever. How are we going to get confidence that the trust is properly independent? I know you say Nolan, but, frankly, is that enough? If there is a government involvement to this extent should it not be something much more

dramatically in charge of Parliament itself rather than any form of government?

Sir Derek Higgs: I am not sure the alternative is Parliament. I think an independent process is just that—it is an independent process. If you think of a Nolan approach as comprising government, if you think of three people—one a representative of government, one a genuinely independent assessor and contributor to the process and the third the chairman of the trust, the chairman of the trust is a government appointment, as I understand the way it is envisaged, but hopefully, once made, is effectively an independent person—then I think there is a reasonable chance of getting a sensible outcome out of that. I think the issue that we have rather moved on from without drawing any conclusions is whether you can have a meritocratically appointed trust board or whether you have a representative board—whether it is regions or it is cross-sections of civil society. Given that the two do not easily reconcile as concepts, I would always go for a meritocratic, fit-for-purpose, not a representative board because that points to the importance and value of the quality of the people.

Q1293 Chairman: Are we talking about both boards there?

Sir Derek Higgs: Essentially, yes, because those concepts apply, in my view, to any organisation. As I understand it, the operating board will be rather more internal in the way that it makes appointments, obviously, in particular for management. The trust board is a more externally exposed appointment situation, but it would be important to ensure that it was not just an opaque decision of a sponsoring department.

Q1294 Baroness Howe of Idlicote: Are these specialists that are going to be chosen—I think we all agree there has to be a change in the system—these people with specific knowledge of the whole broadcasting industry, are they going to be sufficiently representative and able to respond to the licence payers, as such? I think this is very important. We go back to the National Trust concept, but at least with the National Trust you pay to be a member (there are other backings, I know), but in terms of the licence fee payers, the licence fee payers currently pay centrally and have no other means of deciding whether they want to join or not.

Dr Helm: Can I answer that one? The difference between the National Trust membership fee and the BBC licence fee is that one is voluntary and the other is not. However, there is one more difference; it is not just in the case of the BBC that we are interested in whether the people are willing and able to pay as consumers, we are also interested in their entitlement as citizens where the ability to pay is not relevant.

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That is what makes it different and, in a sense, adds up to a more compulsory version that emerges. It seems to me that in all this discussion we have had about where these people come from and who they are appointed for, it is only now the word “licence fee payer” has come up, and I think one could be a bit more constructive as to how they fit into this frame. The first thing, I think, one needs to say is that if you want clear independence it is important the licence fee payer understands what the trustees do and what they do not do. That is why I like this narrow view that they are interpreting public service broadcasting and they are not involved in overseeing what, essentially, the executive board is doing. That is what I think is slightly muddled. In terms of selecting these individuals, clearly there is an advertising process, clearly there is a whittling down of the list, but in a day when everyone can do interactive voting on their television, these people’s interviews ought to be subjected to a web-cast; people ought to be able to fire questions at them; there ought to be a whole involvement of licence fee payers so they see who these individuals are and react to them. It is not to say that the members can, as they do in the National Trust example, actually select the trustees, but there is a great deal we can do to include them in the process. It would be rather good if a trustee had to field questions live from actual licence fee payers for two or three hours before they got passed for appointment.

Q1295 Bishop of Manchester: Some of our conversation this afternoon has been dealing with both the trust and the executive board. I wonder whether if we could hone in on the executive board itself for a moment. Sir Robert, earlier on, was talking about the non-executives and used the phrase about “quality rather than quantity”. I wonder—and I imagine that the three of our guests may have something to say on this—if you could deal with three brief questions. They are simply these, in terms of the non-executives: how many; how chosen and what role? I know Sir Derek has written something about the kind of role which you believe the non-executives should have. I think it would be helpful to hone in on that particular aspect of the executive board.

Sir Robert Phillis: I will answer the three questions, my Lord. However, just to hark back on how governors and the board of management used to operate, I ask you to imagine the BBC council room with the chairman of the governors, 12 governors and 8, 9, 10 or 12 executives sitting round a table. It might have been a unitary board insofar as they all sat in the same room; whether it was a board capable of debate, discussion, analysis and challenge in that forum (and that is not to suggest that there were not other fora) I leave you to imagine the situation. In answer to

your first question, despite Sir Derek’s very clear recommendation in his own view, I do not think it is the number of non-execs that count; it is the quality and the merit of what they bring to the table which is important. I believe that if non-executives are to be appointed to the operational board they should be in a minority, because if the Director General is to chair that board then, clearly, it has to be an effective management/executive operational board in conducting business. So whether two or three is appropriate, or four, it is a small number and I have no difficulty, personally, in the concept that they are in a distinct minority on that committee, because if they have quality and experience then the Director General and the executive members of the board will turn to them for advice, guidance and expertise on relevant areas when issues arise. How they should be chosen? It does seem to me that on the operational board quite properly the Director General of the day should have a view and be consulted, but that is surely where the chair of the trust—and perhaps other trust members—should be involved in that process. If one is looking at an on-going situation where there are existing non-executive directors, then the senior non-executive director or a representative of the non-executive directors should be involved. It would seem to me (though I think it is debatable and I recognise that) that that is a matter internal to the BBC overseen by the trust, with Nolan principles, with external assessors to validate, but I do not think that should be a DCMS or a government appointment *per se*. What role should they play? I think, Lady Howe, I am certainly not arguing, either in relation to the trust or the operational board, that they need have broadcasting or media experience. Some of them might, and that would be helpful, but I think the experience of governance in large organisations, which may have nothing to do whatsoever with broadcasting and the media, brings the wisdom, experience and skills to guide, to challenge constructively, to question and, indeed, to assist the chief executive—the Director General—and his executive colleagues as and when need be. However, I think there must be external independent assessment, which, frankly, I take for granted in any such appointment. Personally, I would not think that that is a DCMS, or whatever department of government, role. That is for the trust to oversee, and the chairman of the trust plays a key role.

Q1296 Chairman: Another phrase used to describe non-executive directors is part-time directors, is it not—or, particularly, part-time chairman is more likely? These non-executives on the executive board are going to have quite a work burden. Sir Derek, how many examples are there of executive boards with non-executives on?

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Sir Derek Higgs: A unitary board is, in a real sense, an executive board with non-executives on it.

Q1297 Chairman: This is with a minority.

Sir Derek Higgs: I do not think there should be any attempt to impose the Combined Code. I would agree with Sir Robert that, as I think is envisaged in the relevant papers, a minority gives the right kind of balance. It also means that you can keep the overall numbers smaller because the boards and committees work better with fewer rather than more members. I am not going to give you a precise number but smaller is more desirable—certainly a minority. As far as the way they are chosen, I think, it is a version of the nomination committee. It certainly, I agree, should involve the chairman of the trust. Otherwise I think it is a closed process, except to the extent that open advertising and research processes can and should be used. There is work to be done to understand what the right of approval by the BBC Trust of appointments of non-executive directors to the operating board means in practice because I think it would be important to know where the ultimate sanction lies. Indeed, I think there is work needed to understand where, ultimately, in a stand-off situation the right of broader appointments to the operating board lies. This is work in progress: it should have clarity, to avoid it ever getting to a stand-off. The kind of role? Well, in the unitary board in the corporate sector the non-executive is there to deal with strategy, with monitoring performance, with addressing questions of risk and, fourthly, looking at succession and people issues. Strategy is, I think, rightly and clearly identified with the BBC Trust under this model. Monitoring of performance is certainly part of the role of the operating board; risk is as well, and people issues in terms of the management of the corporation. So it is a recognisable version of what you might call a classic non-executive director role, but there are certain perfectly explicable, defensible and understandable differences for the particular circumstances.

Q1298 Baroness O'Neill of Bengarve: This may be just a crude way of getting to the questions you have all been addressing, but in two forms. Firstly, informally, in a situation of confrontation who speaks for the BBC? Secondly, where does the legal personality ultimately lie, with the trust or the board? *Sir Derek Higgs:* I would see, as I said earlier, the relationship between the Chairman of the Trust and the Director General as, effectively, are between the Chairman and the chief executive of the operating entity as the combination who should, as in a corporate parallel, decide between themselves who is going to speak on what subject. That is, in a real sense, in my book, a partnership and they have to sort that out. I agree that that is related to where the legal

personality lies, but I am not an expert on this subject. If the BBC remains a chartered corporation I think that that question probably recedes in terms of the difference between the trust and the operating board. Again, without specialist knowledge of this, I cannot see it in the operating board.

Dr Helm: I see the executive board speaking for the BBC and the trustees speaking for the licence fee payers. That is quite a distinction. I think it is important to recognise that the job of the non-executives is, in the unitary board of the organisation, the BBC, very similar to the job of non-executives in many corporate bodies. I think Sir Derek has described that admirably. It is when they get muddled up with the job of working out what public service broadcasting is that you then have to raise all these questions about who appoints them, do we have to have special procedures for doing this and who are they accountable to? In my model these are very separate activities; one is a regulatory function—the trustees representing the licence fee payers. This is just a normal board. If you ask, “Who speaks for Sainsbury’s?” you would say “The Chairman, Chief Executive and Board of Sainsbury’s.” That is the same kind of answer I would give here. As long as the functions are kept distinct.

Q1299 Lord Holme of Cheltenham: An observation is that if we stop regarding public service broadcasting as a mystery wrapped in a riddle, wrapped in an enigma, it might make life a lot easier for everyone. As long as it is as unclear as it is, somebody has to define it. The border between the trust and the executive board, I just want to ask a question which might illustrate the difficulty of definition. One or two of our witnesses have talked about the approval of strategy as being something for the trust rather than the way the main board of a company might approve the executive committee’s version of strategy and say, “Yes, we agree with the strategy.” The moment the trust owns the strategy is it able, for instance, to say whether a new service should be launched or not? This seems to me the hard question, because very often strategy is about: “Do we do something new?” The moment the BBC wants to do something new and launch a new service—at the moment we have, in my view, the wholly inappropriate situation where the DCMS decides that, which seems to me potentially a corrupt link between government and the BBC. However, if you say somebody else has to do it, the obvious thing would be that the trust should approve it because it would be consistent with or not consistent with the public service broadcasting requirement.

Dr Helm: On this part I agree with the Green Paper. That is precisely thought out. How the trustees do their strategy bit is they license the services; they ensure the services pursue the public service

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broadcasting route. It seems to me perfectly sensible for any executive to propose a new service but it has to get a licence. That is what goes to the trust board, and the trust board decides whether it is consistent with the broader objectives and interests of the licence fee payers.

Q1300 Lord Holme of Cheltenham: My question, which I think you appreciated, is if the trust, at that point, has bought into and owns the strategy of the executive board, is it any longer in any sense objectively approving a new service?

Dr Helm: That is where I make that distinction as to what is strategy and what is licensed approval of public service broadcasting. That is why we keep the muddle separate from what is a unitary executive board, in its normal function, including strategy (all boards have that), and what is public service broadcasting and the licensing of services within that frame. I think the executive board should be proactive; they can propose all sorts of things, like a company would, to their shareholders. In this case it is for the trustees—and I keep it narrow because the job is so enormous otherwise for the trustees—to work out whether public service broadcasting is being properly pursued.

Q1301 Lord Maxton: I wonder if I can just broaden it out because I think we are in danger, in this whole debate, of talking about the past, the present and not about the future, which is a very different world in broadcasting from the one we have at the present time. If I can address this directly to you, Dr Helm, as the expert on regulation: first of all, how do you differentiate between regulation of, if you like, the structures of broadcasting and the content of broadcasting, where some of the public are concerned? Linking to that, when—in the very near future not just now but sometime, maybe outside my lifetime but probably within the next four or five years—we will be able to download on to our mobile phones, any broadcast made anywhere in the world by any broadcaster (or indeed not even by a broadcaster but by almost any individual) who wishes to put that out for you to get—how on earth do you regulate in that situation? Can you regulate and should we be regulating?

Dr Helm: The fact that we are going to have this proliferation of services in no way undermines the idea that there is a market failure and a need for public service broadcasting. It has a different structure and different kinds of options available to people but the public service broadcasting problem does not go away because of digitalisation. That is what Ofcom claimed initially in their original document, and I think that is quite wrong. That said, digitalisation, lots of services, provide all sorts of opportunities. Regulation should be as light as

possible, as it is for many internet services at present. There are some limits on that, and the normal things one would want to regulate are, first of all, competition issues—market structure issues—and we have got Ofcom and we have got OFT to look after those things, and then there is taste and decency and there is a whole set of regulatory rules which one would want to apply. So you may think this is a non-answer, but I actually do not think the regulatory problem becomes very different because of a proliferation of services. The opportunities become fabulously greater but we have still got to provide public service broadcasting in this frame because the market will not do for that (that is a fundamental argument). Secondly, we have still got the traditional competition, monopoly and public taste and decency regulatory rules to pursue.

Q1302 Lord Maxton: Do we not shackle, to some extent, the BBC if we apply standards to them which are then not applied to anybody else? The licence fee payer eventually says, “Well, what do they do for me? I can get all sorts of other things; I do not have to listen to the BBC; I do not have to watch the BBC. I can watch an American soap directly, and not even have a broadcaster in this country putting it out; I can watch it where I like; I can watch Australian television, German television—whatever I want.” If, at the end of the day, the BBC is not providing the things that the licence fee payer wants then the licence fee payer may say, “Well, hard luck; I am not paying it.”

Dr Helm: I could not agree more. The whole point of governance is to design a structure which makes sure that the BBC does deliver to its licence fee payers because if it does not it has no right to exist. In the end, that is what people may choose. This structure is the best structure, I think, in its broadened form, with the trustees, of trying to ensure that it delivers. However, nobody has the right to endure forever.

Sir Robert Phillis: To Lord Maxton’s point, I think the question of regulation has to be considered in the context of technology. My own personal view is that after the next charter period, after the next 10 years, assuming there is the switchover to digital broadcasting and the analogue broadcasting spectrum is closed down, then I think the BBC will have to prepare itself and will have to address a different financing structure to the one that we currently have, that is a single universal licence fee. I could envisage, taking the time-span you asked us to address, a situation where perhaps there is a lower licence fee relating to a more narrowly defined collection of public service broadcasting output and where other aspects of output are paid for by subscription even within BBC output. I think, in a sense, the regulation of what is public service broadcasting and what constitutes that core essential

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of a public service offering for a unitary licence fee will also then have an additional test where technology will be able to measure whether people wish to pay for those additional services. I am talking 10, 15 years out, but that is the time-scale you asked us to address.

Lord Maxton: I must say I am more interested in the quality of what the BBC should produce in the future rather than whether it is tied to some public service broadcasting definition. Then, in my view, if we can produce quality television in this country by the BBC or by other broadcasters, maybe driven by the quality of the BBC, then there is going to be an enormous market. It is one of the things that will allow us to remain in the marketplace in the world in a way that, perhaps, nothing else in this country will.

Q1303 Chairman: Would you envisage advertising in your—

Sir Robert Phillis: No.

Chairman: There speaks a true newspaper man! Just a question on audit.

Q1304 Baroness Howe of Idlicote: We are about to see the Chairman of the NAO, in a moment. Can I ask you, particularly, perhaps, Sir Robert (but others may have a view), and particularly in view of what you, apparently, said on a previous occasion, that when you were Managing Director of the World Service you went through regular reviews of the NAO and it was perfectly proper and extremely helpful, do you think that the NAO should actually have full access to the BBC? Perhaps, if you do think that, you could explain why you think that the BBC has been so reluctant about this. Is it because of the last infringement of their privacy or is it, really, because they feel that it will fetter their discretion to make the sort of investments which have paid off, mostly, so well?

Sir Robert Phillis: I am sure the Members of the Committee are aware that the BBC World Service radio is funded by the Foreign and Commonwealth Office and through grant-in-aid. In the first period of my time at the BBC I had the privilege of being Managing Director of the World Service. We were subject to regular NAO reviews and I found them valuable, in terms of the thoroughness and the detail with which an outside body scrutinised, in that case, the use of public funds as opposed to licence fee

funding. It was extremely thorough, it was very searching and it certainly served to keep us, as an executive, on our toes—reminding us of our responsibilities in the use of public funds in that case. I do not believe the BBC should have anything to fear from scrutiny by the National Audit Office. The only qualification I would make would be frequency, because it is quite a time-consuming exercise of the executive, and indeed of the National Audit Office itself. So I think a balance between the frequency and the extent and the range of such a review is the question I would pose, but as to the principle I think if you believe in transparency and openness, if the BBC and its management has nothing to fear in the way that it conducts its business, why should it be concerned about a review by the National Audit Office? Again, my qualifications are on timing, the breadth of such an exercise but not the principle. That would have to be worked out. I found, in the World Service context, that it was a very useful stimulus to the management team in addressing issues in our own custodianship of public funding.

Q1305 Baroness Howe of Idlicote: I wonder if the others have any views on this.

Sir Derek Higgs: I do not know whether Sir John is in the room yet but, whether he is or is not, I would say my own limited experience of the NAO is perfectly satisfactory, and I would echo what Sir Robert has said.

Chairman: I fear we need to bring this to an end. I think what you are saying is you are all agreed that the present system of management of the BBC can be improved—no one has actually tried to defend the status quo. You also think that the Green Paper can work, although with different ways of reporting proposals and different proposals. There is this question of regulation and where that regulation goes, and the issue of Ofcom. I suppose one of the things which I think, Sir Derek, you made in your report but you made again today is the sort of quality of the people; that, actually, whatever structure you have, unless you get the quality of the people right you are not going to make a great deal of progress. Have you anything to add to that, or is that a reasonably fair description of what you have said? Fine. In that case, thank you very much. If we have got any other questions perhaps we could write to you, but I am enormously grateful. Thank you so much.

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Examination of Witness

Witness: SIR JOHN BOURN KCB, Comptroller and Auditor General, National Audit Office, examined.

Q1306 Chairman: Sir John, I apologise we have kept you waiting, but we had a rather lengthy session beforehand. Welcome and thank you very much for coming. As you know, we are looking at the review of the BBC's Royal Charter and, particularly, at the proposals in the Green Paper and trying to measure those. We have had a letter from Edward Leigh, the Chairman of the Public Accounts Committee, and I suppose my first preliminary question is whether that actually represents your view and the view of your office that this is what should happen?

Sir John Bourn: My Lord Chairman, thank you. Yes, Mr Leigh's letter does represent our views as well as his own and the rest of the Members of the former Committee of Public Accounts.

Q1307 Chairman: So you look to an extended role as far as the BBC is concerned. Just putting to you what Sir Christopher Bland, the former Chairman of the BBC, said to this Committee when he gave evidence: "The NAO ought to justify what it is going to bring to the party. That is what I am not clear about. It would be a plain extension of the NAO empire to have the BBC fall within its remit." I think, basically, what he is saying is that the BBC has a thoroughly effective firm of commercial auditors doing the audit *per se* and it does not need a second audit.

Sir John Bourn: My Lord Chairman, on that, of course, the idea of the National Audit Office doing value-for-money studies on the BBC came from Lord Sharman in the report that he produced a few years ago. His argument was that the licence fee money coming to the BBC was public money and that, as it was public money, Parliament's auditor should have the right to look at how it was spent and to report freely to Parliament on these matters. Neither Lord Sharman nor Mr Leigh nor myself have ambitions to be the financial auditor of the BBC; it is not that we wish to supplant the current financial auditors, KPMG—that is not the idea at all. The proposal of Lord Sharman, which Mr Leigh and I endorsed, is that we should be able to do value-for-money studies and report to Parliament on those.

Q1308 Lord Peston: I am very puzzled by this. I can understand the standard audit function, which you say is not your concern, but what I do not see, if you are going to do value-for-money studies, is how you do not involve yourself with taking a view of the programmes. To take an obvious example, would you regard it as within a possible remit of yours for you to be able to say: "The BBC spent £X million acquiring the rights to show test matches but we do not think test matches are worth £X million and think they are worth a number of estimated millions

of pounds and, therefore, that is how we are going to report"? Is that what you have in mind? In other words, not simply where did the money go and all the usual audit things but actually saying: "Our estimate of the value is such-and-such and it is less than the BBC's estimate"?

Sir John Bourn: No, that is certainly not how we see the contribution that we would make. In no sense is it the idea, as it were, to put forward our own scheme of programmes, any more than in our current audit of the Arts Council we suggest that different operas should be shown at Covent Garden than the ones that are shown. Nor do we, in our rights of access to most of the universities in this country, and further education colleges, attempt to say that physics should be taught in a different way or that all history departments should be organised in different ways. The way that we would do it is in line with the way in which we do our work in looking at government departments, where we take a policy, of course, as read, and it is not part of our responsibility to question that policy but to see how it is implemented. Therefore, as Members of the Committee will know, most of our work develops around better management of assets, better procurement arrangements and a better analysis of human resource management and issues of that kind. So we have no ambitions to set ourselves up as working out alternative programme schedules or anything of that kind.

Q1309 Lord Peston: Just to pursue that point slightly differently so I understand what you would regard as being your remit, going back to your university example, supposing you were to argue (certainly as I used to do in my younger days) that there was, up to a point, increasing returns of scale in terms of university teaching and, therefore, some departments in universities were too small and the university system would be more efficient if not everybody said, "We have to have a physics department", for example. That was regarded as very *outré* when I first put that but it seems to be becoming the in-view now. Would you regard that kind of concept, again, as relevant to you? You cannot draw the analogy precisely but it could be argued that the BBC is doing too many things, for example, and ought to be doing fewer. Would that come within—looking at it in terms of value for money—your remit?

Sir John Bourn: I would not think that, with the BBC any more than the universities, would play to our strengths. My concern in our work as a whole is to use the skills and developments and techniques that we

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have got, and I do not see them being applied to that kind of subject.

Q1310 Lord Maxton: Can I pursue that? I accept what you are saying about you are not interested in the policy of programmes. Let us take the news services provided by the BBC. It is clear policy that they will provide those services. Would you be looking, however, at whether or not they require a certain number of staff in a certain place to provide that news? I think sometimes they do over-employ, but that is another matter. For instance, they do not believe that Scottish reporters can ever cover a Scottish story down here, they have to send up someone from England who speaks with a nice accent. At the end of the day, is it your job to say: "Look, you are employing too many people to do that particular job and you do not need it"? Once you start doing that, are you not beginning to interfere in the editorial freedom of the BBC's news-gathering service?

Sir John Bourn: I would not do a study that took me down that road and exposed me to the very real criticism that you outline.

Q1311 Lord Maxton: I think most MPs would say that the BBC employ far too many people in this building for the service that they provide. You would not look at that? Even though it may be an inefficient use of the licence fee payers' money?

Sir John Bourn: What I think about that is, of course, there is an enormous amount of work that I can do from my strengths. I would be very careful and cautious about embarking on a study which, although, if one presented it at first, seemed entirely about efficiency and economy, took one very quickly into the world of policy and politics. That has been my principle, really, across the work that I have done in government departments, where the same sort of question comes up; that you could think of a subject that looks pretty nitty-gritty but if you went down there you would soon find yourself engaged in major political questions. Recognising that I am the auditor and not the person in charge of policy, I would be very careful to avoid inadvertently getting into policy areas.

Q1312 Lord Maxton: Your reports, however, go to the Public Accounts Committee (and I have to admit that I am an ex-member of the Public Accounts Committee—before your time) which is of course made up of politicians who will then use your reports, whether you think they are political or not, for whatever political purpose they think they can use them. Is that right?

Sir John Bourn: They are politicians, entirely as you say, but could I make the point, as you are remembering from your membership of the

Committee, that one of the great strengths of the PAC is that they stand together; there has never been a case, in my experience as C&AG, when there has been a division on political lines between the Members. They have always stood together in that sense and have, if you like, supported the approach that I have taken.

Q1313 Lord King of Bridgwater: Following up the point Lord Maxton has just made, it is quite interesting that Edward Leigh has written the letter and you have come to answer the questions. You are the politically acceptable face, if one might say, of this process, because you are seen as above political interference of any kind. Do you see any situation in this area where, because of the sensitivity of the BBC to its entitlement to independence and the public desire to be independent of government, the NAO might conduct value for money studies and might widen its scope without it necessarily being available to the whole of the PAC? I have in mind the arrangement that we arranged for the Intelligence and Security Committee, where you kindly assisted us with an amount of work which was, I think, only available to the Chairman of the PAC. I believe that was the arrangement. What about that?

Sir John Bourn: The arrangements, Lord King, that you describe were arrangements that you agreed with the Chairman of the PAC. It was based on a long-standing arrangement within the PAC that there were certain security matters which the Chairman alone dealt with, and this had been accepted by the Members of the Committee. Of course, the Committee which you chaired was of a very special character, so I cannot foresee that what is necessary from the viewpoint of intelligence and security would be relevant to the kind of work we did on the BBC, so I could not see myself doing for some other group what I did with the agreement of yourself and the Chairman of the PAC on intelligence and security.

Q1314 Lord King of Bridgwater: So that any value-for-money studies you did would come within the full remit of the PAC and all the members of it?

Sir John Bourn: Absolutely.

Q1315 Lord King of Bridgwater: I have one quite separate question, which I think Lord Peston was getting at. One of the issues that arises at the BBC is that some very big ticket items that they get involved in have a major impact on their budget, which compared to some of the studies that you might do on value for money would look pretty small beer. Do you think you could really do value for money without getting into some of the big issues? I think they declined to bid for further cricket tests because it would have been too big a dent in their budget. Do

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you have views that that was a public service broadcasting obligation that they ducked?

Sir John Bourn: I cannot see myself doing a study on that particular proposition. I would regard that there is the budget that they have and they must determine the policy of what programmes they decide to do within that budget. It is rather analogous to most government departments that have a budget and where the Secretary of State, taking advice, reaches his own decisions on where the money is to be spent and which programmes and projects go forward. I do not question those decisions. I could not see that I would question it as far as the BBC was concerned.

Q1316 Lord King of Bridgwater: This follows on from a very interesting sentence in here which says: "... the approach of the Committee of Public Accounts and the National Audit Office is very much one of supporting well-managed risk taking ...". In my experience from what I have read of the reports of the PAC, if they can find a bit of risk-taking that went wrong they will absolutely go for it—or you will provide the ammunition to go for whoever took the risk that went wrong, no matter how bravely it was managed. The serious point of that is that you then breed a culture of caution and, in fact, there will not be so much risk-taking because they will be nervous of the consequences?

Sir John Bourn: Lord King, that is a point that is often said but I will deny that that is our attitude or that that is our effect. When you look at the work that we have done, we have never in the time I was C&AG criticised people for taking well-thought-out risks. What we have had so often to criticise was risks that were taken without being thought through; where programmes have been started without the department thinking: "Well, what are the obstacles in the way of achieving what we want to do?"; embarked upon without pilot studies—

Q1317 Lord King of Bridgwater: May I say, you work entirely from hindsight; you do not give advance approval to projects that go forward; you review them afterwards. Is that right?

Sir John Bourn: We do review what has been done, but of course many of the recommendations throw forward to the future.

Q1318 Lord King of Bridgwater: Having done that, the person who is going to take the risk has to be absolutely confident that he has got it properly managed or whether others will decide with hindsight that he had not actually thought it through and, therefore, is open to criticism.

Sir John Bourn: Where he had thought it through and he had taken it but it had, nevertheless, not come off, we have not criticised him for that.

Q1319 Bishop of Manchester: Could we go a little further into the whole issue of reviews because we are interested in the fact that at the moment there are six, as I understand it, that you are doing within the BBC. Without going into too much detail, I wonder if you could tell us what the six areas of review are, how far you have got with them and whether or not you felt that in all those areas you have got the kind of co-operation that you would have hoped for from the BBC?

Sir John Bourn: I am very glad to do that. The six studies that we are doing are, first of all, the BBC is investment in Freeview, which is making available 30 digital channels. The second study is the development of White City; the third one is measures of public service broadcasting; the fourth one is the definition of overheads which the BBC use; the fifth one is outsourcing arrangements and the sixth one is the risk management processes that they use to assess their projects and programmes. Those studies are going well. One has been published already—the one on Freeview—which was published by the BBC at the same time as their annual report last July, and the BBC said in the response, which was included within the publication of our report, that they were taking active steps to address the recommendations, and they thanked the NAO for the study that we had done. I think the studies that we agreed to do, jointly between the BBC and ourselves, were useful studies, they were studies that played to our strengths and the programme is going well. The BBC intend to publish the next two, the second and third that I mentioned, when they publish their next annual report later this month.

Q1320 Bishop of Manchester: What do you do if they do not take up the recommendations that you make, particularly if you feel a recommendation you have been quite strongly pushing is rejected? What happens then?

Sir John Bourn: Under this present scheme, of course, which is an experimental scheme and is not the same as a full-scale audit, there is no purchase that I have on them to do this, but what I do hope—and certainly was the case with Freeview—is that the recommendations we make will commend themselves to the BBC. That was certainly the case in the first one that has been published, and I hope it will be with the rest.

Q1321 Bishop of Manchester: Are you saying that you would hope for a system whereby what you recommend could be regarded as being rather more prescriptive than it clearly is at the moment?

Sir John Bourn: Well, it is not as if the recommendations were saying, "You must follow this rule; you must do this, you must not do that." That is not the kind of thing that they are. What they

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are saying is: “As you take this forward these are aspects”—and a lot of them turn around knowing what you are doing, assessing the risks and managing them; they are around how to manage the activity to success. That is the thrust of them all.

Q1322 Bishop of Manchester: You can confirm that the BBC have given utter co-operation in all these areas?

Sir John Bourn: They have been absolutely fair. We agreed the six studies between us and they have co-operated and made available information that we needed.

Q1323 Chairman: What happens if you say: “I want to do this particular project” and the BBC say: “Very difficult, very sensitive, don’t think we would quite like you to do that”? What happens then?

Sir John Bourn: Under the present scheme, I could not do it, and that is, of course, the difference between being a consultant who does what he is asked to do and being an auditor, who has the right to choose what he should do and what he should bring, in my case, before Parliament.

Q1324 Chairman: It is early days, is it not, in this scheme that we are doing. Have there been things that you have suggested which the BBC have deflected?

Sir John Bourn: No, there have not. The six studies came out of a first discussion I had with the BBC staff at which we went over what we thought were the kind of strengths of the office, the sort of thing that we had done before. Within that context we said: “We think that these are the sorts of areas in which we could make a useful contribution.” The BBC thought about them, and they came up with a series of studies which, essentially, lay within that framework. I was happy to agree the six subjects and set to work on them.

Q1325 Lord King of Bridgwater: Can I ask one point on this? The point is that you, under the present arrangement, have to agree with them what you do; you do not have freedom of action, and you report to the BBC and not to Parliament. Is that correct?

Sir John Bourn: It gets to—

Q1326 Lord King of Bridgwater: The question I am actually coming to is if you have the freedom you are asking for, how many more studies would you want to do? Or is about six all you can take on?

Sir John Bourn: Given the range of activities I have got right across government—currently the PAC ask me to do 60 studies a year—if this came, maybe they would ask me to do 62 or 63, so I would not expect to do more than one or two a year on the BBC.

Q1327 Chairman: But the difference is that you would choose the studies that you were going to do rather than having to come to an agreement on what they were?

Sir John Bourn: That is exactly right, my Lord Chairman.

Q1328 Lord Holme of Cheltenham: I dare say other Members of the Committee share, to some extent, my ambivalence. On the one hand there are large sums of, ultimately, public money, although in the special form of a licence fee, and why should the BBC be sacrosanct? On the other hand, the BBC is a creative organisation, and I have to say well-considered risk means something rather different in a publishing company or a broadcasting company than it means in normal spheres of government and administration and management. From memory, when I was a publisher, something like eight out of 10 novels lose money and one out of two magazines fails. Lots of programmes are made which are disasters for the ratings, and yet decisions have to be made by people. Very often flair comes into it, although of course people do consider risk and they have to consider the commercial implications of what they are doing, but it would be quite difficult to put it into a risk-reward grid of the sort that one might conventionally operate. The question I wanted to ask you is it seems to me to come together on this issue of new services from the BBC. A new service is launched, very often, with quite a lot of criticism from potential competitors out there who do not receive public funds, that: “This new service will compete with us and it is not fair”. It is, therefore, in a sensitive area, the sort of area in which the PAC might well be interested. Do you see yourself, retrospectively, after a year of a new service for which a licence has been obtained—since this is the cutting edge of what the BBC is doing (and some people say they are doing too much of it anyhow and have too great a proliferation of new services)—would you see that as an example of the sort of thing that you might do? Perhaps you could just address the sort of creative organisation point as well. Are there any other creative organisations where your skills and services have been called on?

Sir John Bourn: If I take that last point, as I mentioned before, we are the auditors of the Arts Council and they engage, through various bodies affiliated to them, in a vast range of creative activity and they try new things out, and we have never said—and it has never been my ambition to say—“I think it was quite wrong that you decided to do Hamlet in Darlington or that you had done poetry in Bristol”, or whatever. We have never sought to stifle creativity in that way; on the whole we have tried to encourage it by saying: “When you set out to do something, by all means it is your choice, but think of how you are

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going to do it and how you are going to make a success of it.” That is what we think of when we talk about well-thought-out risk taking; it is not a question of, “Don’t do it if there is any risk at all”; it is a question of saying, “Think out what you are doing and do it with your eyes open.” If you do that, as I have said, we would not criticise you. I recognise the point you make and I recognise the fear that people have, that in some way what works, perhaps, for the Department of Work and Pensions is not absolutely appropriate for the BBC, but there is a methodology of addressing uncertainty in life, and the methodology is essentially the same, I think, across the piece. So I think, from our experience, we would be able to make a real contribution to the BBC on the basis of the auditors’ choice, reporting to Parliament, reporting to the public in ways that did not invade editorial independence nor act as a way of disinclining the BBC to do adventurous things; we are in favour of that, it is just thinking out what you are doing.

Q1329 Lord Holme of Cheltenham: Thank you very much for a very helpful answer, but my specific point was about new services, which, if you like, is the cockpit where a lot of these issues come together. Would you imagine that would be something where you would have an open door and that you would be wanting to look at, in retrospect—does this new service work?

Sir John Bourn: I think, certainly, one might want to look, but our experience has been on these things is not to look at it after 12 months if it is a programme or a project, and it is going forward. Sometimes it is worthwhile looking at it after two or three years and seeing how it has worked. For example, with a new social security benefit you would not look at that after six months or a year; you might look at it after three years and say: “Has that achieved what the Secretary of State aimed to do?” So you might look at an initiative after a few years and say, “When the BBC did this, their aim and objective and purpose was X; were they able to achieve, in a reasonable amount of time, X?” Again, you would not want to say—it would be most unlikely—“How stupid you were to do X and what a hash you have made of it.” We would say, if there were areas of possible improvement, “As you go on from years 3 to 6 bear these points in mind.”

Q1330 Baroness Bonham-Carter of Yarnbury: Can I pick up on the point Lord King made earlier, that you are an organ of government? In the Green Paper the Government seems to concur with the BBC because it believes that you are seen as having a Parliamentary involvement with the BBC which the public do not like or do not want any more of. What is your response to that?

Sir John Bourn: The first point I make is that I am not an organ of Government, I am an organ of Parliament. Certainly in the work that we have done, for example, we already do work in the World Service, which I recognise is perhaps slightly to one side, and I have never had addressed to me a similar point to the one you mention by anyone else. So I do not, personally (this is my view) think that I am seen as some kind of acolyte of the Government, and I think that I am seen, and I certainly hope so, as a servant of Parliament.

Q1331 Baroness Howe of Idlicote: Listening to all this, Sir John, I really find it quite difficult to see why people should object to your role. I am just wondering what sort of complaints you may have had from other organisations or whether, in relation to everything that you have done with full authority, where you are able to publish it, any of that has resulted in complaints? If not, perhaps you could explain to us why you think the BBC have this particular attitude. I can see entirely why you want it fully up front because it is published, etc, etc Is it just the fact that it would take up some of their time? Incidentally, how many years have you spread the six agreed reviews that you have done over, because that presumably all takes time, and resources too?

Sir John Bourn: Lady Howe, in terms of complaints against us, of course, the way in which we work, as with all auditors, is we will produce a report and we will show it to the auditee. We agree on the facts, so that there is no dispute about the basis of a fact on which our report rests. Of course, the recommendations that come from that are for us to make. As in the case of the one we have done, we did not have any argument or difficulty with the members of staff of the BBC. As I said before, these studies have gone forward in a spirit of co-operation and amity between us. So I think those who have dealt with us, and certainly those who deal with us in the BBC (I must not speak for them, of course) have not expressed complaints or problems and the BBC have commissioned a lot of people to do studies. At the same time as the six we are doing there are three others: two being done by PricewaterhouseCoopers and one being done by Ernst & Young.

Q1332 Baroness Howe of Idlicote: You did them over one year, two years—how many years?

Sir John Bourn: Over two years¹. Why are people so fearful of us? It must be, I suppose—and I would say this, would I not?—because they are people who have not, perhaps, really looked at our work and not really looked at our reports and not quite understood the position we have as the Parliamentary auditor. Of course, I can absolutely see why, in a modern society,

¹ The programme of six reviews will be completed by the end of 2006.

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there is great concern that people should speak freely and great concern that the media should be outside government, as it is in this country, and I can see that people, if they think I am part of government, might have thought it would be very dangerous. However, as I have said, I am not part of government; I report to Parliament. So I think that those who have these reservations—and perhaps we should have done more to explain about what the National Audit Office does—have fears which are unnecessary.

Q1333 Baroness O'Neill of Bengarve: Retrospective studies can cast prospective shadows. You speak of the central demand being that risk be well thought through. All over public life, people are faced with requirements to think risk through well when they make decisions and do things, from school teachers taking children to the park and upwards. Very often the interpretation of what it is to think a risk through well is extremely formulaic and very deadening to the activity required. Do you have a formulaic way of thinking about what it is to think risk through?

Sir John Bourn: Certainly not in the formulaic way of having a sort of checklist. We do not work on the basis of saying: "There are 16 things you have got to get right and if you can tick the 16 boxes then it is well thought out." Our view is it depends very much on what your area is; taking risks in terms of defence procurement is a different matter from taking risks in a design of a system of taxation. So it is not a formulaic conception at all. We have produced various studies with examples of areas where risks have been well taken and why they were well taken; there are some examples where they have not been well taken. So it is not formulaic, it is not inward looking; it is taking risks in the nature of the activity with which you are concerned, and sensitivity to that.

Q1334 Lord Peston: You yourself, of course, were using resources in order to do these audits. What would a Committee like ours look at, in a few years' time, in order to say that your use of resources led to gains compared with the costs? What pluses will follow from your doing this auditing?

Sir John Bourn: Of course, my performance is surveyed every year by the Public Accounts Commission, who look at my work, who have the report from the external auditor they select to audit me, and there are various tests which they expect me to have followed through. One of them, of course, is the question of the number of recommendations that we make that the Government has accepted. They run at about 90 per cent of acceptance by the Government of the recommendations that we make. It is very largely because the recommendations are based on facts and analysis. So, in that way, the Public Accounts Commission look at the work that we have done, look at what our auditors say about it

and reach a view as to whether we ourselves are value for money. We have various external people looking at this. For example, I have a contract with Oxford University Business School and with the London School of Economics to look at all our value-for-money reports and produce an assessment of whether they think the work was well done. These assessments are available to the Public Accounts Commission and to the PAC so there are a variety of ways of assessing whether the work that we have done is of good quality. It would certainly be possible, after a few years, for yourselves and the Commission to say: "We would like to have a look. How good was the work that the NAO did in this field?"

Q1335 Lord Peston: The BBC field is what I am asking you about.

Sir John Bourn: Yes. You could see that that could be done, and I would welcome it, and would have no problem about it.

Q1336 Lord Peston: You would expect the PAC to be a suitable body—

Sir John Bourn: The Public Accounts Committee is the Select Committee which has responsibility for my budget, and they review it every year. I would not set my face against, because the reports that are available to the Public Accounts Commission are available to everybody else. So even if the Public Accounts Commission said: "We want to have a special analysis done on how well you have done your work on the BBC", they would have a report and they would look at it, and quiz me on it, but it is available to your Committee or anybody else in Parliament to ask me questions about it. So it would be a public analysis available to all.

Q1337 Lord King of Bridgwater: Do you cost individual studies? You have said you have an overall budget and you do 60 value-for-money audits. Do you cost them individually?

Sir John Bourn: Yes, we do cost them individually.

Q1338 Lord King of Bridgwater: I just wondered. Could you just clear up some complete ignorance on my part? We have established the fact that what you are seeking is the independence of judgement as to what studies you do.

Sir John Bourn: Yes.

Q1339 Lord King of Bridgwater: Commonly, auditors may identify things in their audit which lead to them, perhaps, being invited to conduct a value-for-money audit. You are not the auditors of the BBC. What would be the sources of the material that would guide you to make an independent choice as to what your value-for-money studies would be?

5 July 2005

Sir John Bourn KCB

Sir John Bourn: The access rights we would have to the books and records and opportunities to talk to the staff of the BBC.

Q1340 Lord King of Bridgwater: Can I just stop you? So you mean that actually you would require access to all the books and documents—whatever information there was—across the whole of the range of the BBC's activities in determining which you thought were worthy of value-for-money studies?

Sir John Bourn: In the same way as I have that with government departments, yes.

Q1341 Lord King of Bridgwater: That is the point. It widens the point of you just conducting six or less studies a year; it gives you total access to the total material. You would not draw on the outside auditors' reports or other things to guide you as to which subjects to choose?

Sir John Bourn: Certainly, because this arises in other cases. If I may say, there are a number of other institutions of which we are not the external financial auditor but we have access rights. Of course, in exercising our access rights we have regard to what the external auditors said and published. So it is part of the information available. However, at the same time as we have access, as we do with government departments, that access is not used thoughtlessly; it is not used as a conduit for passing on the confidential information of the auditee to other parties. The only thing that is published is the report which they have seen and the facts of which are agreed. So the fact that we have got access to the materials does not constitute any extra risk for them.

Q1342 Lord King of Bridgwater: You cover commercial confidentiality? For instance, the bids. There is an imbalance here between the BBC, who may have their bidding processes exposed, against their commercial rivals, who might not.

Sir John Bourn: The same position arises as, for example, in the Ministry of Defence, where there may be areas where we report to Parliament in confidence for exactly that reason. If that were to arise I would see it being handled in that way.

Q1343 Chairman: The commercial auditors, presumably, also have total access?

Sir John Bourn: Yes, they do; of course.

Q1344 Chairman: They must have. You are limited but the commercial auditors have total access.

Sir John Bourn: Yes.

Q1345 Lord Maxton: This is not a question, really. Value for money, of course, is not just about cash, it is about the value of the product in relation to the money spent on it. So when you do an investigation of this nature, I assume you are employing people other than just accountants; you are employing, for instance on your Freeview one, people in the technology field who could give you expertise. Is that right?

Sir John Bourn: That is absolutely right, Lord Maxton. Pretty well all of our value-for-money studies are done by joint teams of insiders and outsiders. So, for example, in our work on the Health Service and the reports we have done on the treatment of heart disease, the provision of maternity services and the treatment of various kinds of cancers—which are reports, really, about the funding of good practice—we have had people from the Royal College of Surgeons, physicians and from universities. So it is not just accountants at all. You are absolutely right to say that value for money goes beyond the financial. We have certainly made a big thing about having the right sets of people and the right kind of expertise on the team.

Q1346 Lord Maxton: Perhaps Scottish accountants as well!

Sir John Bourn: I have Scottish accountants, but that takes us into another debate

Q1347 Chairman: Could I just ask one last question? A great amount of public money is used and devoted to the BBC. Is there any comparable organisation which is exempt from agreed review by your organisation?

Sir John Bourn: There is not now, my Lord Chairman. It was the case that when there were nationalised industries—British Airways and the railways—they were audited by commercial auditors, but of course these have now, essentially, been privatised. So the BBC is really the only public corporation of any size that remains, so it is the only organisation of that character outside our remit.

Q1348 Lord Maxton: Scottish and Caledonian Railways (?).

Sir John Bourn: These are now the responsibilities of my colleague the Auditor General for Scotland.

Q1349 Chairman: I knew Scotland was going to have the last word! Sir John, thank you very, very much indeed. We are very grateful. I thought you answered our questions very thoroughly, as far as we are concerned. If we have got any further points perhaps we can come back to you.

Sir John Bourn: Indeed. I am very glad to help the Committee further, my Lord Chairman.

Chairman: Thank you very much for coming.

 WEDNESDAY 6 JULY 2005

Present	Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Gibson of Market Rasen, B Holme of Cheltenham, L Howe of Idlicote, B	King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Memorandum by ITN

ITN is grateful for the opportunity to submit evidence to the House of Lords Select Committee on the Review of the BBC Charter.

ITN is the UK's largest commercial producer of news, providing national and international news programmes to ITV1 and Channel 4, as well as to some 270 commercial radio stations through Independent Radio News (IRN). ITN also produces the ITV News Channel, the 24-hour news channel broadcast on digital terrestrial, satellite and cable television.

ITN is rapidly expanding into new media, pioneering new ways of delivering news on demand, for example by supplying video news to mobile phones, as well as by broadband, in stations, commuter trains and at airports. ITN also operates the world's largest commercial news archive and through various business partnerships with Reuters, British Pathe, Granada, Fox News and Channel 4, we have successfully broadened the range of this business into non-news material. ITN Archive is currently the fastest-growing area of ITN's businesses and competes directly with BBC Worldwide's commercial archive business, BBC Motion Gallery.

It is important for ITN to be able to thrive in a range of markets on a commercial basis and ITN welcomes the Green Paper's acknowledgement of the direct effect the BBC can have on media markets. We support the proposed involvement of Ofcom in market impact tests for proposed new services, such as the BBC Creative Archive, the need for clear remits for BBC services through the Public Value Test, and more effective competition scrutiny of the BBC through the involvement of Ofcom in the Fair Trading Commitment. These issues are addressed in more detail in (3) below.

1. THE ROLE OF PUBLIC SERVICE BROADCASTERS AND THE BBC

ITN supports the future of the BBC as a strong and vibrant public service broadcaster funded by the licence fee. However, it is crucial to ensure, as we move towards digital switchover when there will be universal availability of a wide range of services, that the might of the BBC does not constrain the delivery of news and other PSB services in the commercial marketplace. For the last 50 years, ITN and the BBC (and latterly BSkyB) have competed robustly in the supply of news and this has been beneficial to viewers and listeners.

Ofcom, in its three-phase Public Service Review, recognised that securing provision of impartial, trustworthy television news from a plurality of sources continues to be essential in the future to make sure that audiences receive different views in news, current affairs and other types of programmes, and that it provides the competition needed to drive innovation and quality. Ofcom presents a compelling case that, post switchover, the BBC should not be left as sole guaranteed provider.

The BBC's mission, the way in which it is regulated, and the amount the BBC has to spend on its news services all have an impact on plurality in the market. ITN supports the principles in the Green Paper (page 33) that the BBC's news and current affairs coverage should set standards of quality and be resourced accordingly. However, plurality and competition in the supply of news services can only be real when the disparity of funding between the BBC and the commercial sector is not too great. The BBC has been extremely well funded in recent years. Efficiency savings are now being made and they could ultimately deliver more focused services for the public and prevent the BBC stifling innovation in the commercial sector. The level set for the licence fee will be therefore be crucial in the way it affects competition and quality in the whole market.

Ofcom put the provision of news and information as the first of the four public purposes that are core to public service broadcasting in the digital age and the Green Paper has done likewise in defining the BBC's five distinctive purposes. ITN supports this. Impartial and independent news is fundamental to an informed and democratic society and essential to healthy political and cultural debate and to the preservation and development of a national identity.

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In defining the BBC's future role as regards news and information, the Green Paper (page 33) supports the continuation of BBC initiatives such as BBC Online and BBC Parliament, and so does ITN. However, the Green Paper is right in highlighting the possible market impact of some of the BBC's ideas for new services, such as the proposed local digital TV news services. It is surely possible that many such services could be provided by the market. ITN therefore supports the idea that such services should be subjected to a public value test and market impact assessment before any decision to launch. The same should apply to plans for opening up the BBC's Creative Archive, which could have a significant market impact for commercial operators like ITN.

2. GOVERNANCE AND REGULATION OF THE BBC

ITN welcomes the acknowledgement in the Green Paper that the dual role of the existing Board of Governors is not adequate because it does not allow for sufficient distance between governance of the BBC and its management. ITN has long argued that there needs to be clear blue water between the two and has seen its own commercial activities damaged by past BBC initiatives which have been sanctioned by the Governors without adequate regard for their impact. A division of responsibilities is the only way to create confidence amongst the public and commercial competitors that BBC services are being held properly to account. The proposed concept of a BBC Trust, which will hold the BBC to its public purposes and be directly accountable to licence payers, with a separate Executive Board responsible for delivery of the BBC's services, certainly goes some way to creating a clearer division of functions. ITN would, however, also like to see Ofcom's supervisory responsibilities strengthened in regard to BBC activities which have a demonstrably direct impact on commercial markets.

It will be important to ensure that the BBC Trust operates in a genuinely independent and outward-facing way, because with the BBC its sole responsibility, there remains the danger that the Trust could become too aligned with BBC interests. ITN therefore supports the Green Paper requirements in paragraph 5.30 that:

- the two Boards will be required to work to explicit protocols detailing the processes for interaction between them, for maximum clarity and transparency;
- decisions will be tested in an objective, evidence-based assessment; and
- the presumption will be that decisions are public.

New Services Approvals Process

Currently, approval for new BBC services rests with the Secretary of State and there is a full and transparent process of consultation run by the DCMS, as well as the BBC, on proposals for new BBC services. The Green Paper proposes to shift the assessment process to the BBC Trust, which will conduct the Public Value Test. The Secretary of State will in future give only "final sign-off" (page 73).

Though the BBC Trust is intended to be more outward-facing than the Governors, ITN remains concerned about transparency of process and objectivity, because the new procedures will remove the "third party" element which is currently provided. This means the way in which Ofcom's market impact assessments and the Trust's Public Value Test will be conducted are crucial.

Market Impact Assessments by Ofcom

ITN welcomes the proposed market impact testing of services by Ofcom. This should be a specific requirement in the Charter and it should include a public consultation element. We remain concerned that the BBC Trust alone will be responsible for carrying out the public consultation on a proposed new service. Whilst we can see this might be an important part of the public value test, ownership of this process by the Trust means the BBC is in a position to influence the outcome by setting favourable questions that beg the answer from members of the public that "yes, the proposed service is in the public interest and should go ahead". This is why we favour some externally-run public consultation as part of the impact assessment process. An Ofcom role here could also be a solution.

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The Public Value Test

ITN supports the concept of the Public Value Test for new BBC services. This will require the BBC Trust to approve proposals only where it judges public value exceeds market impact.

We note that that further work is needed on the methodology for making such judgements (page 7) and that the BBC is expected to do this in the next phase of Charter review. The methodology for the Public Value Test should be subject to a public consultation process before it is adopted, as it is of key importance to market acceptance of the BBC's development of new services.

ITN assumes it will include a number of different qualitative and quantitative criteria, including probable audience reach and share, audience and market response to the service, its value for money, and its intended public purpose. It should also include details of the enforcement mechanism that the Trust intends to use to ensure that the service does not stray beyond its remit.

The effectiveness of the Public Service Test depends also on the composition of the BBC Trust. The Trust must ensure that amongst its representatives there are those with economic and competition skills as well as commercial experience.

Service Licences

The Trust will also be responsible for assessing proposals developed by the BBC management through the Executive Board for new BBC services. The concept of Service Licences—a remit allocated to each BBC service—is crucial, as it ensures that each service will be held to account. This is important, as previously it has been up to the Governors to decide whether a service approvals process is needed, which does not happen in every case. We believe it is essential that each and every new venture should have to obtain a Service Licence so that competitors in the market are clear about the remit of the proposed service and have a level of certainty that the BBC cannot undercut any new commercial service they may wish to launch in the market. The Service Licences should be specific and detailed. We accept this imposes constraints on the BBC which can create difficulties in fast-moving new markets, but we feel that this is the price that should come with the licence fee. If the BBC wishes to change the remit, there is a procedure for doing so through the BBC Trust.

Creative Archive

ITN has specific concerns about the BBC's Creative Archive project, which would provide cost-free public access to the BBC's video archives via the internet. We are also puzzled that the Green Paper does not clearly specify that Service Licences would be required for the BBC to launch Creative Archive (page 89, paragraph 8.4), or for the proposed Interactive Media Player (IMP), which would give people access to visual as well as audio content (pages 97–98, paragraph 8.44–8.45).

As recognised in the White Paper, services of this kind can have a seriously market impact on commercial competitors like ITN who are pioneering new services in developing markets. It is not easy to predict how the BBC may impact on markets in the next decade, and this will be a challenging task for the BBC Trust in applying its Public Value Test to new services. Converging platforms are changing the whole market very rapidly and ITN, like other operators, is seeking to capitalise on new commercial opportunities that may not even yet exist and which cannot be easily predicted right now.

ITN's specific concerns about the Creative Archive project stem from concern about the impact on its own archive business. ITN has built up the world's largest commercial video archive operation. It is also the world's fastest growing video archive business, with strongest expansion in the United States and Europe, as well as being a major growth engine for ITN itself. ITN's worry is that the BBC Creative Archive plans will cut across ITN's strategy for the future commercial exploitation of its own video clips business. The BBC's plans ostensibly have a different purpose—free internet downloads of BBC programming by the public, but not for commercial use. However, there is a serious risk of knock-on damage to commercial vendors.

There are simple ways to ensure this does not happen. ITN has some experience in this area. Right now we make digitised British Pathe content available cost-free online, strictly for non-commercial use. This material is delivered in low resolution and is watermarked to prevent piracy. If the BBC implemented similar measures it would minimise the potential impact of Creative Archive on the commercial marketplace. However, so far it has not indicated whether it is willing to do so.

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ITN is also concerned about the apparent lack of mechanisms in the Creative Archive plans to prevent piracy and misuse (eg commercial uses that would ordinarily incur licence payments to BBC, ITN Archive and others). It is furthermore unclear how the BBC Trust would intend to enforce the “non-commercial use only” terms of the Creative Archive user licence.

Another issue centres on clarity around use of public funds for digitisation. The BBC’s archive content is being digitised using licence fee funding. We believe that the digitisation of the archive must indirectly benefit BBC Worldwide’s commercial Motion Gallery business, which exploits the BBC’s Archive and operates in direct competition with ITN Archive. The ITN Archive is also in the process of being digitised, but without the spin-off benefits of public funding, so already an uneven playing field may be being created, with a potential adverse market impact. It is therefore important to have greater transparency on the inter-relationship between a licence fee-funded BBC Creative Archive and BBC Worldwide’s Motion Gallery business.

ITN would hope that such issues would be fully addressed in the approvals process and that they would be spelt out in the Service Licence. As demonstrated above, it is crucial for competitors to:

- know the terms of trade and conditions of use for such new services;
- to be reassured that there are sufficient safeguards to prevent distortions of the market; and that
- a proper process of enforcement is put in place by the BBC Trust.

3. THE BBC’S IMPACT ON COMPETITION

ITN’s most important concerns have focused on the BBC’s commercial activities and the way in which they are regulated. It is important for ITN to be able to thrive in a range of markets and on a commercial basis. In addition to the provision of broadcast news to ITV and Channel 4, ITN is pioneering new ways of delivering news on demand, for example by supplying video news to mobile phones, as well as by broadband, in stations, commuter trains and at airports.

ITN is European leader in provision of video news and other content to 3G mobile phones and is lead supplier to Vodafone, O2 and the 3 network in the UK. Our expertise in this area is enabling us to begin looking at overseas markets for expansion. In other words this is a UK success story and an example of UK innovation establishing a vital commercial lead. However, the BBC could undermine or destroy the UK 3G video content market by developing cost-free products and making them freely available without reference to market impact. This would not be done by malevolent design, but would be following a BBC strategy in recent years of launching services in response to new technology developments and changing viewing and listening habits. There are many cases where this has distorted the market and posed a threat to ITN’s ability to compete.

For example, as long ago as December 1999, ITN became the UK’s first provider of a text news service (using SMS messaging) to mobile telephones in a commercial deal with Orange. However, in January 2000, the BBC launched a similar deal to provide news content to BT Cellnet (now O2). But the BBC was providing the material to BT Cellnet completely free of charge. Therefore, having taken the initiative to enter this market, ITN found its business model unsustainable once its main competitor started providing parallel content for free. ITN was eventually forced to withdraw from the market.

It is also arguable that the BBC’s massive investment in its news website, while providing an excellent service to the public, has stifled both competition and innovation in a critically important media marketplace. ITN, along with many other news organisations, was forced to scale back its own news website operation because advertising revenue declined as the scope of BBC operations expanded. This leaves the BBC as the only innovator in website news provision. A glance at US news websites, which have evolved their delivery techniques enormously over the past five years, makes clear that UK news websites, in comparison, have suffered from a lack of precisely the kind of competitive innovation which creates world-class business models. It is not just the public or the British marketplace which suffers as a consequence, it is the UK’s overall competitive position in a rapidly evolving global media markets.

ITN therefore welcomes the Green Paper’s acknowledgement that the BBC needs to be vigilant about its potential to distort the market, and the proposal that it should be subject to “tough new internal and external processes” (page 6).

The Green Paper also states that there is a case for drawing a clearer distinction between external competition regulation and internal rules of BBC behaviour (pages 7 and 14). The Green Paper is not entirely clear what is intended but appears to open the door to welcome changes. One suggested option is to give Ofcom the power to “approve the terms” of whatever internal rules remained, as a form of ex ante regulation.

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Whilst ITN would welcome this, we are not convinced that this fully addresses the problem. The Fair Trading Commitment essentially provides a good framework of rules. The problem is how it is enforced. ITN has had cause in the past to complain to the BBC Board of Governors about certain practices, but the response has at times been cursory and little evidence was provided that the complaint was properly investigated.

The fact that the Fair Trading Commitment is enforced by the BBC Governors who are at the same time responsible for all the BBC's services means that they are both judge and jury, and this does not encourage confidence by commercial competitors in the transparency of scrutiny. Whilst we accept that the Trustees will be more outward-facing, more transparent, and act separately from the management, ITN would have more confidence in a system where the BBC was subject to clearer competition regulation and enforcement by an external body. Ofcom is the obvious candidate.

4. THE FUTURE OF PUBLIC SERVICE BROADCASTING

The Green Paper makes reference to Ofcom's public service review and the different policy options it proposes for sustaining plurality in the future. It suggests that the option of more widely distributing public funding, including the licence fee, could be explored during the course of the next Charter, with a review, to take place towards the end of the switchover process. ITN assumes this is timed to take account of Ofcom's next five year review as well as its assessment of Channel 4's funding situation in 2006–07.¹

Ofcom's analysis of the PSB ecology after switchover indicates that the commercial PSBs may face significant competitive and financial pressures that mean the "PSB compact" is no longer viable, and cannot be enforced by regulatory measures or through the licences. Ofcom has made a strong case that measures may need to be taken in the future to ensure the commercial public service sector continues to compete vigorously and effectively with the BBC, and that plurality is also delivered across a range of new services.

As stated above, ITN believes it is essential that both Ofcom and the Government consider other mechanisms for intervention well in advance of them being required. Such reviews should monitor the situation as regards the provision of news and information, since it is already established that a single supplier—even if this is the BBC—could create a loss of plurality of voice and a democratic deficit.

The commitment to news by our major customers, ITV and Channel 4, is not in doubt. Their appointment news programmes bring significant reputational and commercial value and are an important part of their schedules in peak and throughout the day. In the 24 hour news market, there is vigorous competition between three services—BBC News 24, the ITV News Channel, and Sky News, and commercial operators such as ITN are actively growing new news markets (mobile, broadband, etc).

However, in the context of Ofcom's Public Service Broadcasting review, a number of commentators² have recently spoken about the need to consider strategies and incentives for ensuring the continuation of impartial and properly-resourced news after digital switchover.

In a recently-published paper entitled *News Broadcasting in the Digital Age*, the Social Market Foundation argues that "the post-switchover market will fail to produce an adequately plural provision of appointment news at peak viewing times". The SMF proposes the introduction of "genre licences", providing commercial broadcasters with the opportunity to bid for financial support to provide specific PSB programming, including news, paid for by "top-slicing" the BBC licence fee.

Whether or not such financial intervention in the commercial marketplace for news will be required is not yet clear. However, it is important to plan measures in advance of their needing to be used.

Thus we support the proposal in the Green Paper to review the health of the sector in the lead-up to digital switchover and believe that the continued existence of pluralistic provision of impartial, well-funded news services should be an integral part of the review. ITN believes it will be difficult to sell to the public and to the Treasury the need for additional funding and that for this reason top-slicing the licence fee must be an option. If this is the route chosen, it would be important to guarantee a fixed level of licence fee funding for the BBC, and to allocate the remaining amount accordingly.

31 March 2005

¹ Paragraph 1.28, page 11, Ofcom Phase 3 PSB review.

² "Potted History" by Barry Cox, FT Magazine, 6 November 2004, "Is this the switch that turns off the news" by Stewart Purvis, published in "Television", the Royal Television Society's publication, March 2005.

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Supplementary memorandum by ITN

Further to the written evidence submitted by ITN on 31 March, there have been some new developments about which ITN wishes to comment to the Select Committee and which are in support of the arguments we have previously made.

SUMMARY

ITN is concerned that the BBC plans the launch of new services for which it has sought no approvals, which appear to us to be very liberal interpretations of existing remits, and which will have a significant impact on the market and pluralism within it.

1. In our last submission, ITN outlined our concerns about the Creative Archive project, which envisages making video clips from BBC Archives available cost-free via the internet. As a world leader in archive footage sales, ITN has serious concerns about the impact this venture could have on our business and is concerned that there is new evidence BBC plans to press ahead without any agreed remit.

2. Of equal concern is the announcement by BBC executives of plans for the BBC to launch new cost-free multi-media products for mobile phones. As UK and European leader in provision of news and related content to mobile phones, ITN has deep concerns about the commercial impact of these new BBC services. The BBC has not sought approval for these and is launching them under its online remit with no market impact assessment being carried out. We believe the mobile and online markets are entirely separate.

Although the BBC has spoken publicly about its readiness to use market impact assessments in the future, there is no evidence of it being willing to apply them right now. As a company which has invested in the development of strong new business streams, ITN believes the BBC should be required either to supply such new services on a commercial basis or agree to define a remit for them which takes account of existing market ecologies and does not ride roughshod over competitors.

ITN has established British leadership in the Archive and mobile multi-media content markets. *In both areas, unregulated BBC activity could stifle or extinguish vibrant new businesses which are leading the world and enhancing Britain's reputation as a centre of innovation and creativity.*

THE MARKET IMPACT OF THE BBC'S NEW SERVICE ACTIVITIES

ITN was pleased to see that the BBC has publicly committed itself to the concept of Service Licences. It is important that each and every licence fee-funded service should have a detailed remit so that the scope of the service is clear to licence payers and to commercial competitors.

However, as far as the new media areas of the BBC's activities are concerned, it appears from the Statements of Programme Policy for 2005–06, published on 19 April, that nothing has fundamentally changed in the way the BBC is behaving.

The Statements³ indicate that the BBC plans to launch a range of new services this year *under the existing online remit*, including trials for the Creative Archive and the Interactive Media Player service, as well as free content via “a range of devices”, which BBC executives have said will include mobile phones. Another specific commitment is to “trial the submission of images and video content ‘on the move’”⁴.

This seems to us to be an extraordinarily flexible interpretation of the online remit. It underlines that there has been no external approvals process or review of the Governors' response to the Graf report, and this has allowed the BBC free rein in interpreting what it can do in terms of new services. Even by its own definition, services “on the move” cannot be online services—online implies a connection to a telephone or broadband service.

In fact it is clear that the BBC is planning to launch a range of services which will have a direct impact on the business of competitors like ITN and has so far made little effort to justify them in the context of the market, or to assess what the market impact might be.

To put our concerns into historic context, it is important for the Committee to be aware that the massive BBC investment in its website effectively destroyed the UK market for web news and information services from commercial vendors. As the BBC website expanded, use of competitors' sites declined and advertising revenue withered. The longer term impact of this is that there is little innovation in the UK in web news sites beyond

³ Page 40, Statements of Programme Policy for 2005–06.

⁴ Page 41, Statements of Programme Policy for 2005–06.

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the BBC's own activities. The end result is that the UK now lags behind other countries in innovative management of news and current affairs content on the internet. To put the scale of BBC activity in this area in context, it is important to note that the BBC's annual expenditure on its website is close to ITN's entire newsgathering and production budget.

Creative archive

ITN now operates the world's largest video archive business, managing an enormous range of video collections, including all current and historic news footage from ITN, Reuters, and Fox News, the British Pathe newsreel collection, Fox Movietone and the back catalogues of Granada and Channel 4. Our content sets include wildlife film (the Survival series), music, comedy programmes and documentaries. Although ITN's is a commercial business-to-business operation, and the BBC's Creative Archive is intended for free public use, it has the potential, by its very nature, to have an effect on our business.

The Creative Archive is, at its heart, a plan to make BBC video archive content available to the public cost-free via the internet. DCMS has previously confirmed to ITN that the Creative Archive falls within the terms of the existing Charter and that there is, therefore, no basis for intervention.

However, *the provision of BBC content in different ways and to different platforms or devices can have a significant and varying impact on commercial operators and it is essential that the next Charter takes this into account.* The BBC should not be allowed to develop major new initiatives such as this without a licence, involving both a Public Value Test and market impact assessment.

The BBC has already said it will apply the Public Value Test (including a market impact assessment) to the Creative Archive, but only *after* an 18 month trial phase, due to start this autumn (ie pre-dating the next Charter). ITN has had previous experience of trial services launched by the BBC. They tend to continue unchecked and unrestrained after the trial period has ended. In any case, even a trial can result in a permanent effect on the market. The fact that the BBC intends to make available to the Creative Archive natural history and news programming means that this falls within the direct commercial territory of ITN Archive. We are concerned that such a lengthy trial phase could have a serious market impact, especially if it is not properly scoped. This is why the Creative Archive project needs clarification and clear parameters. We do believe it is possible to define a form of the Creative Archive project which serves the public and limits commercial impact (eg by management of picture resolution levels and use of visible embedded branding). So far the discussions in the BBC's External Panel, in which ITN and other third parties participate, have not addressed such details.

Mobile

The BBC, which until now has only provided news text to mobile, has, in the last few weeks, announced that it intends to expand its content-to-mobile strategy. It plans to make clips of programme content available cost-free on a seven-day basis, moving over time into full programmes to the mobile. It also talks about a three-phase "appointment to view" plan beginning in the next two months which will result, at the end of 2005, in users being able to use a mobile phone to record TV shows via a personal video recorder (PVR) or an interactive media player (IMP) on a PC⁵. The BBC recently ran a trial with the Grand National which it streamed live to mobile phones without charge. The service was only actively promoted by 3 UK, as the other 3G operators, Vodafone and O₂ did not run the video stream. Nevertheless the BBC reported that between 5–10,000 streams were initiated during the three days of the trial, which was heavily promoted via the BBC's website.

These are all exciting developments for the consumer. However, from the perspective of a competitor, ITN has significant concerns. It is clear that the BBC has plans to provide its own mobile gateways. We perceive a possible threat that the BBC could bundle content in such a way that could "lock users in" to their services via a mobile gateway.

Furthermore, we are concerned that the BBC could use its cost-free cross-promotional power from television, radio and websites to promote short-code access numbers of its mobile services and thereby achieve an enormous marketing advantage over commercial competitors. It is difficult for commercial companies to compete with this, operating as they are on tight margins, without the BBC's broadcast firepower, and with a need to make a profit on their content.

⁵ Media Guardian, 2 May 2005.

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ITN is now UK leader in the production of video news on 3G mobile phones, delivering streamed channels and packaged video bulletins. We do not fear competition and we are not seeking to prevent the BBC from providing existing services via new platforms. But *we do want to see some rules in place, both in the next Charter and in the interim period before it comes into effect, to limit or prevent any market distorting effect.* When the BBC launches *free* content in emerging markets, this has considerable potential to impact adversely on the commercial competition in those markets. ITN has been making a major investment in custom-made content and has been establishing an infrastructure, with a custom-made studio and a team of staff. In doing so, ITN is taking considerable commercial risk and needs to know it has a sustainable business model that will not be undercut by the BBC. We, like other commercial operators, can only provide services for which we can charge the customer and share in the revenue of the mobile phone operator.

From the consumer perspective, it is interesting to note that the customer pays for access to content regardless of whether the material is provided free or commercially to the mobile operator by the content generator. Consumers pay either in the form of a flat-rate subscription or per call. ITN's experience shows that mobile operators are willing to pay for access to premium content because its availability to their users then allows the phone operators to attract new revenues through subscription or call charges. However, if the BBC were to offer packages of news or other content at no charge to mobile phone operators, it will become difficult for other content providers to charge. Their participation in those markets would no longer be viable.

In summary, while we understand the BBC's mission to maximise returns to the licence payer, account must also be taken of the fact that, in entering these new markets with licence fee funding—in other words, at no risk and with considerable resource—the BBC will inevitably have an impact on competition and could force commercial operators to withdraw from new markets. There is a real risk, in the 3G mobile market, that the BBC could emerge as the dominant—indeed single—provider of content and source of news and information. It is difficult to see what would be the public benefit of that outcome.

The future—service licences

It is very disappointing that, despite the Graf Report, the Governors' response, reforms proposed by Michael Grade and the Government Green Paper, we still see the BBC planning entirely new service launches without adequate thought given to their market impact and with no sign of any interest in changing a long-standing tradition of acting unilaterally.

At the very least, we would expect that the proposed system of Service Licences, to be acquired only after the application of a Public Value Test and market impact assessment, should apply to each and every new BBC licence fee-funded service, including online and mobile services. If there are significant changes to services, the BBC should have to re-submit the changes to the Trust for approval. It should not be the case that the BBC can expand as it likes under the banner of an online remit which does not even properly apply to planned new areas of operation.

Interim measures before charter renewal

Furthermore, as this new system would not commence until 2007, and new services such as the Creative Archive and video content to mobile are being launched now, the BBC needs to put in place *interim measures with immediate effect to ensure an adequate approvals and market impact test.*

Other possible solutions to achieve pluralism

However, the potential repercussions of the BBC's activities on pluralism in new media markets are so serious that ITN strongly believes that consideration should be given, in the context of the Charter review, to the way in which the BBC provides such services in the future.

There are two options that should be considered where the BBC is providing content to a commercial third party:

1. the BBC could operate such services on a *commercial basis* by BBC Worldwide, in accordance with an externally-enforced competition framework⁶; or
2. a *structure, or market mechanism*, could be put in place to ensure competition and pluralism in those markets.

⁶ See page 6 of ITN's first submission to the Select Committee on 31 March 2005.

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The advantage of the first option is that profits could be ploughed back to the public service arm of the BBC, thus returning value for money to the licence payer. This solution would help reduce the level of the licence fee. It would therefore appear to be in line with the Green Paper's conclusion that technological change will make the collection of a fixed charge based on television ownership more difficult to sustain in the longer term⁷.

As regards the second option above, it should not be automatically assumed that pluralistic markets will emerge without some sort of market intervention. The advertising-funded model, which has worked for television, does not apply in new markets such as mobile, which operate on a pay-per-use or subscription basis.

There are other precedents which could be considered. In the digital television market, for example, the BBC's Freeview was launched into a mature market where commercial operators had been given some years to establish a market presence, with the result that both now co-exist, offering competition and choice to the consumer.

CONCLUSION

ITN's overriding interest is ensuring plurality in new media markets. We urge the Committee to review the mechanisms that could be put in place in the next Charter, as well as interim measures that could operate before the next Charter comes into effect, to ensure that BBC activities do not create a monopoly, as has happened in some other areas, and destroy vibrant and innovative British businesses.

We understand the BBC wishes to serve the licence payers but believe this should be within a clearly defined regulatory framework now and in the future.

26 May 2005

¹⁴ Green Paper, page 58.

Examination of Witnesses

Witnesses: MR MARK WOOD, Chief Executive, and Ms VICTORIA JEROME, Director of Corporate Development, ITN, examined.

Q1350 Chairman: Good morning. Thank you very much for coming. As you know, we are conducting a review of the BBC Charter and we are trying to provide a report which can be taken into account before the Government publishes its White Paper. We will be fairly brisk, if we may, this morning because we have got three interviews. Now, ITN is best known, might I suggest, for your evening news and *News At Ten* broadcasts. You then went to a new slot reluctantly.

Mr Wood: Yes, good morning and thank you for inviting us. That is getting on to a different sort of subject. We went on to a new slot with *ITV News* because at that time ITV wanted to try a new schedule and we co-operated with it. I think nobody thinks it has been a great success, but times have moved on.

Q1351 Chairman: And has your audience gone down since then?

Mr Wood: Well, the overall news audience is changing. Our audience at 6.30, for example, for the 6.30 *ITV News* is now beating the BBC's news at six and we regularly get four or even five million viewers at 6.30. Our impression is that that is becoming a stronger news slot than late evening, so from that point of view, yes, 10.30 is better than ten, but 6.30 is much bigger than it used to be.

Q1352 Chairman: Can we be guaranteed that ITN will continue producing a news programme at 10.30?
Mr Wood: I would hope so. I have not seen any indication as to why we should not. That is the impression I have from ITV, that they are very committed to their new schedule and very committed to news. They have just extended the lunchtime news programme, for example.

Q1353 Lord Maxton: Do you do the 24-hour service as well?

Mr Wood: Yes.

Q1354 Lord Holme of Cheltenham: Regardless of the time of the news, there have been quite aggressive news stories about how ITN must in one way or another be compensated for producing decent news programmes. I am at a loss to understand that personally. If you have a major terrestrial TV company in this country, if I can put it bluntly, why on earth would you not produce good news? It must be a point of entry for other programming. As a matter of corporate social responsibility, how is it possible for a major terrestrial broadcaster not to produce good news programmes and, as a matter of competitive advantage and comparative advantage, why would you commercially not do the same? Although I quite respected the vigorous lobbying

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campaign you ran with Ofcom with some success on more favourable financial terms in the new age, I am at an absolute loss to understand why you have to be in some way compensated for doing what you ought to do anyhow, which is produce decent news programmes.

Mr Wood: Can I just stand back a moment because there is a slight confusion here. We at ITN do not only supply ITV with news, but we supply Channel 4 with news. We are a company which is partly owned by ITV, but not wholly owned by ITV. ITV is a 40 per cent shareholder, but we have other shareholders, including Reuters, *The Daily Mail*, and United Business Media, so we are not the ones who have been lobbying Ofcom on licence fees; that is ITV which is a shareholder and a customer. I cannot speak for ITV, but what I can say is that we have naturally got a very close relationship with ITV and we work very closely with them and I have seen no sign of any weakening in their commitment to news as a core part of their main schedule. As I say, if you look at what has happened recently, earlier this year ITV extended its lunchtime news from half an hour to an hour and that was quite, I think, a vote of confidence in news provision on the main schedule and it has been quite successful, so I do not know. I saw the weekend reports as well and they did not ring true to me and I am not aware of any efforts to seek support for the mainstream news. I think ITV has said something different on regional news and current affairs in the future post the digital switchover.

Q1355 Lord Holme of Cheltenham: I apologise for addressing your major shareholder through you, but clearly you would know if you were getting intimations from ITV that, “This is very difficult to pay for and we are worried about it. You must not assume we will go on wanting your services to produce this quality of news into the future”, so although I accept that they are merely one of your shareholders, you would have a pretty good awareness of any intimations of cut-back in quality or quantity of news if financial support were not forthcoming.

Mr Wood: Yes, and I do not get any sense of any weakening in ITV’s commitment to news as a very central and strong part of the schedule on ITV1 and I think they have been consistent in saying that news is an important part of the schedule, it attracts a strong audience, particularly in the early evening, we want to strengthen the audience later in the evening and we are both working on that. No, I do not get any sense of any weakening in ITV’s view of where news sits and the wish to have a very strong news service which is competitive and competes with the BBC.

Q1356 Baroness Bonham-Carter of Yarnbury: On a slightly different point, you say in the paper that you have supplied to us that you are concerned by the BBC’s proposal for local digital news services.

Mr Wood: Yes.

Q1357 Baroness Bonham-Carter of Yarnbury: You feel that this is possibly going to affect you adversely, but is not embedding itself at the local level a role that the BBC should provide as part of its remit to deliver a range of services to everyone and as part of its remit as a licence fee broadcaster?

Mr Wood: Can I just give a slightly broader answer to that. Just stepping back a bit, we are a commercial company which has to deliver profits to our shareholders and our core business is providing new services to ITV and Channel 4, but, beyond that, we have a whole range of new businesses and, in particular, strong-growth businesses in the video archive area where I think we are now a world leader and in video services, in particular, to mobile and then to broadband, but this is video news on mobile phones, 3G mobile phones, which is a big growth market and where we are leaders. Our sensitivity around this is that if the BBC channels massive investment into new services competing particularly on the national level, but also on a local level, I think that is a totally different issue. On a national level, if it competes with commercial vendors head on and swamps the market with content because it is able to over-fund its editorial activities compared with other competitors, then it will destroy an emerging market. We have had experience of this in the past and, therefore, our submission is based on a wish simply to have very clear regulation and very clear market impact assessment of what the BBC does. We do not want to stop the BBC doing anything, but we do want regulation in place which says, “What impact is that going to have on the commercial market and can we ensure that there is a plurality of news provision or content provision and also that we allow an innovative economy to emerge?” I speak there from some experience and I think if you look at web activity on the Internet, bbc.co.uk is a fantastic service, but its budget is of a size that commercial competitors can only dream of. It is vast and the effect of that investment in a very good service has been to push out commercial competitors and, therefore, you have a market which is really dominated by one supplier and not only is that not good for plurality, it is very bad for innovation. We had to exit that market where we were investing heavily and now we have invested in other growth areas where we seek to generate future business and where we are staking out a position as a British leader. We are European leaders in video on 3G phones, but that could simply be wiped away and

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wiped out if the BBC were to intervene in that market on a massive scale, which is what they do.

Chairman: So we are now getting into the guts and you are concerned about fair competition and all of that. Lord Peston, do you want to pick it up?

Q1358 Lord Peston: My Lord Chairman, you have raised the question. I take it, when you talk about a demonstrably direct impact on the commercial market, you are concerned and you want Ofcom to be more involved. This is really all about fair versus unfair competition.

Mr Wood: Yes.

Q1359 Lord Peston: Are you able to tell us, and you seem to be saying, that if the BBC uses a lot of resources for something, that has got to become unfair competition at some point?

Mr Wood: Yes.

Q1360 Lord Peston: Is that generally your view?

Mr Wood: The problem we have is that the BBC is able to channel large-scale resources into new activities on a scale that commercial competitors cannot. The BBC is well funded. It is a Rolls-Royce operation compared with other suppliers. I was trying to find some evidence from the BBC itself. Mark Thompson, as the Director General, made a comment in May when he announced his reform programme that he had one interview request from ITN, one interview request from Sky and 35 requests from within the BBC. That is the scale of opposition we are up against. In the new media areas, I absolutely accept that the BBC has to have a role, and it can have a role as a supplier of free content and it can have a role as a supplier via BBC Worldwide of commercially priced content, which frankly we would prefer, but we can understand that it is on both sides of that fence, however, it is a matter of measuring the degree into which they enter those markets and develop in them so that you can allow a plurality of suppliers. That is our concern.

Q1361 Lord Peston: But in economics, competition is called 'unfair' not when one firm uses a lot of resources to do something, but when it actually uses those resources specifically to stop another firm doing it.

Ms Jerome: It can do that by offering content for free.

Q1362 Lord Peston: Yes, or something, but the obvious example occurs in football where a rich club will buy a player they do not want solely to stop another club getting that player. Now, you are saying not only that (a) the BBC does this, but (b) Ofcom would be able to identify fair and powerful competition from unfair competition and you are confident that Ofcom could do that?

Mr Wood: Our experience to date of Ofcom is that it is a smart regulator with a lot of depth of expertise in competition law and in the economics of the commercial marketplace. My experience so far is that they are a very wise regulator which knows how to measure market development and assist it and, therefore, I think that their greater involvement, which is set out quite clearly, in measuring the market impact of BBC activities would be beneficial all round.

Ms Jerome: They could measure public value as well and there comes a point when public value diminishes because innovation and competition are decreasing and it is measuring at which point that happens.

Q1363 Chairman: You do not think that the newly proposed BBC Trust could actually do this job?

Mr Wood: It seems a bit woolly, the way it is described. It is not clear, the separation of powers between the Trust and the actual BBC about where the Trust sits as a regulator and how it relates to the BBC. If it were a separate regulator, that would be helpful. There seems to be sort of confusion over where the Chairman's role is and so on, but I think that would be the most important thing first of all, to have complete clarity of remit for the Trust and its role as a regulator. Secondly, the Trust is going to be, as I understand it, not a very large body and Ofcom has a larger group of experts which it can lean on. It seems to me questionable whether it is a good use of public money to fund another group of experts sitting over with the Trust when Ofcom already has a group of experts and can contribute to the thinking of the Trust, so that would seem to me to be a sensible outcome, that the two work together.

Q1364 Lord Maxton: I have to say, it often seems to me that the commercial broadcasters want Ofcom to protect them from the BBC, but can we also ask that the BBC be protected from you, not you, but your major shareholder, the ITV companies, Channel 4, Sky, whatever it might be? After all, if you look at your favourite sport, football, on television now, it is almost entirely on other channels rather than on the BBC. Why? Because they decided, for competitive reasons, that they were going to price the BBC out of the market. Is that not right? Therefore, if we are going to have one protection, can we have the other as well, that those things that traditionally the BBC have done should be protected?

Mr Wood: I think that is a reasonable point about how you ensure that the BBC continues its central role and, yes, I do not see why that should not be an issue which is up for discussion, but we are not an organisation which buys sports rights.

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Q1365 Lord Maxton: I appreciate that, but your major shareholder does. The other thing is about the BBC website. It is a superb website, but it has also been very innovative and it has done things that other broadcasters have not tried and have not done. It is broadcasting its radio stations, so you can listen to them for a week and it has now moved in so that a techno-nut like me can take a programme, like *Humphrey Littleton's Jazz* and record it on my I-Pod and listen to it anywhere and any time I want to. That is innovation. It seems to me sometimes again that what the commercial companies want is to say, "Let the BBC innovate. Let them come up with the good ideas, but once they have got those good ideas, can we please use them without having the BBC doing them anymore?"

Mr Wood: No, that is not our argument at all. I absolutely agree with you that the BBC website is outstanding and I think it is also quite innovative. I do not want to stop them innovating and I do not think we want to stop them continuing to have their own role and providing services to the public, but it is not healthy for either the public or the economy if they are the only innovators in an area. What you are seeing in the web area, particularly web news, is that the BBC a few years ago drove out other news web services because it was not possible for them to compete and, therefore, achieve sustainable commercial revenues. I think the impact of that is that if you look on American news websites, you will see quite a range of competitive innovation in the way they are trying to attract attention and the way they are managing the news and I do not think we have that innovative environment in the UK. We have one innovator which is the BBC in this particular area and that is not healthy.

Q1366 Baroness Howe of Idlicote: Just following on a bit about the market impact assessment, okay, for new services Ofcom, the Green Paper says, is the one that assesses them, but not for the extension of services. Now, do you think that is right? I was wondering also to what extent the webbing aspect is an extension of a new service.

Mr Wood: Well, it is a very good question and our concern right now is that the BBC is planning new services quite clearly which it has talked about in the mobile environment without, as far as I can see, any service licences or any service remit. What it is doing is saying that it has a remit already within the online environment and it is extending that. I would hope that under the new arrangements of the new Charter, it would be more straightforward to insist that there are proper specifications of service licences and any deviation from those specifications would be subject to regulatory scrutiny. I think the problem we have right now is that the BBC is doing things now before the new Charter comes in and it is moving into

territories quite rapidly and trying to get in there quickly before the Charter is finalised and that worries me a lot.

Ms Jerome: The problem is that the online remit is very broad and mobile is seen as an extension to that remit. Actually there is a new business model attached to mobile, so even though it uses some of the same content and it can, therefore, be seen as an extension, it is in actual fact a possible new business model and a new way of marketing services in the market, so it is really a new service.

Q1367 Baroness Howe of Idlicote: So if it is a new service, it ought to be being looked at by Ofcom?

Ms Jerome: But it is being bucketed under the BBC online remit.

Mr Wood: We have challenged them on this and the reply we got was that they view it as an extension of their online remit so far, and I find that troublesome. In my view, the BBC could take the same view and say that it wants to launch a national newspaper because it is already producing the news and it wants to get it out to the public on a new platform. Anybody would say, "This is nuts. Why are you doing this?" but because it is new media territories, it is not quite so clear, I think, to the broader public and the media what is happening, but these are whole new areas of delivery which the BBC wants to move into quite swiftly.

Q1368 Baroness Gibson of Market Rasen: Just sticking with service licences, do you believe that the BBC service licences should actually follow the models which have already been agreed between commercial operators and Ofcom?

Mr Wood: Yes, I do. I think we have very good experience, and I think the commercial broadcasters do, of very clear licences, very clear service agreements and there is a very straightforward relationship with the regulator. When the regulator intervenes or questions things, we always know what basis it is on and it is always very straightforward, so I think one could apply the same model to the BBC service licences and again I think that is where Ofcom's expertise would be invaluable.

Ms Jerome: It would provide clarity to have an independent set of rules which could be scrutinised externally and provide a framework from which we can work with clear parameters around it.

Q1369 Baroness Gibson of Market Rasen: And it would then be understood by everybody.

Ms Jerome: Exactly.

Q1370 Chairman: That is the point, is it not? It seems to me that what you are advocating actually as the way forward is that the BBC is organised perhaps in

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a unitary way, but with the regulator standing to one side which would be Ofcom?

Mr Wood: Yes, well, Ofcom or, if there was a Trust, Ofcom working to the Trust and advising the Trust. You could have both models.

Q1371 Lord Holme of Cheltenham: At the end of this process, whether it is Ofcom going beyond the market impact assessment to an overall conclusion or whether it is Ofcom to the BBC Trust in a mode which would be external to the BBC rather than part of it, whichever it is, do you take the view that the licensing of new services should continue to be ultimately in the hands of the DCMS or should it be in somebody else's hands?

Mr Wood: Well, I think if the funding is coming through DCMS, it is getting the checks and balances. If new licences are subject to scrutiny by the Trust and Ofcom, then I do not think there is any problem in a process which allows the BBC to launch new services. It just comes back again to the regulatory scrutiny and the ability to moderate the way the BBC acts so as to minimise market impact. It is going to have market impact if it launches new services, but you can actually ensure that the market continues to evolve alongside the BBC offering and I think that is what we are trying to get to, a regulatory framework which allows that.

Q1372 Lord Holme of Cheltenham: If that was in place, you would be content not to have the DCMS itself ultimately granting the licences?

Mr Wood: I do not think it has to, no.

Q1373 Bishop of Manchester: I would be interested in your views about how much scope you feel the BBC ought to be given in the new digital environment to build up its own brand. Now, looking in its financial report, I see that last year it put £140 million back into public services and commercial activities, leaving a profit of about £38 million. Now, looking at the Green Paper about the boundaries between the BBC's commercial and public services, what do you feel about the proposals? Are they sufficient? Are they enforceable?

Mr Wood: Again I think there is a need for greater clarity and scrutiny of how BBC Worldwide is managed. I saw the suggestion from the Office of Fair Trading that there was a question mark over whether BBC Worldwide should exist at all. I think it is a good question. I think there needs to be clarity about how it exploits resources paid for by the licence-fee payer. I think our concern here, and I will take the creative archive as an issue for us as we manage a very rapidly growing archive business, we manage a lot of different archives and we have got a global business which is growing very quickly, is that the BBC can cause us damage on two fronts. One is that it

launches free content on the creative archive which it makes available to the public cost-free and, therefore, undermines part of the market which is now currently a commercial market. Secondly, by digitising content on a large scale and making that digital content available to BBC Worldwide, it is subsidising a commercial competitor, so it is a double-whammy for us that we have free content on one side and subsidised content on the other side. I think that is where I would like to see clearer regulation and clearer powers for Ofcom to say, "There has got to be a clear payment for content", or indeed to put it out to tender, that maybe it should not just be BBC Worldwide given the remit to exploit content paid for by the licence-fee payer and there should be more open competition, and I would welcome that.

Q1374 Bishop of Manchester: But you do not feel that either EU or our competition law provides enough in terms of a fair balance between everybody and you would like to see tighter proposals?

Mr Wood: I think it can be tightened quite clearly and quite easily under the new Charter, but I must say again that I understand completely when the BBC says that it has to move into the new digital environment and be a supplier in that and reach its audience in that way, and we do not want in any way to stop that, but it is just the speed and the velocity at which they do that and the resources they apply. I think the point which is always of concern to us is that we know from recent history that the BBC is able, and is funded in a manner which allows it, to apply enormous resources to areas where commercial competitors just cannot compete not on the same resource level. Now, give us time to build up our commercial business model so that we can build up our resources, and we are making long-term investments in these areas, and then you can compete more evenly, but it is a matter of timing and scale.

Q1375 Baroness O'Neill of Bengarve: I was going to ask a little bit more about the creative archive, but can I just pinpoint this: that the BBC might reasonably argue that the licence-fee payer has paid for the production of this archive and so it should be made available free. How do you respond to that?

Mr Wood: The answer to that is I think it is how it is made available free. Right now, for example, as part of the ITN archive group of collections, and we manage Granada, Channel 4, British Pathé, Fox News, Fox Movietone as well as ITN and indeed the Reuters collection, so it is a big collection, one of our collections is British Pathé which was digitised with Lottery funding. One of the conditions of that digitisation is that it is made available to the public cost-free via the web, which it is, but we make it available for public, non-commercial use at a particular resolution which is a lower resolution than

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commercial use and also we have embedded branding. This, therefore, means it cannot be used commercially and it deters piracy, if you like. What we have been suggesting to the BBC is that if you take those same kind of measures on resolution and on branding and packaging, then you can actually make content available to the public and not have an impact on the commercial market.

Q1376 Lord King of Bridgwater: What is the embedded branding?

Mr Wood: Sorry, embedded branding is if you download a video clip, it has “BBC” in the corner of every frame, so throughout. We have been making progress with this and the BBC have been listening in this area and I get the sense that they are engaged and they are listening, but we just have not quite got to the end of the process yet where we are sure that what they are going to do will not cause commercial damage. I do take the point that, yes, if they want to make part of that archive available to the public, I think you can do it, but it is just the way that you do it so that again you do not cause harm to commercial competitors who are developing strong businesses for the UK. I regard ITN as a British success story in these areas as in mobile technology and mobile content.

Q1377 Baroness Bonham-Carter of Yarnbury: As someone who has had to create a lot of money for the BBC archive, it does not seem to me to make any sense that they would not want to pursue the route you are suggesting, so I am surprised that this concerns you as much as it does. Also you have said on a couple of occasions that you cannot compete with the BBC website and yet national newspapers have extremely successful and good news websites which I think probably some people use more than the BBC’s, so I do not quite understand why ITN cannot compete also.

Ms Jerome: Sorry, your earlier point was?

Q1378 Baroness Bonham-Carter of Yarnbury: It did not seem to be very like the BBC not to ensure that—

Ms Jerome: Just on that, there are two different sides to the BBC, I suppose. The BBC archive is going through BBC Worldwide which is a commercial organisation. The BBC creative archive is a part of the BBC, so it has a public service remit. What the relations between the two are, I do not know, but it would be the same for us and we are in the same shoes on that point with BBC Worldwide.

Mr Wood: I think on the other one, if you look at the actual usage statistics that I am aware of, the BBC is way in advance of anything that the newspapers are achieving in terms of traffic. One or two of them, and *The Guardian*, has a strong offering and has been quite successful, these are still on a much smaller

scale than the BBC usage numbers. My point is only that you actually want a more even marketplace where you have a lot of competing suppliers. I think also it is starting to change now. I think we are seeing other suppliers move into stronger positions in the marketplace, but it has taken five years to get there. That is an evolving marketplace partly driven by broadband now which is bringing in new users and creating new opportunities, but I would say that when it was launched with the resources that were applied, it for a long time destroyed the commercial marketplace and if the commercial marketplace is starting to evolve, then that is jolly good for everyone.

Q1379 Lord King of Bridgwater: So you say other people are coming in, so you have been frozen out for good?

Mr Wood: I think we will probably get into that market only by broadband offerings now. We would not try to compete with the BBC with a commercially driven, all-encompassing website of the kind we had five years ago.

Q1380 Lord Maxton: As somebody who uses broadband, I have to say that the video quality of BBC, whether deliberately or not, is much poorer once you put it full screen than Sky or other people working on the web. To some extent the BBC are already doing, if you like, what you want them to do which is to have a lower quality of video rather than a commercial quality.

Ms Jerome: They are at the moment, I would agree with that, but there is a potential for the integrated media player, which is another initiative by the BBC, to put content on to broadband which I suspect would be much richer content.

Q1381 Lord Maxton: Well, I would be delighted because I want to watch that news. The other thing about the BBC website is that it is a tremendous advert for Britain right throughout the world. It is not just something which is limited to this country and to competitors in this country, but it is a worldwide thing. It is the first thing I go to when I am overseas and I want the news of this country.

Mr Wood: I agree and I do not want to stop it being a great success story for Britain either. I must say, and let me stress again, I do not see the BBC as a rampaging, evil competitor which is out to destroy its competition. I think one of the problems of the BBC is that it is enormously funded and actually very well managed and has good people. If it were a rather slothful state broadcaster, we would not have to worry about it, but it is good at what it does and it has a lot of resources to do it, so sure, it is great that the BBC is successful in these areas, but what I am saying is that we need regulation which allows room for

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others to grow and flourish alongside. That is where I think we have had problems in the past and I see new problems emerging now, not that they want to destroy competition, but that they will apply resources and not take appropriate notice of the impact those new services will have on what is in many cases a very fragile economic environment. I will repeat again, the impact is on innovation and it is UK plc's innovation that I think is at stake here.

Q1382 Lord Maxton: Are you involved commercially at all with Freeview? It is mainly a BBC operation.

Mr Wood: The ITV News Channel is on Freeview which we produce for ITV, the 24-hour news channel, but we are not involved commercially, no.

Q1383 Lord Maxton: Do they pay you or do you pay them?

Mr Wood: They pay for the channel to be on.

Q1384 Lord Maxton: They pay?

Mr Wood: Yes.

Chairman: I think you have very succinctly put your case, and Lord King is going to take us on.

Q1385 Lord King of Bridgwater: About complaints, you said that you had cause to complain to the BBC about certain practices. Are these the practices you have just been talking about or are they something else because you said that, "the response has at times been cursory and little evidence was provided that the complaint was properly investigated", so there have been a number?

Mr Wood: We have complained on a number of occasions in the past when the BBC has driven us out of some markets by offering content either free—

Q1386 Lord King of Bridgwater: So really it is what we have been talking about?

Mr Wood: Yes. For example, on the public broadcasting service in the United States, we used to sell a news programme and then the BBC offered a service, as far as I understand it, for nothing and we lost that contract. A smaller example is the main advertising in stations where here we see the news on the big screens and we charge for it. For the Heathrow Express it is the same thing and the BBC came along and offered services either for free or at a very, very low cost, uncompetitive cost. We complained and the answer has been, "Well, hard luck" basically.

Q1387 Bishop of Manchester: Are you happy that the proposed or already tightening procedures about complaints that the BBC is putting in place are going to be helpful or would you prefer to have some

stronger independent regulatory force to which you can turn in those circumstances?

Mr Wood: I think the complaints procedure which was put in place is really more for viewers' complaints and so on, so it does not really apply to this. I think in terms of competitive complaints, it has again got to be a strong role for the Governors or the Trust and a strong role for Ofcom to assist on that, and I think that has got to be the route, and transparent. We have never had any transparency. At any time we have appealed to the Governors, the answer has come back, "We disagree and the BBC can carry on", but never any explanation of the thinking behind that. We would like transparency and we would like a route of appeal so that we can actually say, "Will you listen and give us the answers?" Sometimes we may lose, but it would be good to see the argumentation.

Q1388 Chairman: You have been up to now stating the case against unfair competition, if I can put it this way, from the BBC. As far as the licence fee is concerned, you would actually like the option of top-slicing?

Mr Wood: Yes.

Q1389 Chairman: Is this a part of fair competition and how and to what extent do you actually advocate this?

Mr Wood: Well, my starting point is I do think that with the current licence fee level the BBC is more than adequately funded and I would say generously funded. In the news environment, it is the fact that the BBC will almost always be able to field resources which outnumber all the commercial competitors combined on a major story. These are large numbers. If you take the US election as an example, I think the BBC sent something like five times as many people to the States as we did for *ITV News* and *Channel 4 News*. That is just the scale of difference in resources. They have more outlets than us, so it is not an entirely fair comparison, but they do have large resources. My concern is that the next licence fee level first of all does not increase those resources even more and tilt the balance even further, but I do think that I agree with the Ofcom proposal for a PSP publisher where there is public funding, and I would like to see that there is contestable funding, for certain public service broadcasting activities which I think, for example, could be local news, locally based news, which I think would be an interesting development. Having a second tranche of public funding seems strange to me, so why not say that the licence fee should be set at a level which allows a slice to be taken out? I do not think this has a disadvantage to the BBC, but I would like to see additional funding available for alternative publicly funded activities.

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Q1390 Baroness O'Neill of Bengarve: Could I push you a bit further on that model. If you had contestable funding and you got a tranche of public money, you would, I take it, accept that you would not be permitted to advertise the programmes so funded?

Mr Wood: Absolutely. I think the rules would have to be set accordingly and it depends what the framework is for the funding, but I think if there is public funding, then they can set the rules themselves and it is up to suppliers like us to decide whether we want to tender for that funding and whether we are prepared to accept that framework. I think there are arguments around where that funding would be needed. ITV, I know, has said that it thinks that funding should be made available for local news and current affairs. I can understand that. It is going to be very hard for ITV to sustain that in a digital environment, but there may be other local news services that could be funded in this way.

Q1391 Lord Holme of Cheltenham: I just want to be sure that there is not an inconsistency in your position between what you said earlier in this session and what you are saying now. You said that you were not aware that ITV wanted to be compensated for news and that that was not your position at ITN. You now seem to be saying with top-slicing that you would like to be compensated for the public service benefit of producing news programmes on a local basis. Now, is it your case that if there were top-slicing from an ITN point of view and a news point of view, it would be applied exclusively to local news? With local news, again in the arguments I made earlier in terms of producing decent news programmes, it is a responsible thing to do and a matter of comparative advantage and indeed technology now allows for local news in a way which it did not in the past. Is it your case that you will not be producing such news in the future unless somebody pays you to do it?

Mr Wood: To avoid confusion, let me make it quite clear that there is a division here. ITN produces national and international news for ITV, but we do not manage the regional news operations. What I meant in my earlier answer was that in our dealings with ITV on our news provision to ITV1, to the News Channel and indeed London Regional News, I have not seen any lessening of their commitment. However, ITV have said publicly, they raised the question about whether they can manage regional news and current affairs on the current scale post digital switchover in 2012 and they have said that they want to engage with Ofcom in whether there is a possibility of funding for that, but they have said no more than that and that was a public statement some time ago.

Q1392 Lord King of Bridgwater: You are not doing any international news for commercial radio?

Mr Wood: We have a news service for commercial radio, yes.

Q1393 Lord King of Bridgwater: You never mentioned it. You have talked about television, but you never mentioned radio at all.

Mr Wood: We should get back to that. We produce the IRN news service which supplies 272 radio stations. That is also very important.

Q1394 Lord Peston: I just want to make sure I understand really. You produce the news for Channel 4?

Mr Wood: Yes.

Q1395 Lord Peston: And then, to go back to, I think it was, Lady O'Neill's question, do you find any disadvantages in the advertising thing? I think *Channel 4 News* is very good until you get to the first lot of ads and then I immediately switch off because I do not want my news interrupted by ads. I am quite interested in the economics of this as to whether the fact that the news is broken up by ads loses you viewers.

Mr Wood: I do not think it does actually. If you look at the viewer consistency throughout the programme, it is pretty consistent actually and we do hold the audience quite well throughout the channel.

Q1396 Lord Peston: They go out and make a cup of tea.

Mr Wood: And then they come back again.

Lord Maxton: There are PBRs that will allow you to take the adverts out as you record and then you can watch it 10 minutes later after it has finished.

Q1397 Chairman: The *Channel 4 News* does not run to profit, does it? We established that on the last occasion. I think, from memory, it is £20 million that it costs Channel 4.

Mr Wood: Well, again we are the supplier to Channel 4 in the same way as we are a supplier of news to ITV and indeed to the radio network, to IRN, the entire commercial radio network in the UK. We supply news and they pay us a subscription.

Q1398 Lord King of Bridgwater: And they sell the adverts?

Mr Wood: Yes, and it is their job to sell. For example, the 6.30 news on ITV normally does not have an ad break and they run it straight through. That is partly for audience retention and partly because they use the advertising slots at different times of the schedule. I think that is a scheduler's and a customer's prerogative and need and we have to work with their scheduling requirements.

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Q1399 Chairman: It is quite interesting how you keep coming back to the 6.30 news. Is the 6.30 news really your flagship now?

Mr Wood: Gosh, that is a dangerous word. No, but I think we regard the 6.30 and the 10.30 both as flagships. They get different audiences, but the 6.30 gets a bigger audience. If you look at America, the American experience is that the early-evening news is the big news programme.

Q1400 Chairman: And I think you have guaranteed to me, have you not, that the 10.30 flagship is not going to be sunk?

Mr Wood: No, we do not expect it to. We expect it to continue and to thrive and we want to build up the audience. I am sure that, come the autumn with a different and a new ITV schedule, we will see very strong figures for that.

Q1401 Bishop of Manchester: Could you just give us an idea of the audience figures? I am taking up the point that Lord King very importantly made about radio and you mentioned feeding into IRN which you do. What is the comparison between the listening figures and the viewing figures?

Mr Wood: For radio and?

Q1402 Bishop of Manchester: Yes, if you are feeding in news to radio, what level of listening are you getting as compared to viewing?

Mr Wood: It is enormous. Across the whole radio population, we are reaching audiences of between 15 and 20 million a week.

Ms Jerome: The overall commercial radio reaches over 50 per cent and we access the same.

Mr Wood: Altogether ITN reaches about 68 per cent of the population every day via television or radio, so we do reach almost the same as the BBC because I think the BBC reaches almost exactly the same number, so this is a large reach and we want to get at the audience through new platforms as well, but we have to do it on a commercial basis and invest in what we do and get returns for it.

Q1403 Chairman: Thank you very much. You have given your evidence very succinctly and very clearly and we are very grateful. Perhaps if we have any other questions, we could write to you.

Mr Wood: Thank you very much for inviting us and giving us the time here. We are certainly at your disposal for any further information.

Supplementary memorandum by ITN

ITN was grateful for the opportunity to give oral evidence to the Select Committee on 6 July and to air ITN's concerns about the potential market impact of the BBC's plans to expand its online licence fee funded activities. The proposed market impact test by Ofcom—if it is to be applied both to new services and to significant amendments to existing ones—would certainly help address some of our concerns.

However, the BBC's commercial services operated by BBC Worldwide also have a market impact that needs to be addressed through structural reforms. Having read the uncorrected transcript of evidence given on 6 July by Mr Anthony Salz, the Chairman of the BBC's Fair Trading Committee, and Mr Nicholas Eldred, General Counsel, I would take issue, on the basis of ITN's experience, with some of the points they made.

They argued that the BBC is not judge and jury because “it is always open and possible for an outside agency such as the OFT or Ofcom or indeed the European Commission to come in and investigate the BBC or for a complainant to go direct to those agencies for redress or relief”.

The implication that external regulators can intervene on any grounds in BBC Fair Trading issues is rather misleading. Although compliance with the core principles set out in the Fair Trading Guidelines, on which the fair trading commitments rest, would generally ensure the BBC's compliance with EC and UK competition law, the fact remains that the BBC's Fair Trading Commitment and Guidelines are specifically designed to address issues arising from the relationship between BBC Worldwide and the BBC's licence fee funded arm (such as ensuring BBC Worldwide acquires licence fee funded content at a fair market price). These are important areas where complaints are likely to arise. Yet it is clear from the preface to the Fair Trading Guidelines⁸ that the BBC's fair trading policy goes *beyond* the competition remit of the OFT and Ofcom, and these authorities are therefore not able to intervene in the Governors' decisions on such matters.

This demonstrates that, contrary to the impression the BBC gives that the competition authorities can intervene on any grounds, there are regulatory “gaps” where neither the OFT nor Ofcom have a remit to intervene. In these areas, the BBC is entirely self-regulating, and there is a complete lack of external recourse or enforcement in these areas. Moreover, the Governors do not have enforcement powers for ensuring fair

⁸ In addition to ensuring compliance with European and UK Competition Law and European law on State Aid, and in recognition of its special position as a publicly-funded organisation, **the BBC voluntarily embraces additional requirements within its framework of Fair Trading**”.

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trading, the only sanction for breach of this, or any other, provision of the Charter being its revocation. This inadequacy of the current system is likely to be replicated in the new one, where it is proposed that the Trust, rather than an external competition authority, will continue to have responsibility for the Fair Trading Commitment.

The BBC also said in its evidence that the fair trading rules are externally audited, that the BBC has an excellent record in terms of compliance with competition law, and that no regulatory authority has found against it in the last 10 years. This is not surprising, given the limitations on their powers to intervene, combined with the lack of transparency with which cases are dealt with by the Governors.

The issue can be well illustrated by one particular case. In May 2000, ITN submitted a complaint to the Governors about the free distribution of BBC World in the US. This was accompanied by conclusive documentary evidence from the Report and Accounts of a US broadcaster, proving that the service was being distributed free of charge, in clear breach of the Fair Trading Commitment. Responding to ITN's formal complaint, Baroness Young (then Chairman of the BBC's Fair Trading Committee) said in her letter that BBC Worldwide had done nothing wrong. She said that they were not at liberty publicly to substantiate this conclusion because the distribution of BBC World was "commercially sensitive" and therefore confidential. However, there was no acknowledgement or response in the letter to the incontestable documentary evidence that ITN had submitted as part of the complaint. ITN could not take this any further as there was no external body to which we could appeal.

Despite putting together detailed evidence about this and a number of other breaches of the Fair Trading Commitment by BBC Worldwide services that had a direct market impact on ITN's own commercial services, our concerns have never been properly or transparently addressed by the Governors. We therefore believe that the current policy framework is inadequate because it fails to empower any independent regulatory authority to scrutinise breaches of the Commitment and—as a direct result—there have been times when BBC Worldwide has crowded out commercial competitors from the UK and overseas markets.

We do not believe, therefore, that the Green Paper's solution for the future—to transfer responsibility for enforcing the Fair Trading Commitment to the Trust, possibly with some nominal scrutiny of the terms of the Commitment by Ofcom—is satisfactory. Although the Trust is intended to be more independent from BBC management than the Governors are at present, the system of managing complaints will still lack any kind of external competition scrutiny or external route of appeal for complainants against a Trust decision. Moreover, there appears to be no detailed proposal to ensure that the Trust's enforcement of the Fair Trading Commitment and Guidelines is transparent.

It is crucial that both these points are addressed. ITN would therefore like to see some external scrutiny, whether by Ofcom or another competition body, over the BBC Trust's handling of competition complaints. At the very least, there needs to be an external mechanism for appeals against Trust decisions or adjudications. This could be carried out by a competition regulator such as Ofcom, or even by some kind of ombudsman or independent reviewer with competition expertise.

As the BBC's activities span publicly-funded content and commercial activities—both having a significant market impact—ITN considers that Ofcom's proposed approach has much to commend it. Ofcom suggests that all the BBC's activities need to be subject to independent overview from a competition authority with sufficient powers to be able to act quickly, and on an *ex ante* basis if needed, and that the BBC Agreement should contain a general obligation that the BBC should have due regard to its effect on competition. Ofcom also proposes that there should be a competition-focused BBC Fair Trading Commitment, which applies both to licence fee-funded content as well as commercial services, and which is subject to independent approval and oversight.

Under this proposal, the Trust would retain responsibility for the Fair Trading Commitment in terms of investigating breaches of the Commitment, and the Fair Trading Guidelines would be used for internal compliance. However, Ofcom would have ultimate responsibility for adjudicating on formal complaints and taking appropriate action. Ofcom would also need appropriate powers to obtain relevant information from the BBC in pursuing a complaint under the Fair Trading rules.

I hope this clarifies ITN's position as regards the operation of the Fair Trading Commitment.

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Examination of Witnesses

Witnesses: MR RICHARD SAMBROOK, Director, Global News Division, MR NIGEL CHAPMAN, Director, BBC World Service, and Ms ANNE BARNARD, Chief Operating Officer, BBC World, examined.

Q1404 Chairman: Welcome and thank you very much for coming. As you know, we are conducting a review of the BBC Charter with the aim of actually having something ready by the end of October. We have received a great deal of evidence and we would just like to explore with you some of the things about the World Service. I think we have all of your biographies here, but would you like to introduce yourselves.

Mr Sambrook: Yes, would it be helpful, Chairman, if I just introduced my colleagues and explained our relative responsibilities. On my left is Anne Barnard who is the Chief Operating Officer for BBC World and she basically oversees the commercial performance and indeed every other aspect of performance of the channel. On my right is Nigel Chapman who is the Director of the World Service and that is a self-explanatory title. I am the Director of Global News and my role is to oversee the BBC's international news strategy. I should emphasise that my responsibilities are for News services across radio, television and online and to co-ordinate between the different services.

Q1405 Chairman: Can we start with BBC World Service. How do you measure the success of BBC World Service?

Mr Chapman: Against a number of criteria and the first is the sheer scale of the audience, the size of it and how many people listen every week, but as important as that is the perceptions of the audience about it, so whether they trust it, whether they find it objective, whether it is relevant to their lives, so those qualitative indicators, if you like, are very, very important. We measure audiences in about 75 per cent of the key countries we broadcast to every year and, taking all those figures together, you can then publish an estimated global audience for the World Service which is roughly around 150 million at the moment, by far the biggest of any international radio broadcaster in the world. We also measure our online audiences, our new media audiences using our website, so we have got a pretty good range of yearly measures, if you like, which we publish and they are part also of the PSA framework that we have with the Government, with the Treasury as a result of the Spending Round process, so there is a lot of evidence, if you like, about the BBC's impact overseas in terms of the World Service.

Q1406 Chairman: Trust, do you measure that?

Mr Chapman: Yes, we measure that and we measure it against our competitors as well, so it is not just whether people trust the World Service in isolation,

but how much they trust us as against other major international radio and television players in each market, so we get a pretty good sense of that. We also get a pretty good sense not just about the overall numbers of the audience, but also about how far we are having an impact with particular groups in individual countries. Obviously one of our ambitions is to have an impact with opinion formers, people who shape and have an influence over the governing of societies and, therefore, it is very, very important that we can do that and we do that in most of the societies we can measure. There are one or two places obviously in the world where it is pretty difficult to measure. China at the moment, for instance, is not the most hospitable place in terms of measurement and also many countries where there are serious issues around civil war and disturbance where again, like Somalia, if I can give you an example, you just cannot get the measurements, but in most places now you can.

Q1407 Chairman: I remember myself reporting the Middle East war 30 years ago and American reporters listening in to the World Service on the basis that that was where they would get the best objective reporting. Do you think that is still the case?

Mr Chapman: I absolutely do think that is still the case. I think objective reporting, hearing all sides of the story and being scrupulous about the facts is the absolute bloodstream of the World Service. It has been right from the start in 1932 and it remains that. The added advantage I think we have is that we obviously have broadcasting not just going on in English, but we also, if we take the case of the Middle East, have broadcasting going on in Arabic. The Arabic service is a tremendous set of eyes and ears, if you like, not just for listeners in the Middle East itself who understand Arabic, but obviously the rest of our listeners too because all of that material feeds back into the general news operation. In somewhere like Iraq, for instance, it is very, very important to have those people on the ground and it is far easier actually to operate through an Arabic speaker and from Iraq inside places like Baghdad than if you are a British person going out there at the moment to work, so those are some of the advantages of that relationship.

Q1408 Chairman: We are talking about radio?

Mr Chapman: Yes.

Q1409 Chairman: One assumes, one knows, that television viewing is becoming, I assume, a much more predominant way of reaching people. Does this worry you that you are being in a sense, and 150

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million does not sound as if you are being confined totally, but that actually in the world market you are being confined, are you not?

Mr Chapman: Absolutely in some markets not being on television in vernacular languages, languages other than English, is a disadvantage. The Middle East is the best example and the Middle East has changed fundamentally in the past five years in terms of media provision. Cable and satellite television is widespread, television is the medium of choice for people who want to understand news and who want to get it in Arabic, which is why we proposed to the Government at the last Spending Round that we should have an Arabic television service from the BBC and we continue to have those conversations with them about how we can make that happen.

Q1410 Chairman: What are the Government saying?

Mr Chapman: Well, the Government are saying that times are tight, finances are tight. They did not feel able to give any funding during the last Spending Round, but we are looking at the overall budget for the World Service and seeing how far we can help ourselves on this journey, if you like.

Q1411 Chairman: What sort of sums are we talking about?

Mr Chapman: We are talking about, for a 24-hour service in Arabic, about £25–26 million a year and we believe we could fund a substantial proportion of that, but it would be very hard for us to find all of it, so that is why we are presently in discussion with the Government about it. I think there is a consensus emerging that this is a necessity if the BBC in Britain is going to have impact in the Middle East in terms of its broadcasting. Being a radio and new media player alone will not do the job in the years ahead.

Q1412 Lord Holme of Cheltenham: Speaking as an unqualified admirer of the World Service, I think the job you do for brand Britain is an extraordinarily good job which is well esteemed all over the world and in a world which is much in need of objective news and I think the way you provide it does great credit to this country. I suppose it is part of what is called now in foreign policy circles “public diplomacy” and this is the reason that you are financed by Foreign Office grant-in-aid. However, there seems to be a tension here, which I would like to understand, between a global news-gathering operation and the Chinese walls which presumably surround the World Service. Logically, if BBC World needs news in Afghanistan and you have news in Afghanistan, you would think there would be, from the point of view of the news-gathering operation, a great case for your using the same people, the same technology and the same opportunities. I would really be grateful if you could explain how the

Chinese walls operate between the funding of the World Service for specific aims and the synergy needs of a news-gathering organisation as a whole.

Mr Sambrook: Yes, perhaps I could explain it; it is a little complicated. The World Service grant-in-aid fully funds all of the news-gathering and programming requirements in the vernacular languages and it also purchases from the BBC News Production Base the English language programme production and news-gathering. Equally, BBC World purchases, through internal contracts, the television English language news production and news-gathering it requires from that BBC News Production Base. There are fair trading protocols in place to regulate the internal contractual relationships between all of those partners which are regularly audited, but we do have a very widespread news-gathering infrastructure which is primarily managed by BBC News and which is supported by licence fee and by grant-in-aid through its internal contracts and to some extent through the commercial revenues and payments to BBC World by the internal contracts as well.

Q1413 Lord Holme of Cheltenham: Do you find you often have difficult problems of resolution in the course of operating it?

Mr Sambrook: I think the only difficulties are ones of supply and demand. As you have been hearing, the BBC is a very large news broadcaster. We have multiple services and often in the cases of peak times of day or indeed peak demand when there is a major breaking story, you may have one or two people in place to try to serve multiple outlets across radio and television, but that is simply an editorial and management issue and we are now fairly well practised at it. In terms of the financial arrangements, as I say, there are clear internal contracts in place which are regularly audited and I think although there is some complexity with three different funding streams, they are now fairly well established.

Q1414 Chairman: Would you like to explain how BBC World works?

Ms Barnard: Yes. Similarly to the English-language side of World Service, we actually effectively buy our news from the BBC News Production Base and from the news-gathering base, so we have an annual contract which is set up at the beginning of every year and, as Richard has mentioned, is audited both by fair trading auditors and also by financial auditors on a regular basis. That sets the parameters around which we work, so the day-to-day decisions are not difficult to make and, as Richard says, the problem arises effectively from over-demand, if you like, for a limited resource rather than because of a complication over a funding stream on a day-to-day basis.

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Q1415 Chairman: But you are not a free service? You are not being provided in the same way as the World Service?

Ms Barnard: Well, neither of us is free. The World Service is using its grant-in-aid to pay for that service and we are using our commercial revenues to pay for the service as well.

Mr Sambrook: There is a cost allocation in each case.

Q1416 Chairman: Yes, you are right to have corrected me, but you are getting your revenue from advertising basically?

Ms Barnard: We are getting our revenue from two main sources, from advertising and also from sales of the channel distribution.

Q1417 Chairman: And is it a profitable organisation?

Ms Barnard: No, it is not.

Q1418 Chairman: How much are you losing?

Ms Barnard: At the last published results, we were losing £16 million.

Q1419 Bishop of Manchester: On that £16 million figure, has that been a consistent figure over the last few years, is it decreasing or declining?

Ms Barnard: Generally speaking, it is declining, but the results are improving. Over the last couple of years we have had some specific problems because most of our revenue comes in US dollars and the fall in the value of the dollar has been so substantial that it has not declined as much as we would have found.

Q1420 Lord Peston: I listen obviously to your news broadcasts when I am abroad and I cannot understand why, when I switch on your news, which I do dutifully every half an hour, I never get any British news. If I were an ex-pat, particularly if I were an ex-pat without a computer, I would have the same experience. I am totally bewildered why I am told about what is going on in some totally uninteresting part of the world, as far as I am concerned, and often the story does not sound like news anyway and I cannot get any basic British news at all. Now, there is some time in the day when I think if I searched, and I am not eating at that time or drinking, I might find it. At least once you actually ended the football results before the end in order to go on to the next scheduled programme and so on and you nearly lost me for ever on that!

Mr Sambrook: I am very sorry to hear that and I cannot quite explain why we should not have finished the football results. However, let me start off by explaining that the World Service, and indeed the same thing applies to BBC World, was established as a service for an international audience. It is not designed to be a service for an ex-pat listenership or a

British listenership abroad, but it is designed to serve international audiences around the world and to have an international agenda. Having said that, of course it is a BBC service, so we do reflect British news, but events and issues in Britain take their place in an international agenda. We do have certain programmes which reflect life in Britain, but in the general mix of the news agenda, there are editorial judgments where we weigh up placing British events as against events anywhere else in the world. The editorial framework is one of reporting international affairs for an international audience rather than broadcasting specifically for British audiences.

Q1421 Lord Peston: But you do not broadcast international affairs. You broadcast specific country affairs internationally. Very rarely do you actually get what one might call an international story on BBC. An example of an international story would be the current stuff on global warming. That would be news if we hear something about that because it affects the whole world, but mostly you have specific country news which is not the same as international news at all.

Mr Sambrook: I would say we have a mix of both. We do cover international stories and we have done quite a lot specifically on global warming. I am sorry if you have not managed to catch that.

Lord Peston: I have not been abroad in the last few weeks so I have not heard one.

Q1422 Lord King of Bridgwater: This is a question about the funding of the World Service and the Foreign Office. What interests me is how you manage to free yourself from political interference. The Prime Minister is writing to the chairman and director general of the BBC to complain about the bias of the BBC in their news reporting, even though there should be a much more tenuous relationship if the BBC are going to be more independent. Was the World Service reporting a different version of events or a different slant on events? How is the BBC World Service free of the pressure that was put nationally by the Prime Minister on the news reading of the BBC?

Mr Sambrook: Having been overseeing BBC international news services for almost a year, there is a significant difference to my mind in the type and style of journalism to some extent because international journalism tends to be more reflective. It tends to be less politicised in the sense that domestic journalism responds to domestic political issues, often on quite a short term basis. Equally, British journalism, the UK news services, are broadcasting to the UK electorate and therefore there is greater political sensitivity around what we are broadcasting. There is less political interest and less political sensitivity around our international broadcasts.

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Mr Chapman: That is right. Enshrined in the broadcasting agreement that we have with the FCO on repeated occasions is the acceptance by both sides that there is editorial independence for the World Service. This is in black and white. The long history of relationships means that, whilst there is discussion with the Foreign Office about strategic objectives, about the geographical spread of services, there are no go areas and one of the no go areas is, frankly, interference in the editorial output, the construction of programmes and the running orders and the interviewees chosen. This is just not a conversation I would have with the FCO as part of our agreement.

Q1423 Lord King of Bridgwater: That is the theory, notwithstanding the Foreign Office's duty to promote the interests of the United Kingdom and notwithstanding that they have a regular review of what has been described as your plans and performance. Did you receive any representations at all in any of those reviews about your presentation of any of these matters?

Mr Chapman: No.

Q1424 Lord King of Bridgwater: Not at all?

Mr Chapman: Not at all. In relation to Hutton and all those issues, not at all and in relation to general news coverage not at all.

Q1425 Lord King of Bridgwater: I am talking about the letter the Prime Minister wrote complaining about the general bias in the BBC.

Mr Chapman: There were no representations on that matter.

Q1426 Baroness Howe of Idlicote: If one is looking at the FCO broadcasting agreement, it really does look like a very compact agreement for delivering public service broadcasting of pretty high quality with the complete editorial independence that you have indicated. I would have thought also it is hardly ever questioned, highly respected around the world and so on. You have indicated that political pressure is not and has not been brought to bear in your answer to Lord King. To what extent can government influence editorial objectives by setting general organisational objectives for the BBC World Service, because that is part of their input into what you do?

Mr Chapman: We have to distinguish between the editorial day to day management of programmes and output, and the setting of strategic objectives. There is a clear distinction here. There is discussion with the FCO about what I call strategic priorities as seems befitting given that it is taxpayers' money that is paying for the World Service. We have regular meetings with them about the geographical spread of our activities, the relevance of certain language services: should we have them? Should they be

extended etc., and the sort of audiences which may use the World Service on who we should be targeting in terms of performance. We keep the things in a separate box, to be honest, and that is the way we work together.

Q1427 Baroness Howe of Idlicote: Just thinking about the funding referred to earlier on and the shortness in the supply, is that not one way in which a certain amount of influence can be exercised?

Mr Sambrook: The Foreign Office is quite properly keen to ensure that there is efficient and effective use of grant in aid but there is no editorial influence at all. We are informed at quite a high level by the FCO's objectives but not directed by them.

Q1428 Chairman: It is not just the FCO, is it? I am sure what you say about the FCO is right but, when it comes down to it, it is the Treasury who has great influence in these events and I remember from my days in government—I am sure it still goes on—there were big battles on even fairly small budgets of this kind. Are you never conscious of this? It seems to me extraordinary that this should take place without you ever being conscious of it.

Mr Sambrook: We are conscious of the financial climate and we do have discussions about that. We are quite clear that we need to argue our case in each spending round, just as many other institutions and constituencies do. Therefore, it is about the strength of the case that we make and where that sits in the government's overall priorities. We are quite clear that that is the framework within which we have to operate. I cannot say that we have ever felt that that has imposed an improper editorial burden on us.

Q1429 Baroness Bonham-Carter of Yarnbury: Lady Howe was asking about the influence of the Foreign Office over geographical stretch. There is certainly controversy at the moment about the closing down of certain embassies and consulates across the world. Are you never put in a position where you are required to boost or expand or cut back on services that you would rather not as a result of pressure from the Foreign Office?

Mr Chapman: I was with you until the "rather not". We are in regular discussion with the Foreign Office about the overall priorities. There is a limited pot of money here and as the world changes the competitive challenges change. It is quite right to move money around within the budget on a geographical basis or on a targeting a particular audience basis. In the last four or five years there has been great emphasis on spending money in the Islamic world, in the Middle East, as well as providing new services, new media and better distribution. I do not think we can treat the whole world as equal. There have to be some priorities set and I am happy with that. I am not in a

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position where I feel they are asking me to do things which are neither logical or right against the background of finite resources. In a world of infinite resources, it would be a different story. Everything could carry on and we could do lots of new things. The reality in life is that you have to make choices. It is better in the end for the World Service as a philosophy to have high impact in fewer cases than spread the jam very thinly across lots and lots of different markets, have relatively low impact and be unable to compete properly. That is the strategic dilemma, if you like, that lies at the heart of the World Service now. Where does it want to target resources? Where does it really matter and where is there less audience need? Are they going to use it as much? They have their own provision in their own country or in their own region and those factors have to be borne in mind when you come to make those priority decisions.

Q1430 Baroness Bonham-Carter of Yarnbury: You are happy that the system works and you work well together?

Mr Chapman: Yes. Frankly, if they were saying to me that I ought to do things that I felt very strongly about, I would be resisting them.

Q1431 Baroness O'Neill of Bengarve: As a nocturnal listener of things that are meant for others, I am a great admirer. It strikes me as, if I may say so, very much better news than the news that I hear from other broadcasters throughout the day, including BBC broadcasters. Is there a culture of a higher commitment to accuracy and sobriety in presenting the news than there is in other parts of the BBC? Is this the reason why you are not getting complaints from the Foreign Office if you are doing such a good job?

Mr Chapman: I would not like to cast aspersions on my colleagues in the domestic services. I do think there is sobriety, yes. There is a cultural tradition, going back 70 years, of very meticulous fact checking, multiple sourcing of stories and there is a tradition of reflecting a diversity of view. This is an international service and it is very important, if we are broadcasting in English or any language, that listeners feel the various points of view around a complex subject are properly reflected in the output. In the Middle East, it is very important in that context that you hear from Arab leaders, Israelis and everybody else, often in the same programme, and that you give people the opportunity to have their point of view. The World Service does not have a point of view. It is there to report the news accurately, fairly and impartially and to reflect the various points of view that appertain to it. That is in its bloodstream. It is a very big part of its culture and there is a lot of meticulous care taken so that

that legacy and heritage are protected, despite competitive pressure, despite the desire to get news out fast. It is better to be right and second than first and wrong. That is absolutely the tenet of what we do.

Q1432 Lord Maxton: Can I aim this question at BBC World? It seems to me that you are a commercial operation but you are aiming to be a television version of the World Service rather than perhaps seeing that the licence fee payer picks up 16 million loss ever year, presumably. There are two things about it. One is that there is a very large ex-pat audience and there is also a very big travelling audience, British travellers on holiday, on business or whatever it is around the world, particularly in Europe. What they are looking for is what they get in nearly every hotel they go to, which is British news but unfortunately in most hotels or apartments, whatever it might be, they get Sky and they do not get the BBC. Does Sky undercut you or is it the fact that you are not providing a British news service and are providing a world service that is offputting to hotels who are very largely catering for a British clientele?

Mr Sambrook: BBC World is attempting to do a television version of the World Service with the same kind of editorial approach and values. In other words, it is trying to provide a service of international views to an international audience and not British news for a British audience abroad. Sky News is focused on a British audience and it is primarily a British news channel. To answer your point about the losses, the losses are met by the commercial revenue of the BBC's other commercial operations—in other words, the profits from BBC Worldwide and the BBC's other commercial operations. The BBC takes a decision every year whether or not to use this to meet the shortfall of BBC World's greater costs. It is not directly from the licence fee. In terms of our hotel distribution, overall our global distribution is very strong. We are in 270 million homes all over the world and we are in a significant number of hotel rooms. It will not always be the same hotel rooms as Sky News or indeed CNN.

Ms Barnard: It is over a million hotel rooms. I do not know the number offhand for Europe specifically. I think that Europe is a little different in that Sky News is extending its remit out into Europe.

Q1433 Lord Maxton: Do you try to compete with them?

Ms Barnard: Yes. The big difference between ourselves and Sky in this instance is that Sky is a British news channel that has extended out to Europe. Therefore, its major market is in the UK. Its major advertisers are looking for a UK audience. For BBC World we do not have a presence in the UK. We have no domestic market and therefore the

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advertising that we are taking on BBC World will generally be different to the advertising that is taken on Sky because it is not looking for a UK domestic audience.

Q1434 Chairman: If you had a World Service television programme like your proposed Arabic service, is there a danger of one falling over the other?
Mr Sambrook: We do not believe so because they are targeted at very different audiences. The English speaking audience in the Middle East, for example, is fairly specialised across Middle Eastern countries. An Arabic language television service would be aimed much more at the general population so I do not think that one would cannibalise the other's audience.

Q1435 Lord Maxton: You did mention the link between yourselves and the BBC website. Is BBC World associated in any way with it and do you contribute any funding to the BBC World website?
Mr Sambrook: BBC World has a commercial website which is purely about supporting information about the channel, the schedule and so on. In terms of the BBC News website, grant in aid pays for some original international content, for a reversioning of the international front page, the world page, and for international distribution in terms of certain costs. To the extent that an international audience of users accesses the BBC website, the cost of that distribution and access is covered by grant in aid.

Q1436 Baroness Gibson of Market Rasen: This is a question on your relationship with the FCO. You use the word "we" when you are talking to them. At what level of seniority is that and how often do you meet?
Mr Chapman: As part of the agreement we have with the FCO, we have quarterly meetings with them at a pretty senior level. That would be at director or board level, with the Director of Strategy Information. Ann Pringle is the present incumbent. She would chair a meeting where I and colleagues would talk about business issues, investment issues and performance on a quarterly basis. Once a year, usually around this time, we have what we call the annual ministerial meeting where the chairman, the BBC international governor, myself and Richard would go from the BBC to talk to the minister with responsibility for the World Service, PUS and other senior officials.

Q1437 Lord King of Bridgwater: Who is the minister?
Mr Chapman: Lord Triesman. At that meeting I would report on our performance against the objectives that had been set and then we would look forward to the next year about major issues such as investment issues, changes in the market etc.

Q1438 Baroness Gibson of Market Rasen: If there was anything that either side decided was a crisis, would you have extra meetings?
Mr Chapman: Yes.

Q1439 Lord Maxton: You also produce other languages on the website, particularly Arabic.
Mr Chapman: Yes.
Mr Sambrook: All the vernacular service websites and language service websites are paid for by grant in aid.

Q1440 Lord Maxton: To what extent is that helping to subsidise the website as a whole?
Mr Sambrook: I am not sure that "subsidy" is the right word but we cover the cost of international distribution of the website for international users.
Mr Chapman: We also add extra content for international users which the licensing fee side of the BBC would not want created. We need often greater depth on certain parts of the world for international consumption than perhaps they would want on the domestic side. It seems right that we would therefore contribute something to enable that to happen.

Q1441 Lord Maxton: As that develops, can you see a time in the relatively short term where you are producing news about Iraq, say, for the World Service but whoever is watching it on the web would then be able to access into archive material as well and past broadcasts so that they can build up a much bigger picture for themselves rather than specifically a news item?
Mr Sambrook: Very much so.

Q1442 Bishop of Manchester: Much of our conversation this morning has indicated the slight separateness that the three of you have from some of the other areas that we have been exploring in previous meetings about the BBC Charter review. I wonder if there are any comments that you would like to make in terms of the proposals which have been put forward in the Green Paper, proposals which either worry you or proposals about which you are very pleased. It would be interesting, from your slightly apart perspective, to have your views on these areas.
Mr Sambrook: To be fair, I am not sure that my overall views would differ very much from my other colleagues, the executive directors of the BBC and the BBC's response to the Green Paper reflects the fairly collective view amongst the senior management of the BBC. In relation to the World Service and the international services in particular, as we said in our response to the Green Paper, we welcome the suggestion in the Green Paper that we review a

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number of our services to respond to a very rapidly changing environment in terms of audience behaviour, consumption, technology and increasing competition. We believe that the time is right to make some hard choices and have clear prioritisation about the best and most effective use of our resources. The Green Paper indicates a willingness on the part of the government as well to enter into that process with us, which we welcome.

Q1443 Chairman: Do you regard the Arabic service and television service as a pilot project to see if it works?

Mr Chapman: I do not think we would want to launch an Arabic television service and stop it. We would be setting off to make it a permanent part of our activities.

Q1444 Chairman: The point is you are doing it step by step; you are not trying to do it all in one go.

Mr Sambrook: We would not embark on it unless we had a lot of confidence that it would succeed but we would set success measures. We would have to review its performance and if we turned out to be wrong in that judgment, if it was not successful and it was not having any impact, we would not justify the continued use of resources on it.

Mr Chapman: We do have some pretty strong data from measurements we have done in the Middle East about the appetite for it. Despite the Middle East being a crowded market, there is quite a lot of television provision now available. Interestingly enough the BBC brand is based on the legacy of the tradition of broadcasting which is a very strong one. People are asking, "If television is the most important medium, why are you not in this? You could do a very good job and we would relish the fact that you could bring us impartial news and information which we could trust in what is a very difficult, area in the world." I think there is great demand there.

Q1445 Chairman: Would you be able to provide us with that background information and those figures?

Mr Chapman: Yes.

Q1446 Chairman: You said a very interesting thing about the trust for the BBC World Service compared with other channels. Is that also something you could let us have?

Mr Chapman: Yes, we would be delighted to.

Q1447 Chairman: Thank you very much. You have put matters very plainly and very clearly and we are very grateful. Perhaps we can continue to correspond on these issues.

Mr Chapman: We would be glad to.

Supplementary letter from BBC World Service/BBC World

We agreed three questions following from the evidence session with Richard Sambrook, Nigel Chapman and Anne Barnard and our answers are as follows.

1. ANNUAL COSTS OF WORLD SERVICE PROCURING NEWS FROM BBC NEWS DIVISION

BBC World Service operates at arms length from all non-grant-in-aid funded parts of the BBC and adheres to a strict Fair Trading regime whereby the different financial streams are kept separate. This includes domestic licence-fee funded BBC operations and commercially funded services, such as BBC World.

The Fair Trading systems and agreements are scrutinised by independent auditors. In respect of Trading Protocols—KPMG are the auditors; and in respect of Fair Trading procedures—Price Waterhouse Coopers are the auditors. The BBC Governors Audit Committee also has oversight.

BBC World Service directly funds all news services in the 42 vernacular language services, excluding English, through grant-in-aid.

BBC World Service commissions BBC News to provide news gathering and news programmes in English for broadcasting on World Service Radio, and the international facing version of the BBC News internet site.

The World Service spend with News splits into three:

1. The Bush House-based news and current affairs unit, including the Bush House newsroom. Here the World Service makes its own programmes and they are fully funded by grant-in-aid. The total cost of this portion is approximately £22 million per annum (this includes extra coverage/specials which are commissioned throughout the year).
2. Newsgathering. The World Service's share of total BBC newsgathering costs. The cost of this portion is approximately £9 million per annum.

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3. Programmes. Output such as Business Programmes is exclusive to World Service and is fully costed to us, amounting to approximately £2 million per annum. In addition there are a number of other programmes that are charged out, eg political and economic programmes, Talking Point, etc. These total approximately £1 million per annum between them.

As part of the agreement with BBC News, the World Service pays appropriate proportional costs for content creation on the international facing BBC News site.

In addition BBC World Service pays appropriate distribution costs for the international facing version of the BBC News online site.

2. BBC POLLING DATA ON TRUSTWORTHINESS AND OBJECTIVITY OF BBC WORLD SERVICE

In virtually every market surveyed, the BBC World Service remains more trusted than its leading international radio competitor.

The detailed tables overleaf show that BBC trust ratings have risen sharply over the past year virtually everywhere. In markets such as Egypt and Bangladesh 2003–04 saw a significant decline in trust mainly due to the impact of the Iraq war, in 2004–05 this has been reversed.

This pattern is repeated in ratings for objectivity, where virtually everywhere the World Service is seen as the most objective international radio broadcaster. The only exceptions are Russia, where Radio Liberty is ahead on trust, and Saudi Arabia, where Radio Monte Carlo leads on objectivity. In Egypt the most trusted international broadcaster is Al Jazeera (TV) (54 per cent); 3 points ahead of the BBC (radio and online), although it is 10 points ahead for objectivity (48 per cent against BBC 38 per cent).

Rating for cosmopolitans—influential opinion formers—and generally higher than for the overall population.

RATINGS FOR TRUST, PER CENT BY BROADCASTER, BBC VS COMPETITORS

Country	<i>BBC World Service</i>							
	<i>Overall</i>		<i>Overall</i>		<i>Cosmopolitans</i>		<i>Cosmopolitans</i>	
	<i>BBC</i>	<i>Competitor</i>	<i>BBC</i>	<i>Competitor</i>	<i>BBC</i>	<i>Competitor</i>	<i>BBC</i>	<i>Competitor</i>
	<i>Current</i>	<i>Change(+)</i>	<i>Name</i>	<i>Current</i>	<i>Change(+)</i>	<i>Current</i>	<i>Name</i>	<i>Current</i>
Egypt	51	31	SAWA	25	n/a	51	SAWA	17
Kenya	60	9	DW	27	4	66	DW	30
Tanzania	71	15	DW	35	n/a	79	DW	44
United States	n/a	n/a	NPR	n/a	n/a	34	NPR	41*
Bangladesh	84	24	VOA	56	31	89	VOA	73
China	23	9	VOA	16	3	n/a	VOA	n/a
India	86	28	VOA	24	15	n/a	VOA	n/a
Indonesia	65	16	VOA	42	–3	50	VOA	n/a
Pakistan	64	17	VOA	27	11	70	VOA	n/a
Poland	59	35	DW	n/a	n/a	n/a	DW	n/a
Romania	50	14	RFE	27	5	64	RFE	33
Russia	23	9	RL	27	15	29	RL	37

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RATINGS FOR OBJECTIVITY, PER CENT BY BROADCASTER, BBC VS COMPETITORS

Country	BBC World Service								
	Overall			Competitor			Cosmopolitans		
	BBC Current	BBC Change(+)	Name	Competitor Current	Competitor Change(+)	Name	BBC Current	Competitor Name	Competitor Current
Egypt	38	21	SAWA	28	n/a	SAWA	46	SAWA	21
Kenya	47	-3	DW	21	2	DW	49	DW	23
Tanzania	57	8	DW	30	n/a	DW	58	DW	39
United States	n/a	n/a	NPR	n/a	n/a	NPR	30	NPR	35*
Bangladesh	76	27	VOA	40	18	VOA	86	VOA	65
China	20	10	VOA	17	4	VOA	n/a	VOA	n/a
India	82	26	VOA	23	14	VOA	n/a	VOA	n/a
Indonesia	50	21	VOA	11	-12	VOA	27	VOA	n/a
Pakistan	46	16	VOA	15	3	VOA	44	VOA	n/a
Poland	58	27	DW	n/a	n/a	DW	n/a	DW	n/a
Romania	38	9	RFE	22	6	RFE	49	RFE	30
Russia	17	3	RL	15	5	RL	18	RL	14

Source: BBC WS research. Per cent rating is the proportion of those surveyed who cite the broadcaster as one they trust/see as objective. +/- ratings indicate change from previous year, where available. **Bold**—leading score in that category. *Domestic services. No data for Nigeria available

3. INFORMATION ON BBC'S PLANS FOR AN ARABIC NEWS SERVICE AND DETAILS OF NEGOTIATIONS WITH THE GOVERNMENT ON THIS ISSUE

Research commissioned by BBC World Service has reinforced the evidence of demand for the channel, and favourable audience perception of its potential value.

The BBC's current performance and its brand values

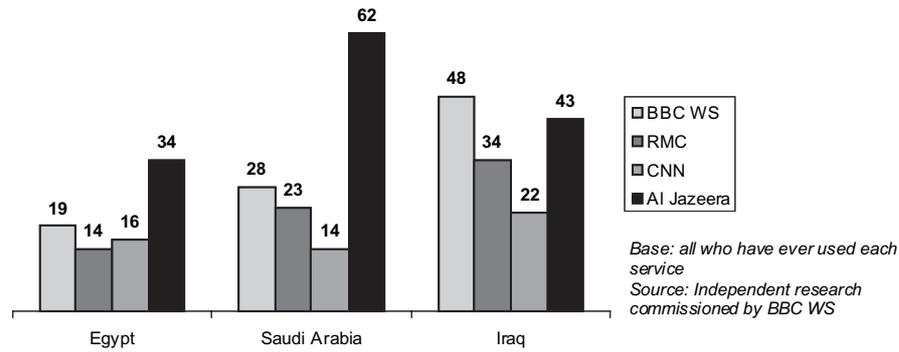
- The BBC Arabic radio and new media services are well-respected and trusted by audiences. Unlike the Americans, who jettisoned their VOA brand, the BBC has scores for trust and objectivity which have been built up over decades.
- The BBC Arabic radio service has over 12 million listeners in the Middle East and a further approx 1 million online users in the region. Of the radio audience, 50 per cent are in the relatively under developed markets of Sudan and Iraq. Our penetration in more developed Arabic markets is low—exactly where demand for a BBC Arabic TV service is highest.
- The BBC World television service in English has a small niche audience (2.5 per cent reach across the region equates to 3.8 million weekly viewers). Many of the viewers are ex-pats or richer Asian diaspora, not the Arabic speakers, who would not be the prime target of BBC Arabic services.
- BBC World's potential growth in reach is limited. Less than 10 per cent of the population say they speak English well enough to consume fast-moving news media in that language: 90 per cent feel excluded. Only in Saudi Arabia does English fluency reach 20 per cent.
- Listeners and potential viewers recognise the unique value of the BBC. It is the most trusted international broadcaster in the region, and seen as the most balanced and objective broadcaster by independent commentators.

Trust ratings

In-depth surveys in 2003 in three key markets—Egypt, Saudi Arabia, and Iraq—confirmed the BBC's position as the most trusted international broadcaster, ahead of CNN and our chief radio competitor, Radio Monte Carlo. However, Al Jazeera is still seen as more trusted in Saudi Arabia and Egypt, reflecting its closeness to audiences and its distinct Arab positioning. Interestingly, the BBC is seen as the most trusted news broadcaster in Iraq overall—a rare feat for a foreign media organisation in any market.

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Percentage of respondents saying they trust each source, late 2003



Qualitative research—audience focus groups December 2003

In extensive focus group research carried out during late 2003, Arabic audiences were asked their opinions of leading news providers. The BBC emerged as the most balanced and objective broadcaster.

Perceptions of audience focus groups, December 2003

Broadcaster	Perceptions
BBC Arabic	<ul style="list-style-type: none"> — Generally seen as an independent organisation, largely free of any political or economic ties and interference — Seen as fair and balanced in most cases — The value of “Britishness” defines the brand and enhances its status — Regarded as “educated”—which is fundamental to delivering insightful news
BBC World	<ul style="list-style-type: none"> — Praised along the same lines, however it was found to have limited appeal as it only broadcasts in English
CNN	<ul style="list-style-type: none"> — The majority view was that CNN is a mouthpiece of the US government — By default CNN is seen as a supporter of Israel and the Israeli “cause” — CNN is criticised for being manipulative of the truth and disrespectful — However, CNN is also admired for its breaking news, its detailed news coverage, and its dynamic and appealing style
Al Jazeera	<ul style="list-style-type: none"> — Perceived as “championing the Arab cause” — Admired for challenging debates — However, seen as having a very limited perspective, no global network and no sound international commentary — Its “sensationalised style” brings into question its ability to deliver truthful and apolitical reporting; it has a tendency to exaggerate — Its funding by the Qatari government means it is perceived by some as having a distinct political bias

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Examination of Witnesses

Witnesses: MR ANTHONY SALZ, BBC Governor and Chair of the Fair Trading Committee, MR JOHN SMITH, CEO, BBC Worldwide, and MR NICHOLAS ELDRED, General Counsel, examined.

Chairman: Good morning and thank you very much indeed for coming. May I start with an apology on my own behalf and I think probably on Lord King’s behalf as well? Two new peers are being introduced into the House of Lords this afternoon. Both Lord King and I are involved in their introductions so we will slip away at some stage and I am going to hand over the chairmanship to Lady Howe.

In the absence of the Chairman, Baroness Howe of Idlicote was called to the Chair

Q1448 Baroness Howe of Idlicote: Welcome to you all and thank you very much for coming. We have details here of your individual roles. Is there anything you particularly want to say to start off with?

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Mr Salz: If I may. I am a relatively new governor. It is rather less than a year. That is not my main job. My main job is as a lawyer and senior partner in Freshfields Bruckhaus Deringer. I do have two full time people on either side. John Smith is CEO, BBC Worldwide, and Nicholas Eldred is the BBC general counsel. I would like, if I may, to say a few things by way of introduction about how the governors handle market impact issues, because it can be a fairly confusing subject. I wanted to see if I could simplify it to some extent. In doing so, I would like to start off with what we as governors see as the BBC's prime responsibility which is as a public service broadcaster. We get nearly three billion in licence fees and for that we have to deliver outstanding programmes and services and we have to do it in a way which confers value for money on the licence fee payer. With that sort of scale, we could have a market impact but we do operate in a market which is pretty competitive and which has some other big and determined players. At the moment, we operate in an environment which is quite challenging with the changes in technology. Aside from the public service aspect of our business, we have the commercial businesses which John runs and in relation to which John has recently conducted a review which we as governors have been quite involved in. The broad objective in these commercial businesses is to deliver for the benefit of the licence fee payers the full value of their investment in BBC content. It is a bit of a simplification but that is broadly what they are about. We are challenged to do that by successive governments as part of the licence fee settlement. In light of John's review, we have cut back on commercial activities. And we also have this discussion in the context of the Green Paper which sets out criteria for assessing what we should do in this area. In both these two different areas we as governors perform a role in trying to ensure that our market impact is proportionate and fair. It is indeed an important issue for us. If we look first at the public services and we take these in the context of the proposal we have put out in *Building Public Value*, we have first a proposal that we have service licences. We are in the process of trying to determine what should be in those service licences. They will last for a five year period. They will be published. They will set out the remit of the various public services. In relation to new services or material amendments to existing services, we plan to apply a public value test. There has been quite a lot of comment about that and we will see it as our duty to balance our duties to deliver excellent programmes to the licence fee payer against the market impact. We have also said that we will have rolling reviews of existing services, thorough reviews from time to time, so that over a period of time we will look at all of the existing services. We believe that this package of proposals in *Building*

Public Value is an appropriate response to some concerns amongst our competitors and will give much greater clarity about what the BBC is intending to do, more predictability and transparency. In relation to market impact of our commercial services, what I call John's bit, we have the structure of a fair trading commitment and, for implementation within the BBC to ensure compliance, the fair trading guidelines. Those are basically about avoiding cross-subsidies from the public funds to the commercial activities and also compliance with competition law. We are subject to competition law so if there is a complaint about the way we are behaving that complaint may be made to the OFT, Ofcom or Europe. There are quite a lot of areas in which we can be brought to task.

Q1449 Baroness Howe of Idlicote: Thank you for that overview. Do you think the Green Paper will ensure that the boundaries between the commercial and the public services activities are going to be clearly defined? I accept what you say about changes that can happen. Some selling off has gone on and you are cutting down on some commercial activities but is this going to satisfy your competitors that there is a clear boundary?

Mr Salz: Taking the last point, to satisfy our competitors is probably impossible in one sense. They are good, effective competitors and this is one of the ways they can get at the BBC, by making a noise about what the BBC is doing. The governors will take the market impact very seriously but in separate ways. The distinction between the public service, the duty to the licence fee payer which is such a core responsibility for the trustees that has to be dealt with in that rather distinctive way, and the commercial activities, will be governed in a different way.

Mr Smith: If you accept the proposals in the Green Paper for assessing whether or not it is okay for the BBC to run a commercial service, those proposals are really sensible. Provided we fulfil the four criteria we will not find the BBC running commercial activities that seem to be completely inappropriate. In addition, provided the proposed systems for fair trading compliance between the commercial services and the public service work properly so that there can be no sense that in some way the commercial businesses are getting an unfair advantage or some unfair subsidy coming from the licence fee, hopefully everything will work.

Q1450 Baroness Howe of Idlicote: Could you remind us of the four criteria?

Mr Smith: In our submission to the DCMS for the Green Paper we said we thought it would be a good idea to have a clear rationale for where the BBC should engage in commercial activities. In a nutshell,

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the purpose of the commercial businesses is to exploit assets which are being paid for by the licence fee payer anyway, programmes made for the licence fee payer and transmitted back to the licence fee payer, and to exploit those assets in secondary markets in the UK and overseas in order to generate extra profits which can then go back into the BBC to supplement the licence fee. That produces more programmes. There are other reasons. Commercial exploitation can extend audiences' appreciation of any particular topic. That is true, for example, in the case of magazines. If people have a particular interest in history, they will buy *BBC History Magazine* to extend their enjoyment. Thirdly, they help to raise awareness around the world of the UK's general, cultural values. They build international audiences for UK content. They provide a shop window for UK talent and they raise awareness generally around the world of what the BBC's brand stands for. We have already arrived at the situation where the BBC's position in the world as a global media player is something quite impressive. The proposals and criteria in the Green Paper for assessing whether or not the scope of these services is okay are fourfold. One is that all commercial services must fit with the BBC's basic public service purposes. It is very important that we do not start getting into fish farming or industrial machinery or things which are patently nothing whatsoever to do with programme making for the BBC. The second criterion is about commercial efficiency. The BBC should only do it commercially if it offers the best value alternative to the licence fee payer. If other people could exploit the BBC assets more effectively, we should let other people do it. The third criterion is about brand protection. Do not do anything commercially which in any way might undermine the brand values that the BBC public service has built up. Finally and fourthly, market distortion, ensuring that the BBC's commercial services are not being structured in any way that might give them an unfair advantage.

Q1451 *Baroness Howe of Idlicote:* Would it be fair to say that all the BBC's commercial activities do relate, certainly from what you have said, to their public service remit?

Mr Smith: That is absolutely the intention. We carried out the review that Anthony has described last year. There were some things which the BBC did commercially which, to be honest, did not spring naturally out of the BBC's public service programmes. Let me give you an example: a magazine known as *Eve Magazine*, a women's glossy, did not really reflect any of the BBC's programming output so we took a decision to fit with these criteria that it was not really appropriate and we sold the magazine to Haymarket. There are some other magazines, *Cross Stitch Magazine* and so on, which

do not fit with these criteria so they are being disposed of.

Q1452 *Lord Maxton:* I do not know where you draw lines. I am more interested in the BBC as a public broadcaster owned by the licence fee payer who is entitled to get a return, rather than a vague idea of a public service broadcaster which is a slightly different thing. It seems to me that oddly enough it is not your activities that most of the commercial companies complain about. It is the free services that the BBC has which they complain about: the website which is provided free, which is innovative and has all sorts of things on it which they do not provide. In a sense, they are not so worried about you so why do you get so sensitive about it?

Mr Smith: I certainly take that in the spirit in which it is meant. Obviously commercial competitors worry as well, particularly about the activities in the UK, but I take the point you make about the activities of a public service being something which impact a market. That is the most important thing. £3 billion of public money is being spent in the UK market place providing services of television, radio and online. That is going to have an effect on the market place and people who are otherwise in the market place will complain about it. That is why the proposal for a public value test which assesses that the public interest in the BBC producing public services outweighs the downside of the impact on competition is very important.

Q1453 *Lord Maxton:* Is that not a very narrow view? Ultimately, your major role is not going to be national as a BBC commercial operation; it is going to be international. There are some of us who would argue that the future of the BBC lies in selling its high quality television to the rest of the world. If you at this point start putting too much restriction on the commercial activities of the BBC, you are in danger of putting that whole future operation at some risk.

Mr Smith: There is no doubt that future growth opportunities commercially are international. At the moment, about 40 per cent of total turnover of BBC Worldwide comes from outside the UK. It is important to remember that inside the UK there are several television channels under the banner of UKTV so there is quite a bit going on here. Then there are 33 magazines. It is the third biggest magazine publisher in Britain and there are books and videos and so on. There is plenty going on in the UK but you are quite right that a lot of the future growth comes from international expansion and the opportunities are very great.

Q1454 *Lord King of Bridgwater:* You made the point that as a trust you saw the role that you play as in public value. Can you confirm that that is what you

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do as a governor at the present time as part of your responsibilities?

Mr Salz: The public value test reflects quite a lot more work on how we achieve some apparent objectivity and reviewable objectivity in the way we go about measuring the balance.

Q1455 Lord King of Bridgwater: That is part of your duty?

Mr Salz: Yes.

Q1456 Lord King of Bridgwater: How much time as a governor do you spend on the responsibility?

Mr Salz: Too much time because I have another job. I think my time is said to be two days a week.

Q1457 Baroness Howe of Idlicote: Does that mean that is what it is or what it is said to be?

Mr Salz: That is a rather personal observation because I recognise that in two respects the time and commitment might be rather greater now with the Charter review and my getting up to speed as a governor, being a relatively new one. I dread to think how much time it actually takes because I spend most of my weekends thinking about how to get through the BBC stuff, so it would be more probably, although my partners will not appreciate my saying that.

Q1458 Baroness Bonham-Carter of Yarnbury: It is not just your competitors that express concern about Worldwide. The Office of Fair Trading submitted that they think Worldwide is potentially distorting markets. Should the BBC Trust, if it comes into existence, have the power to review significant expansions of existing commercial services against the public value, rather than just merely new commercial services?

Mr Smith: The whole idea, as proposed in the Green Paper, is that all commercial services have to pass the four criteria that we were talking about before. Assuming everything does pass those criteria—and it would be essential that we are able to prove that they do—there would not be any commercial activity that did not spring from the BBC's basic public purpose. There would be no unfair advantage and there would be no activity which in any way might undermine the BBC's brand and we would have worked out that it was right for the BBC to own it rather than somebody else because it was in the interest of the licence fee payer to offer the best value. Provided those four criteria are tested, checked and everything that is going on commercially complies with them, it should be possible to be satisfied that the BBC is doing the right thing in its commercial activities.

Q1459 Baroness Bonham-Carter of Yarnbury: It would be retrospective?

Mr Smith: Yes. The review I carried out last year was about a retrospective look at these criteria against what was going on then and, as a result, massive changes are currently going on in commercial activity. To give you a couple of examples, two years ago there were six subsidiaries employing about 6,000 staff and turning over almost £1 billion which, taken together, produced a yield for the BBC of less than 3 per cent. Through all the reviews and changes brought about by this criterion, we are going to end up with two subsidiaries only employing about 2,000 staff with a turnover of about 750 million. The yield will be north of 7 per cent. Already we have published results which show that the profit performance has gone up by 50 per cent in the last year. All that has been done by selling off and/or closing down activities which either did not fit with this criterion or it just was not sensible for the BBC to do it.

Q1460 Baroness Bonham-Carter of Yarnbury: What is your response to the Office of Fair Trading submission of 7 June?

Mr Smith: There has been some misreporting of that, as I read it in the paper. I have not read the detail of the submission, but I have skim read it. They are submitting to the DCMS as they should and they are flagging up possible warnings if we do not do things properly. My reply to that would be provided we comply with these four criteria we will be doing things properly. Of course, everything that goes on in this area is subject to the full panoply of competition law anyway.

Q1461 Baroness Howe of Idlicote: As a matter of interest, how are costs allocated between the BBC commercial and public service activities? Are you confident that common costs are allocated in such a way that the BBC commercial subsidiaries are not unfairly advantaged by cross-subsidy?

Mr Smith: Yes, very firmly. There is a whole system of rules, procedures, checks and balances designed to make sure of that. The whole idea is that all the commercial businesses must pay a fair price for all the services they get from the BBC and vice versa. There is a whole system of ensuring that, for example, BBC Worldwide when acquiring programme rights to then sell them overseas, have to pay the market rate or more for the acquisition of those rights in the first place. The system ensures that those prices are tested periodically to make sure that they are paying the right price. Having bought them in a fair and open market, they are sold around the world. There is a system of auditing those fair trading rules. There is a system whereby external auditors in the form of PWC produce a report on whether or not they have been operated properly. That report is included in the BBC's own annual report which comes out next week. There is a fair trading compliance committee

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which Anthony chairs, which hears any complaints, transgressions or reports from PWC and they are all put right so I am pretty confident that I am able to say yes to that question.

Mr Salz: John is right. We have PWC as auditors who broadly sit with the fair trading compliance committee on every occasion to give us auditing advice and process advice to reassure us that the processes are being applied properly.

Mr Smith: People do make complaints and they do need investigating. They are investigated. In a system as big and complicated as this, there are going to be some things that go on which people will find fault with.

Mr Eldred: The fair trading auditors, PWC, are responsible to and report to the board of governors. They have nothing to do with the management so they provide an objective assessment of fair trading issues to the board and one assumes that is put forward to the trust.

Q1462 Lord Maxton: I am assuming that with a TV producer you would be paying exactly the same price for a piece of archive material or a commercial programme as they would pay for making a TV programme.

Mr Smith: Or more. That is the idea.

Q1463 Lord Maxton: Are you the body that is the partner in the UK companies?

Mr Smith: Yes.

Q1464 Lord Maxton: The same thing works there? You are paying for the programmes through those companies. You are paying the BBC the full commercial rate?

Mr Smith: Yes.

Q1465 Lord Maxton: The people who watch those programmes are the licence fee payers who have already paid for them.

Mr Smith: Yes.

Q1466 Lord Maxton: So they are paying twice and we cannot watch them without paying the monthly sub to either Cable or Sky.

Mr Smith: If you go back to the opening statement I made, the whole rationale for these commercial services is to exploit in secondary markets assets which have been paid for by the licence fee payer. Those programmes which have been paid for by the licence fee payer have been transmitted back to the licence fee payer. The very simple idea is that the licence fee payer has had the benefit of the programme, sometimes several times, but after that point when it would otherwise sit in the archive doing nothing the idea of the commercial exploitation is that in those secondary markets, in the secondary

channels, in the paying television world and overseas those programmes are exploited for commercial profit. If we did not do it, other people would like to do it, so the question is are we paying a fair price to acquire the right to do that against what other people might pay.

Q1467 Lord Maxton: Let me go one stage into the future which will be a website which at the moment broadcasts radio stations, but it has broadband and it builds up. The archive material was promised by Greg Dyke to be freely available on the website to all British licence fee payers. All the material that you at present broadcast on UK TV programmes would be available presumably on the websites, or nothing.

Mr Smith: This is not straightforward. We have just started a trial where the basic idea is that the archive is made available to people who want it for nothing. We are starting a trial of 18 months duration and we will review how it goes at the end of it. It is a complicated area, not least because other rights holders who have a right to the programme, people who wrote it, people who performed in it and directed it and so on, like to earn secondary income from the programme being transmitted in other ways in the UK and overseas. One of the issues about giving programmes away for nothing is that those rights holders might be denied the revenue that they would otherwise get. The way the trial is being structured is that this freely available access to programmes is only the case when the programmes are being used for non-commercial purposes. What we do not want is people going into the archive, accessing the programme, editing a new programme and selling it for profit. There is a lot to be worked through during that trial. The funny thing about programmes is they can have a life in different media and money can be made in different ways. A programme that went out on BBC1 a few months ago can be shown again on a pay TV channel like UKTV on a subscription basis. The audience find that perfectly acceptable. It can then be available in a video on demand world and people find it perfectly acceptable, having watched it already several times in different ways; then a book and a magazine and then you go overseas and see it again.

Q1468 Lord Maxton: What surprises me is that 10 years ago I was a member of the National Heritage select committee and the BBC showed us what they could do with their archive in terms of not just showing it on a website or in a programme but making it interactive so my good friend, Lord Peston, would be able to watch any football match ever shown on BBC. He would be able to watch a particular player. He could watch any of the goals and the goalkeeper. He could do what he wanted but

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he would decide. That is a very different market, is it not?

Mr Smith: Part of the trial is to test how to service that need but it is by no means what the vast majority of the population wants.

Lord Maxton: I think they will eventually.

Baroness Howe of Idlicote: It is a very tricky area with intellectual property rights and so on.

Q1469 *Bishop of Manchester:* I want to make sure that I understand what you mean when you are talking about the interests of the licence fee payer. I am one and I assume that my colleagues have paid their licence fees. For example, those interests are generally served by regular tendering for the supply of goods and services to the BBC?

Mr Smith: Yes.

Q1470 *Bishop of Manchester:* Is it the case that the sale of BBC Broadcast involves the BBC contracting for 10 years for the supply of sub-titling? Are you confident that that was in the licence fee payer's best interests?

Mr Smith: Yes. There are two things to say about that. Yes, it is definitely the case that tendering for service contracts is a good thing for the licence fee payer because they get the very best price. We are buying £700 million or £800 million-worth of services from all sorts of people, including BBC Broadcast, every year. There are exemptions in European procurement law for services which are in the programme making sphere. By saying that, you might ask, "Does that mean the licence fee payer's interest does not matter?" The absolute answer to that is that definitely the licence fee payer's interest is the only thing that matters but there are other ways of ensuring that the licence fee payer gets the best value out of a contract like that. In that particular case, having sold the company for £166 million recently, a price greater than people expected, those proceeds are now available to the licence fee payer for the BBC to spend on other programming across radio, television and on line. There are other ways of getting value, other than simply tendering.

Mr Salz: There is also some benchmarking arrangement in the contract whereby the pricing gets checked against benchmarks from time to time during the course of a long term contract.

Mr Eldred: The BBC always complies with the procurement regulations where it absolutely needs to. We do not need to follow the procurement regulations because they do not apply in this area. However, we did an open competition because that way we could satisfy ourselves that one of the central principles in our fair trading guidelines, that we get best value for the licence fee payer, was achieved. It was not a sale to somebody we discovered, who happened to want to buy it. We ran a very tight,

competitive auction process to achieve best value for the licence fee payer.

Q1471 *Baroness O'Neill of Bengarve:* All disposals are complicated and this has been a rather large disposal. Do you run all disposals on a similar basis to the one you have just been describing, which was the sale of BBC Broadcast to Creative Broadcast Services?

Mr Smith: Not always. A company like BBC Broadcast is a big company with a turnover of over £100 million, employing over 1,000 people and so on. In our view, the best way to make sure the licence fee payer gets the best value out of it is to parcel it up and have a formal auction or sale involving placing adverts and getting people to bid, giving a full information memorandum audited by Ernst & Young and so on. That is what we did in the case of the recent sale undertaken for BBC Technology Limited. It is normally what we do. There are just occasions, rarely and usually quite small, where going to a full tender process like that is out of kilter with the benefit. An example of that was the sale of *Eve Magazine* where all the people who would be interested in buying a magazine like that are patently known to us so we could run a more limited auction, still completely fair, but a bit less formal.

Q1472 *Baroness O'Neill of Bengarve:* In this case, your fundamental position was that although you continued to receive services from the division that you sold it was not essential to own it. Would that be the principle that you would carry across into other disposals?

Mr Smith: Yes, absolutely.

Q1473 *Baroness O'Neill of Bengarve:* Would you envisage a future programme by which a great deal more is sold off in this way or is it a fairly limited programme?

Mr Smith: It is a limited programme. Going back to the four criteria, one of the criteria is commercial efficiency. Does BBC ownership offer the best value for money for the licence fee payer? We concluded that for some of the businesses the BBC owned BBC ownership did not offer the best value to the licence fee payer. A good example is Broadcast, where potential customers were put off by the idea of it being owned by the BBC, because if you have a television channel, the idea of it being played out by the BBC is not something they necessarily like the sound of. By selling it, its opportunity in the market place is greater. It will earn more profits and somebody was willing to pay us for that opportunity. There is one company left where we have said we no longer need to own it. That is known as BBC Resources Limited. As part of our recent negotiations with trade unions, we agreed to delay

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any consideration of the sale of that company, although it is still our view that we do not need to own it. That is the last major disposal that is in mind. There are some small ones. Our book business is currently not making a good enough return. We would like to find a way of perhaps joint venturing with somebody else in the book business.

Q1474 Baroness O'Neill of Bengarve: Resources does what?

Mr Smith: It does three things. It provides studio services to BBC programme makers; it provides post production and editing for BBC programme makers and outside broadcasting for BBC programme makers.

Q1475 Baroness Howe of Idlicote: On BBC World, what are the main factors about it continuing to make a loss?

Mr Smith: World has been around for about 15 years or so. It has not made a profit yet. It changed a lot at the end of the 1990s and from then onwards there has been a desire on our part to make it make money. It is not an easy market in which to make money. Everybody knows that television channels around the world can take a long time before they turn into profit, whether they are news or any other channels. News channels particularly are a difficult market to make money from and we cannot get hard evidence from our competitors about whether or not they are making any money from their international news channels. We just do not know. The particular problems that were alluded to in the earlier session about World are to do with not having distribution in the domestic market. That is one of the difficulties for BBC World. Not having distribution in America has also been a hindrance and we are actively trying to address that right now, plus the dollar issue which was mentioned earlier on, which seems to be correcting itself at the moment. They are all contributing factors to it not making money. We do have a business plan which currently presumes that it will break even within a few years. We have to keep a close eye on it. We cannot go on permanently with it in a loss making situation, but as of now it is making a loss of about £15 million. The performance is going extremely well. Subs and advertising have been rising. We feel that if we keep reviewing it each year we are heading towards a good result.

Q1476 Baroness Howe of Idlicote: 15 years is quite a long time. Would I be right in saying that, in drawing from what you have said, the conclusion is that a commercial broadcaster would have behaved pretty well in the same way?

Mr Smith: It is hard to predict but that is absolutely our view.

Q1477 Baroness O'Neill of Bengarve: As complicated an organisation as the BBC is, obviously a certain number of complaints in the form of referrals to the OFT or Ofcom is inevitable. How many do you find that there are and do you think that is going up or going down?

Mr Eldred: We do have complaints to the regulatory authorities. One thinks of the issue at the moment that Ofcom is looking at FA Cup radio rights. The OFT has looked at issues in the past. I cannot tell you the absolute number of complaints but the BBC has an excellent record in relation to compliance with competition law. In recent memory, I do not think any regulatory authority has found against the BBC on any subject and I am stretching back well over 10 years. We are in constant dialogue with the regulatory authorities, be they in the UK, the OFT or Ofcom, or in Europe, the European Commission. Our record generally is a very good one.

Q1478 Lord Maxton: You have one other international broadcaster known as BBC Prime. Does it make money?

Mr Smith: Yes. There is more than one. There is BBC America, BBC Japan and so on. We have 19.

Q1479 Lord Maxton: BBC Prime presumably is one of the widest?

Mr Smith: It is the oldest going but it is not necessarily the widest.

Q1480 Lord Maxton: Is it subsidised by BBC World?

Mr Smith: Arguably. BBC America is in 45 million homes.

Q1481 Bishop of Manchester: Can you say something about the licensing and distribution agreements that BBC America has with commercial and independent producers in the UK?

Mr Smith: Like all our commercial television channels anywhere around the world, the idea is to secure access to content by buying the programmes and then transmitting them for profit. BBC America, like the others, has all sorts of distribution arrangements with independent television producers in the UK and the BBC to secure content from anybody who is making programmes. The whole idea of BBC America is to showcase programmes produced in Britain, not just from the BBC, to an American audience. Quite a sizeable proportion of BBC America's output is coming from other UK independent producers.

Q1482 Bishop of Manchester: Are there any plans to have that kind of example elsewhere in the world? BBC America has a very good reputation, has it not?

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Would you hope to be able to replicate that somewhere else?

Mr Smith: Yes. We already have more channels around the world than perhaps people would imagine. BBC Prime is subscribed to 21 million homes in 100 different countries. There is a channel called BBC Food. In Canada, there is a channel called BBC Canada and BBC Kids in Canada. In Australia and New Zealand, there is a channel called UK.TV which has come from us in partnership with others. In a 50/50 joint venture with Discovery Communications, there is a channel called People and Arts and another channel called Animal Planet, available in many countries around the world. The whole idea of the channel business is to have some form of BBC commercial television channel output in every single territory exploiting all those genre where the BBC has critical skills and a good supply of programme making. There are lots of opportunities to do that.

Q1483 *Bishop of Manchester:* Presumably you are developing partnerships as well?

Mr Smith: We are in partnership with others where that makes sense.

Baroness Howe of Idlicote: I have learned about some channels I did not know existed.

Q1484 *Baroness Bonham-Carter of Yarnbury:* How do you respond to the charge that the fair trading commitment is enforced by BBC governors at the moment who are at the same time responsible for BBC services and therefore are judge and jury? Are you absolutely clear that the trust would be that much different?

Mr Eldred: I do not think the BBC governors are judge and jury in relation to Competition Act issues. The fair trading guidelines are set out to be restrictive on the BBC management as to what they can undertake in the commercial sphere. Of course they are policed and governed by the board of governors but that is not to the exclusion of outside agencies. It is always open and possible for an outside agency such as the OFT or Ofcom or indeed the European Commission to come in and investigate the BBC or for a complainant to go direct to those agencies for redress or relief. Those agencies simply do not have to wait for the board of governors to determine something before they can come in. We see the guidelines as an essential tool for ensuring that the BBC sticks to what it says it is going to do, but it is no substitute at all for the powers that the competition authorities have. The BBC has always asserted that it is subject to competition law and we are in regular dialogue with competition authorities when we have issues that they come forward with.

Q1485 *Baroness Howe of Idlicote:* If there are no more questions, thank you very much indeed. We are most grateful for what you have told us. I apologise for the other members of the select committee having rather drifted off towards the end, but I think you understand there are other commitments. If we need to ask you further questions, perhaps we could come back to you in writing.

Mr Salz: I was intrigued by the noise outside because this is the moment at which we are due to hear whether or not we have won the Olympic bid. I am reliably informed by two sources that we have won it. You heard it first from the BBC!

WEDNESDAY 13 JULY 2005

Present Bonham-Carter of Yarnbury, B Howe of Idlicote, B
 Fowler, L (Chairman) King of Bridgwater, L

Examination of Witnesses

Witnesses: HERR RUPRECHT POLENZ, Head of TV Council, PROFESSOR DR CARL-EUGEN EBERLE, Director of Legal Affairs, HERR JAN HOLUB, Head of Television and Administrative Council, DAGMAR SKOPALIK, Head of International Relations, and HERR RUDOLPH MEYER, International Relations Adviser, ZDF, examined in Germany.

Q1486 Chairman: Welcome. I understand, Herr Polenz, you wish to say something at the beginning.

Herr Polenz: Ladies and gentlemen, a very warm welcome to Mainz. We are very pleased to have you here and we hope we can provide sufficient answers to all your questions because the questions you have sent in advance are very concrete and to the point. We would prefer to answer in German in order to be more precise.

Q1487 Chairman: Can I first thank you very much for giving us this opportunity and making available your time. We know that you are very busy but we very much appreciate that you have gone to great trouble to accommodate us. Perhaps I can explain what we are doing in the UK at the moment. About every 10 years we review the Charter of the BBC and that process is now taking place. The government have already published what they call a Green Paper which puts out their preliminary proposals and they have asked a number of questions about that and other things, and there will be a White Paper which should be published before the end of this year which will set out the government's policy as far as the BBC is concerned, probably for the best part of the next decade, so it is quite a long process but it is also a rather important process because it happens very infrequently. As far as our select committee is concerned, as you know, we have two Houses in Parliament, the House of Commons and the House of Lords. Some of us have been in both. We have been set up to look at the Charter, the BBC and the future of the BBC and it is in that respect that we come to seek advice from you. We are looking overseas at what is happening in other countries, particularly in the European Union. We are gathering information and what we are most interested in is public service broadcasting and how that is organised. There seem to me to be many similarities between what you are doing and what we are doing and we would like to see if there are any lessons that could be learned from that. I wonder if you could give us a general introduction to ZDF, how you are constituted, what your area is, and we will go on from there.

Herr Polenz: First of all it is quite noticeable that you come here from Great Britain to ask for our advice and help with regard to the question of how public service

broadcasting in the sector is working because it was due to the British that our structures were set up after World War II and we owe certain constituents and structures of our service to the British. ZDF is the public broadcaster here in Germany and that broadcasts together with the private companies. We have this dual system of the public broadcasters and the private commercial ones on the other side. This is different from ARD which is the first German broadcaster. ZDF is a national broadcaster with just one channel and also participates with ARD in Phoenix. They also have programmes over longer periods of time, like broadcasting sessions of the parliament or longer discussions being held elsewhere and they also broadcast cultural events. They have a children's channel and a special programme for young people and there is co-operation also with ORF and ARD on 3-Sat. In addition we have participation with the French on ARTE.

Q1488 Chairman: So it is the national channel?

Herr Polenz: ZDF is a broadcaster all over Germany with the TV programme broadcasting. The shareholders are the federal states and therefore we have this federal states institution. We have studios in all the different federal states and in addition we have studios abroad with the respective correspondents. I would suggest, for the sake of saving time, that you have a look at the English edition of our leaflet which gives you the most important facts and the structure as well. Just to give you an idea of the range and the total budget, the total budget for 2005 amounts to €1.874 billion and the major part, 86.4 per cent, is licence fees, 6.4 per cent is advertising revenue and the remaining amount is 7.2 per cent. After the recent increase the licence fee now amounts to €17.05 and ZDF gets a share out of this amount of €4.39. The market share for the first six months shows some pride in that, which means that our recipe is quite a good one and I think from this point we could go over to the first question that you asked in writing.

Q1489 Chairman: We will get on to the main meat of what we would like to talk about now but I thought it was important to have that introduction. Obviously you have a big market share. You are a very important

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Dagmar Skopalik and Herr Rudolph Meyer

national broadcaster. How do you ensure that you are seen as impartial and do not show any favours to any political party?

Herr Polenz: This question is in the focus and the core of the whole broadcasting system. To guarantee this we have specific laws and also the state treaty. These issues are also regulated by our byelaws and articles of association. On the impartiality question and that we are not being led by any political party, that is guaranteed by our councils. We have the Television Council and the Administrative Council and we have provisions that are anchored in law. We have legislation which regulates the procedure of the settlement of the licence fees.

Professor Eberle: May I add one additional remark with regard to your first question? You actually want to learn whether we are supposed just to respond to market deficiencies and remedy them or whether we have one original programming mission, so to speak. The answer is that we have an independent remit, an independent task. The Supreme Constitutional Court holds the view that the manifold different programmes can only be guaranteed by public broadcasting and that private broadcasting alone is not able to fulfil this task, so we have our own remit to cope with and also a task with a view to democracy, to forming opinions and integrating society. We are the glue that puts these issues together and keeps them together. The private broadcasting companies alone would not be able to fulfil this and consequently the Supreme Constitutional Court holds the view that because public broadcasting exists the private broadcasting companies can exist as well.

Q1490 Chairman: I understand. We also have requirements placed on the BBC that they will be independent and impartial but in practice that is sometimes challenged from outside, that they are not being so. I assume that at times you must have similar challenges. How do they get settled?

Herr Polenz: We are always, of course, met with certain wishes as to programmes and on the other side there is always also some criticism. For instance, in the field of sport we have this very often. Sport is also represented in the ZDF programming and we often get requests from sports associations asking why is this type of sport more represented than that type of sport. We always have discussions about these issues because this needs very well founded decisions. On the one hand we have consents, on the other hand we have objections. The very last decision, however, lies with ZDF and this requires, of course, good discussions and good motivation. That is as far as sport is concerned. It is different prior to elections because there is a lot of confusion. Everybody gets pretty agitated about their own

purposes and each party always thinks that another party is better represented in a special programme and so again we have to have well-founded decisions on a journalistic basis and we need good arguments in order to convince people why we have a special programme and why this is broadcast in this way and not in another way. In order to fulfil this goal we also need an entrepreneurial culture which excludes ZDF from being particularly obliged to one specific party or part of society and this needs also very good journalistic decisions and arguments.

Professor Eberle: A very important factor in this connection is the Broadcasting Council or Television Council as we call it in ZDF. This council consists of 77 members. In this council if political parties are represented, all the federal states are represented and also if social interests are represented. The composition of this council undergoes certain changes, for instance, after elections when the political colour changes we will have different representatives on this council, which means that this is always a well balanced council, and of course every party looks at every other party to make sure that the other party will not have any advantages that their own party does not have. Since everybody knows that these changes take place nobody is going to exaggerate their demands because later on the same thing could be done by the counter party. This means that we have quite a good system of checks and balances in these bodies and the various departments of ZDF as a whole hold this council in high esteem and it is also considered as a representative body of the total enterprise. Whenever it comes to criticism this criticism is taken seriously and this is what we mean by an entrepreneurial culture and therefore I would like to come back to this. This is a direction that has been formed over decades and everybody watches very closely what this Television or Broadcasting Council does. This is also reflected in the programming. However, this council does not have general rules, nor does it have any control of the programming in advance. This is rather something which happens afterwards and so this guarantees independent work. There are directives in advance but these are general directives.

Q1491 Lord King of Bridgwater: Does this committee cover the ARD as well?

Herr Polenz: No.

Q1492 Lord King of Bridgwater: It is just for ZDF?

Herr Polenz: The two systems are totally separate as far as organisation is concerned. Each system has its own controlling bodies but in the end, in the case of ARD, the structure is more or less the same.

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Q1493 Lord King of Bridgwater: Herr Polenz, you are a member of the CDU and you say it reflects the political balance in the Länder and in the federal government. How often does it change? There have been the elections in North Rhine Westphalia with a big change. Does that then feed through to the Fernsehrat?

Herr Polenz: The members of this Broadcasting Council are nominated for four years by the different groups that are entitled to the nomination and these groups comprise a whole lot of parties, like the trade unions, the churches, groups on animal protection, official associations, political parties, and also the 16 federal states as the shareholders of the ZDF, and so a change comes about if a different government is being elected in a particular federal state. Since that has been the case during the past few years in Germany we have had some changes but basically the members are nominated for four years.

Q1494 Lord King of Bridgwater: How often does the committee meet?

Herr Polenz: We meet four times a year for two days and we also have committees for programming, for funding and for investment. These groups meet four times a year also to prepare the various sessions and to do some co-ordination work in order to guarantee that since we have 77 members the debate itself concentrates on the real focus.

Q1495 Lord King of Bridgwater: Does it work? Let me clarify that. Is there real public confidence? How recently has there been a decision by the council criticising the action of a particular broadcaster, producer or presenter?

Herr Polenz: In each session of the council we have critics on the various programmes and we also have suggestions as to certain topics and focuses, and we also have self-criticism and internal criticism. As a consequence we can elaborate on how we can do it better next time. For instance, we had these criticisms and discussions on the war in Iraq, on the tsunami catastrophe and on the election campaign in the United States. In addition to criticism that comes from outside, from something that somebody has seen or heard or gathered from the media or the press, we have this internal discussion about the programming of ZDF and so then we can choose whether to intensify this discussion or establish that we just see things differently. On the bottom line I can say that this system works very well. I might add that one other important source of this is the audience. We get the results in the form of a report and we also get the complaints. We have a pretty extensive complaints procedure so that whenever a complaint comes in we have a very close look at it by the council and a final decision will be made either by the council

or at whatever level if this complaint could not be remedied before by, let us say, a statement from ZDF, and I have to add that we have copied that a little bit from the BBC.

Q1496 Chairman: So we are going full circle?

Professor Eberle: I would like to give you two examples of the influence that the Television Council has. In the mid-nineties there was a discussion about a news channel. This was also discussed on a broad basis within the Television Council and indeed the council refused this news channel, CNN Germany. There were also other discussions under way with regard to branch channels, for instance, a children's channel, which was discussed and finally accepted by the council. Last year the council was very active and took the role of watchdog in regard to product placement in the programming and then we had a report on this topic. After consultations and also after newspaper information it was established that there were errors being made. The Director General had to react and a ten-point paper was issued and so the problem was solved and we had a good solution for the future on the basis of stricter rules. This is one pretty good example of how the council can act and react. There is another field in which the council is very much like a watchdog and this is in the protection of minors.

Chairman: Can we move to the funding of German public service broadcasting? Funding is an issue which is the source of much debate inside the United Kingdom, as I understand it is here.

Q1497 Baroness Howe of Idlicote: I wonder if I could start by asking exactly from whom the licence fee is collected? As I understand it, it comes from everybody who has access to radio or television. How do you define that? I know there are exceptions, such as those who are not very well off. Do you have the same applying to the elderly, as apparently we do in the UK? Could you give me a factual answer to that and then I will come to my main question?

Herr Polenz: The fee is collected for the provision of a television set with an exemption for a second TV set. There are no fees due for that and the legislator also provides for certain other exemptions or reductions, for instance, for social reasons, for people with a lower income and for television sets in hotel rooms. The fees for computers that can be used as a television set or for broadcasting will not be subject to fees until 1 January 2007. This again will only be if there is no other TV set in that particular household. Then there are exemptions for handicapped people and for institutions for handicapped and disabled people.

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Q1498 Baroness Howe of Idlicote: That is very helpful. Coming on to the period of setting the licence fee, I am a little confused about that.

Herr Polenz: It is four years.

Q1499 Baroness Howe of Idlicote: The period in the UK is usually 10 years and immediately it has been granted they begin thinking about it for the next 10 years. Do you find the four-year period is long enough for future planning of what you intend to do?

Herr Polenz: I think there is one problem with a period that stretches too long because then you would not be able to foresee the development of the price indices and the general expenses and expenditure and you would have to set these in advance and then afterwards the leap might be too high. Therefore I think that four years is quite an average period and it gives you a good basis for planning and on the other hand it is not too long with regard to costs development. I think for a ten-year period this is not feasible. This period of four years is not something that is being questioned but there are other issues that are being questioned.

Q1500 Chairman: But it is not increased each year according to RPI?

Herr Polenz: No.

Professor Eberle: Our problem is that we do not have an increase each year and then after four years the increase might be too high and this jeopardises acceptance of it. This is also with regard to the European view because from the European point of view a period of three to four years is adequate and the European Commission has a keen look at the fact that there is no over-compensation but that we just have an equalisation of what is really due and this would not be possible with a period that stretches too long. Therefore European legislation provides for a check every three to four years and with a period of two years this would be too short because it does not give you any planning security.

Q1501 Baroness Howe of Idlicote: I know that the level is set by treaty between the federal Länder following an assessment of the broadcasters' requirements. Is it usually one you can accept? Is it about right or are you always feeling that you are never getting quite enough? Also, does it make you more independent having the funds coming via a licence fee rather than directly from government?

Herr Polenz: First I would like to come to your second question. This is a very important principle, that the payment does not come from the government because then we would no longer be independent and this would make the public broadcasters very much dependent on the respective political system and parties. As to your first question,

maybe ZDF sees this in a different way than the supervisory bodies. We are also representatives of the general public and especially nowadays we have the problem that all the purses are empty. People do not have money and there are pretty hard restrictions on every single household and so we have to fulfil certain requirements and make adequate calculations. This was also part of our political discussion and we need to have this defined within our programming framework. There is also a discussion as to how our constitutional order has to be seen, that it is in a certain way limited and perhaps needs to be increased.

Professor Eberle: I would like to add that we also have this state treaty and a state procedure with which we are pretty content. We file a registration and this registration is then checked by the independent commission that determines the funding requirements of the broadcaster. That commission then finds out what we have in terms of income on the one hand and expenditure on the other and determines on that basis the funding requirements. For instance, with regard to personnel expenditure the basis for the determination is the public service. If we send a product out, for instance, we have the index fixed. This index has to be determined and then on this basis one can see what the costs of the media sector amount to. The index is not adopted one-to-one; there is always a certain reduction being made in order to save money. This means that we do not get all the money that is required. For instance, if the index is 5 per cent we get an increase of 2.5 per cent and for the rest they tell us we have to adopt certain measures to save money in order to enhance efficiency. This result—and this is a very important point—shows the determination of the actual fee. Then this has to be brought to the political level in the form of the state treaty. The Supreme Constitutional Court in a fundamental decision established that parliaments have to accept what this commission, the KEF, finds out and determines and that this is because this is adequate for the requirement and there are only very few exceptions possible in this connection. Then when we accept this treaty as determined by the KEF, we are usually quite happy with it although we still continue to fight with them. The minister-presidents had the problem that there were no increases being made and there was actually a reduction, but I do not think this is such an important point right and there are still arguments going on with regard to this issue. All in all we can say that the procedure works pretty well and we have these experts in this specific and independent commission and so we are quite content with that.

Q1502 Baroness Bonham-Carter of Yarnbury: I want to come on to something that we have not mentioned yet, which is the digital age. How has the

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multiplication of channels affected people's willingness in general to pay the licence fee and do you have a problem there? I would also like to ask Herr Holub what effect it has had on what he has to do in the programming area.

Herr Polenz: ZDF is preparing for the digital future in the form of specific programmes, for instance, a theatre programme, a documentary programme and an information channel. We all ask ourselves the question how is the future going to be when everybody will have the opportunity of 200 different programmes and channels and what will the situation be when the technology is such that you do not have to stick to time any more but you can make your own decision as to time and when to consume any broadcast programme? We are in the middle of strategic discussions on that issue. With regard to the willingness to pay, I think there was no real change due to additional channels being offered. We have this common institution of ARD and KDF that collects the licence fee and, of course, nobody is very happy when they have to pay but in the end the citizens do pay.

Q1503 Baroness Bonham-Carter of Yarnbury: So there is not a debate here about it?

Herr Polenz: No. The discussion is on the fact that the fee is sometimes linked to the TV set and some people will say, "Why should I pay this licence fee because I watch only private and commercial programmes?", but it is not a real debate that is going on. This is also due to the market share which we have because in your leaflet what are still missing are the third programmes and all in all—

Dagmar Skopalik: These are the figures for 2004. I have not included the latest figures. It is only an estimate of the figures.

Herr Polenz: The market share of public channels is actually 50 per cent.

Professor Eberle: I would like to add that there has been a court decision that ruled that even if somebody only watches private broadcasting they still have to pay the licence fee. The development in the digital area also has a legal foundation and there is this development guarantee that we may participate in the new technological developments. We have these in the form of the digital channel, ZDF Vision, which goes via satellite and also via cable, and we also have a terrestrial digital banquet offer. This development in the field of cable is still hindered by the private companies which do not want to consent to the digital channel and there is this quarrel going on about the money coming from the cable companies. What is also interesting is the DSL where we also offer programmes but there are still certain

reservations with the private companies because they ask the question, "Can I earn money by providing my programme or not?", but we as public service broadcasters need to be present on each platform. That means via satellite, via cable, via mobile and via terrestrial digital platform. In order to avoid misunderstanding, we do not have an unlimited development guarantee. We are empowered to develop a certain amount of programmes and we can maybe exchange one channel for another one and replace one by another, but we have certain limitations as to quantity.

Q1504 Baroness Bonham-Carter of Yarnbury: Can I just pick up on the question I was asking about how this greater competition has affected ZDF's output in terms of quality and style?

Herr Polenz: This possibility was actually tried out during the Olympics. For instance, when we had in the main programme already quite a lot of sports being broadcast there was this additional possibility through the digital channel that you could see almost all the various disciplines that went parallel to the main one.

Professor Eberle: We made a lot of effort to offer this possibility so that the spectator could watch maybe horseriding on one channel and on the digital channel another sports event could be watched. We can definitely see the digital possibilities and we are working intensely on this issue. We are developing this digital concept now but it still has something of a preliminary character. In the course of this year we will elaborate a proper concept.

Herr Holub: The sports events were a very special event and I would just like to add what the normal situation is, what we offer in terms of digital programmes. We have, for instance, this theatre channel. We have outstanding productions there and we also use the archives of ZDF and have accompanying programmes which are repeated daily at certain intervals. If we are participating in big productions there is also the possibility of broadcasting through 3-Sat, which includes Switzerland and Austria, and then we might also have a big production in the main programmes and this was the case during Expo 2000 in Hanover when we had the famous Faust production.

Baroness Howe of Idlicote: I want to come in on the collection of the licence fee because you have a separate organisation that collects it. It is outsourced as far as the BBC is concerned. Can you comment on how much it costs to collect? I think in Britain it is about £300 million split between collection and enforcement.

Lord King of Bridgwater: About 10 per cent is the cost of collection.

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Q1505 Baroness Howe of Idlicote: Have you any comments about how it is done with you? Do you think it is very expensive? Do you think people pay up relatively easily?

Professor Eberle: I do not have the figures with me now. I do not know them by heart but I can give you the figures later. Previously the situation was that the licence fee was collected through the post office and now we have this joint venture where all the broadcasters participate and this is the GEZ and now it has become much cheaper and I will give you the share later. During lunch I will be able to give you some figures. [Costs of the GEZ 2004 are 2.08 per cent of the total amount of the licence fee].

Q1506 Chairman: Thank you. We have the opportunity of talking to others about this in any event. Can I ask about advertising because you have what from the outside seems a rather odd arrangement in that it is mainly done by licences but you are allowed to do 20 minutes' advertising between six and eight; is that right?

Dagmar Skopalik: Before eight o'clock.

Lord King of Bridgewater: Am or pm?

Q1507 Chairman: Pm.

Dagmar Skopalik: Prime time advertising is not an option.

Q1508 Chairman: Can you explain what the rationale of this is and how you value it? Do you think it compromises your independence in any way?

Herr Polenz: This also is only a very small part but this makes public broadcasting more independent and gives more freedom from the state if we can do advertising to a certain amount, and the economy does not only want to advertise through the private channels but also through the public channels. Without the advertising revenue the licence fee would have to be increased by €1.50 and this means that advertising also saves money in terms of the licence fee. We have this discussion about the so-called sponsoring indications, which are not called advertising, and these so-called indications are allowed to be broadcast after 8.00 pm and this is an issue that is critically discussed within this council. If you look at it, it looks like advertising and it is paid like advertising. However, it is not allowed to be called advertising. In the realisation of the programme the difference is not really that big. The sponsoring indications take place only at the beginning or the end of a programme, whereas in private broadcasting you also have these interruptions during the films, and so there is this discussion going on about whether we can do without the sponsoring indications or if on the other hand we can have more of these sponsoring advertising for the

sports events. If advertising was not allowed for sports events then it would be almost impossible to acquire any rights for transmitting sport events if the sponsor itself was not being taken into account. That would lead to the fact that certain sports events could not be broadcast at all and this could be a problem with the football world championship. Of course, the private broadcasters do not want that but we agree on a global level that we want to have that.

Q1509 Chairman: I was going to ask exactly that point because clearly not only the commercial, television companies but also presumably the newspapers say, "We think this is unfair competition. You get public money and you get advertising as well".

Herr Polenz: First of all you have to see that there are certain commercial links between the newspapers and the private broadcasters and it is obvious that the newspapers are then on the side of the private broadcasters and speak for them. Secondly, it has to be taken into account that our order also comprises broadcasting sports events, so this is provided for. With regard to the football world championship, we can have these rights only if there are certain funding concepts developed and if the FIFA agrees to those concepts and they are taken into account. There are once again certain objections made by the private broadcasters who find that unfair but on the other hand if you look at the figure regarding the advertising revenue, which is a pretty small figure, I do not think this is a very valid objection.

Professor Eberle: You also need to know that the revenue from advertising is being taken into account by the KEF, the commission that determines the requirements, in the sense that they reduce our requirements by the amount that we get from advertising, so we do not get everything we need but the actual amount less the advertising revenue. Therefore, the reproach that we get public money and do advertising in addition is unjustified. This reduction, or taking into account the advertising revenue, has been detrimental to us during the past 10 to 15 years because the revenues were always estimated and in reality what we got was much less than the estimation. For instance, in the years 1992–96 we had every year an income of 400 million German marks less than the prognosis and this brought us into a very critical situation which we could only cope with by very severe saving measures. Why this limit of 20 minutes per day? It is, of course, to protect the private broadcasters and this was very effective but a big disadvantage to us. In 1984 the percentage was still up to 40 per cent and now we are down to six to 7 per cent, and if you consider the total share of ZDF in the advertising market this amounts only to 2.9 per cent which is a very low percentage.

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Our problem is that prior to 8.00 pm there is very hard competition because the prices are lower and after 8.00 pm advertising is very expensive.

Q1510 Lord King of Bridgwater: Your advertising fell very sharply between 2000 and 2002. You talked about the longer period and it used to be a much higher percentage, but you had a big fall. Is that because of policy, is it because advertisers preferred other media, or is it because the general German economic situation meant that there was a fall in advertising?

Herr Polenz: I think it is both. It is the economic situation and the fact that companies opted for others.

Q1511 Baroness Bonham-Carter of Yarnbury: Was that to do with more channels?

Herr Polenz: Yes.

Q1512 Chairman: On some of these points we might come back to you to make sure we have the information absolutely correct, but I have just one last point on regulation, governance and management which we tend to spend a lot of time on as well. How does your corporation organise itself? You have a Supervisory Board, I think.

Dagmar Skopalik: Two Supervisory Boards.

Chairman: Explain to me how many times the Supervisory Board meets and things of that kind.

Q1513 Lord King of Bridgwater: When you answer that, this paper refers to a General Director and then it refers to a Director General. Is that the same thing?

Dagmar Skopalik: Sorry: that is a Director General. Just for your clarification, there is one Director General.

Q1514 Lord King of Bridgwater: It is Herr Schächter?

Dagmar Skopalik: Yes.

Herr Polenz: You can get the best survey from this chart of 2004 which is still valid. You have at the top the Director General, who is the head of the enterprise and also has the very last responsibility, also towards the bodies and the general public. Then we have the controlling body, the council, of which we were talking before, which is on the left hand side, the Television Council. That is in charge of programme control on the basis of directives and checking whether these directives are complied with, and also has responsibility for the budget. Then on the right hand side we have the Administrative Council which is in charge of financial matters and personnel issues. It is a much smaller body consisting only of 14 members and within this council financial matters are discussed and issues regarding staff and

personnel. The Director General reports to both of those bodies and on the bottom line we hold him responsible for everything that happens within the company.

Q1515 Chairman: And going down into the organisation there are no other outsiders inside the organisation? In other words your outsiders are either in the Administrative Council or the Television Council?

Professor Eberle: Exactly.

Herr Polenz: There is no outside governance on any other level but we are governed here by the Director General and that is it.

Q1516 Chairman: And the Director General is the man responsible: if anything goes wrong it is his head on the block?

Herr Polenz: Yes. That is what he is paid for.

Q1517 Lord King of Bridgwater: The Administrative Council is really the Supervisory Board in respect of everything except programmes which come under the Television Council?

Herr Polenz: You can put it like that. Also, the Television Council is to a certain extent responsible for budget and has a financial committee because the Television Council has to approve the budget.

Q1518 Chairman: I have one question on the Television Council. I have the gravest difficulty keeping order amongst my select committee of about ten. I notice that you have 77 members. How do you do this?

Herr Polenz: You can see what we are able to do! No, seriously, if you consider that we are a company representing federal states and we have 16 federal states here, that is already 16 members. The company is composed of different groups and we have these non-governmental parties and we have the political parties which are also very important in a democracy and we need this high number in order to maintain our independence.

Professor Eberle: Prior to the reunification the Television Council was smaller. There was a certain addition after the reunification but it did not only grow due to the additional states that came about but, for instance, we also had the association for environmental protection that was added to the council and then we had five new representatives, so we need this bigger number in order to not to have only state representatives.

Q1519 Chairman: You meet as one national council four times a year?

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Herr Polenz: If there are no exceptional meetings we meet four times per year for two days and it is my experience that there is no big difference as to whether the council consists of 45 members or 77 members because the rules are always the same. Only one person can talk at a time and you need a list of speakers and the debates are conducted in a similar manner. You also have to prepare the debates which facilitate the work. This size can also be of advantage because it is a guarantee that you cover all the important issues and do not overlook some points.

Q1520 Baroness Bonham-Carter of Yarnbury: Who is in charge of keeping an eye on ZDF's commercial activities, making sure that they are not cross-subsidised by the licence fee?

Herr Polenz: ZDF has an additional company, ZDF Enterprise, and this company controls and coordinates matters. Also, the Director General is a member of the Supervisory Board and we have also representatives of the Administrative Council and the Television Council and so we have the guarantee that control is conducted properly.

Q1521 Lord King of Bridgwater: Do you always meet in Mainz or do you ever meet in Berlin or elsewhere?

Herr Polenz: We meet twice in Mainz and twice in one of the federal states.

Q1522 Lord King of Bridgwater: Have you ever appeared before a committee of the Bundestag?

Herr Polenz: No, because the competence lies with the federal states and not with the parliament. When we meet in the federal states we also meet with the minister-presidents and we invite representatives to spend the evening with us.

Professor Eberle: The Director General has also certain duties to report to the parliaments of the federal states and then he has to show the projects and give an overview of the financial situation.

Q1523 Lord King of Bridgwater: Each federal state? *Professor Eberle:* Yes, that is the problem.

Herr Holub: But it is probably the same report!

Professor Eberle: And he has to answer questions. As to the issue how to exclude cross-subsidising, we are having a code of conduct and in this code of conduct it is established what our attitude is and that our conduct is in line with the market requirements. We also need separate accounting. Commercial accounting has to be separate from the other issues. This will probably be the result of an aiding procedure which we are just having now with Brussels. We have made proposals and these proposals will be worked on in the months to come.

Q1524 Chairman: The Director General presumably has a management board or committee.

Herr Polenz: Yes.

Q1525 Chairman: And that would include the legal affairs director, yourself, international affairs, press and public relations, the ones with the strong oblongs in this chart?

Dagmar Skopalik: Plus all the directors.

Professor Eberle: We also have a meeting of directors and this meeting is attended by the Director General and the directors of the various departments—the administration department, the programming departments, the legal department and other employees. They try to meet every week but definitely every two weeks.

Chairman: You have been extremely patient with us and I would like to thank you very sincerely for your evidence which has been immensely useful and helpful.

Q1526 Lord King of Bridgwater: The BBC will never be the same again!

Herr Polenz: I am not sure that would be good because I like the BBC very much. Nevertheless, we are pleased that we could be of some help to you and maybe we will have the opportunity to visit the BBC in the months to come because we are interested in some developments within the BBC as well. I think this kind of exchange is very useful even if you only get to answer questions because your questions could relate to problems that we might also have to cover within ZDF, so thank you very much.

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Examination of Witnesses

Witnesses: HERR RAINER CONRAD, Chairman, and DR HORST WEGNER, Managing Director, KEF, examined in Germany.

Q1527 Chairman: Thank you very much first and foremost for allowing us to come and talk with you. I know you are extremely busy and we very much appreciate it. Let me explain briefly what we are doing. Every 10 years roughly we look at the Charter that sets up the BBC and the terms for the future 10 years are considered. The government are going to bring forward their final proposals at the end of the year but we have the opportunity as a select committee of the House of Lords to make our proposals prior to that. What we are doing at the same time as looking at the position inside the UK itself is looking at experience overseas, seeing what is happening there and what lessons we can learn from that. Perhaps I could begin by asking you a general question about KEF. KEF was established in 1975?
Herr Conrad: Yes.

Q1528 Chairman: And your function is to try to settle the amount of the licence fee?
Herr Conrad: More or less.

Q1529 Chairman: Given that, what factors do you take into account? How do you do that?
Herr Conrad: If you will excuse me I have the intention to welcome you first. I want to say that for Dr Wegner and I it is a great honour and pleasure to welcome you to KEF, the Commission for the Assessment of the Financial Requirement of Public Broadcasting, as I learned from your very good translation. We will, I hope, be able to answer your written questions but I would like to encourage you to ask other questions if you want to and please do not hesitate to interrupt us if you want any further information. First of all I would like to say that we feel very sorry about what happened to you recently in London when unfortunately these barbaric terrorists hit London. We so far have not been hit but we are well aware of the fact that we might be hit as well one day, and I think it is very important for western democracies to agree on this issue and stand together to fight terrorism and show the terrorists that they cannot turn our states into police states.

Q1530 Chairman: Thank you very much. We very much appreciate those words. As you can imagine, it was an enormous shock in the United Kingdom. It seems a great deal of progress is now being made in finding those responsible. Lord King on my left was Secretary of State in Northern Ireland so he has great experience of these matters as well as being Chairman of the Security Commission. Perhaps we can proceed now to talk about your organisation.

Herr Conrad: I do not know whether this will help but I will make a few preliminary remarks on the public service broadcasting system and KEF and what role KEF plays within that context.

Q1531 Chairman: Please, yes.

Herr Conrad: We often talk about the constitution and the Constitutional Court. This is because the freedom of broadcasting and journalism is at the level of the constitution and the Constitutional Court and this is a consequence of the bitter experiences we had in the Third Reich where we had a lot of abuse of journalism and the like by national socialism. We will therefore always have to see how these processes can be implemented within the context of the constitution. You know that Germany is a federal republic. After World War II the states were formed which together formed the federal republic and we have two levels of competence and legislation. We have the Bund on the one hand and the federal states on the other hand and the competences are split so, for instance, defence goes to the Bund whereas the Länder are competent for police and cultural affairs. We have specific laws for those and therefore we also have the broadcasting institutions at the level of the federal states and there we have ARD and ZDF but this is also based on a state treaty of the federal states. The assessment of the fee was also always done at a uniform level in the Federal Republic of Germany and was the same for all the various federal states. Previously the situation was that the states had no clear criteria for adequacy of these fees. The institutions and the federal states were not satisfied with this situation and therefore they wanted to have a commission on their side and this was the reason for the foundation of KEF in 1975 which had only a consultancy capacity to the minister-presidents. In 1994 the federal Constitutional Court dealt with the question of how the fee was to be found and assessed. The federal Constitutional Court ascertained that this procedure should not be in accordance with political decision because this was against the freedom of broadcasting and so the influence of politics could be too strong. The Constitutional Court said that there was already a KEF which existed and it was an approved institution but also it should be independent. It said that the federal states had to accept the decision made by KEF (with one exception which I will come to later). We had to comply with the autonomy of the broadcasting institutions. However, we had to review and check whether their applications were in line with saving measures and efficiencies. Our decision was merely a technical decision while at the political level the

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minister-presidents and the parliaments could make a further decision to establish whether the licence fee was socially acceptable and adequate and did not exceed certain unbearable limits. Maybe you have heard that during the last decision there was confusion and debate. This debate was triggered by the fact (in order to put it cautiously and mildly) that certain politicians had felt that KEF was too powerful and they wanted to demonstrate in Germany who really was in power. To put it into figures, the broadcasters had filed an application requesting an increase of €2.03 per month and our reply was that the amount necessary was €1.09 to enable them to fulfil their functions.

Q1532 Chairman: So half?

Herr Conrad: More or less. The politicians were not satisfied with that and there was a long debate and I will not go into that debate now but at the end they established that the increase was to be 88 cents.

Q1533 Chairman: So that was a further reduction?

Herr Conrad: Yes. The population did not understand this debate. They considered this to be a political circus and that it was not really about these twenty cents more or less which for the individual citizen does not really make such a big difference.

Q1534 Chairman: That settlement which has now been made of 88 cents' increase per month will last for how long?

Herr Conrad: Four years.

Q1535 Chairman: Although you review it every two years?

Herr Conrad: Yes. We make a report every two years but normally we only change the licence fee every four years.

Q1536 Chairman: So the result of that is that the broadcasters have to deal with that amount of cash for the next four years. That will not go up in terms of the licence fee?

Herr Conrad: That is right.

Q1537 Chairman: You will say to them, "If you want further cash then you should make some improvements in the efficiency of your organisation"?

Herr Conrad: Yes.

Q1538 Baroness Bonham-Carter: But there is an appeal procedure, is there not?

Herr Conrad: The broadcasters do not have the possibility to defend themselves against our decision. The decision is a decision of the Länder and this is based on our decision. They cannot appeal against our decision. The decision of the Länder can be

appealed against. The broadcasters can then go to the Constitutional Court and, as you might have heard, ARD wanted to do this because, just like KEF, they felt that the provisions had been violated.

Q1539 Chairman: But they have not done that yet?

Herr Conrad: No.

Dr Wegner: There is the decision to do it but they have not done it yet.

Q1540 Chairman: And you think they will?

Dr Wegner: In September.

Herr Conrad: I am not quite sure.

Q1541 Chairman: This is a very basic question but it is not entirely clear to me. Out of the amount of money that is raised by the licence fee what proportions go to the different broadcasters?

Herr Conrad: The total amount that comes in from the licence fee per year is slightly more than €7 billion without public relations, merchandising and other income.

Q1542 Chairman: And how is that €7 billion divided?

Dr Wegner: I take as a basis the assessment of KEF and there was an assessment of €17.24, with €12.08 go to ARD from the monthly licence fee.

Q1543 Chairman: I was really asking about the percentage.

Dr Wegner: You can derive the percentage from these proportions. In total it is €17.24, ARD is €12.08 and ZDF is €4.47 because ZDF does not make radio programmes.

Q1544 Chairman: Our expert at the end of the table will work out those percentages for us.

Dr Wegner: But this does not come to €17.24 because we have a nationwide radio station, Deutschland Radio, which gets 37 cents, and then we have the supervisory bodies for private broadcasters headed by Professor Thaenert, and they get 32 cents.

Q1545 Chairman: And you have an overseas channel, Deutsche Welle?

Dr Wegner: Deutsche Welle is paid by the federal budget.

Q1546 Chairman: Like our World Service?

Herr Conrad: That is not an independent broadcaster.

Dr Wegner: Internally it is but financially it is not.

Q1547 Chairman: Let me see if I understand this correctly. Roughly speaking ARD would get three times what ZDF get?

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Dr Wegner: A little bit less, yes.

Herr Conrad: ARD consists of nine broadcasting institutions which each produce between five and eight broadcasting radio programmes. Then there is their contribution to the first television programme and they produce a regional television programme of their own which, however, you can get nationwide.

Q1548 *Baroness Bonham-Carter:* We have entered a new age in television which is the digital age. How has the proliferation of channels affected, if at all, the way in which you set the licence fee and how do you see it affecting it in the future when switch-off happens?

Herr Conrad: The digital world has also started with us here. ARD and ZDF have been operating for years additional digital channels with a programme of their own. In the case of ZDF this is a theatre channel, for ARD it is a festival channel through DAB and in TV. This is very successful in England. Maybe it is named differently but it is digital radio. Another topic is the transmission of existing programmes to the digital system and there are different ways of doing that. Digital terrestrial television started just recently in some regions in Germany. In addition digital programmes are available through satellite and cable and this is very common here in Germany. We will soon have a large number of digital transmission possibilities in Germany.

Q1549 *Baroness Bonham-Carter:* This is not a problem from the point of view of still collecting a licence fee?

Herr Conrad: These fees are already included in this licence fee. We took these fees into account when fixing the licence fee, that is to say, for DVB-T and DAB, but this is a problem for the private broadcasters and they are not interested in doing any transmission via the digital system, cable and terrestrial.

Dr Wegner: I think the question also referred to whether the population still accepts the licence fee if you have so many different possibilities and such a wide variety of programmes.

Herr Conrad: That is a very interesting question and this question leaves us right in the middle of constitutional law. Previously freedom of broadcasting only referred to the public broadcasters, obviously. The private broadcasters came into being in the middle of the 80's. The question at the time was whether these activities were admissible because the private broadcasters could not provide the country with the necessary programmes in terms of various kinds of programmes, such as culture, sport, information, partly because they were not able to do this but also they were not even interested in providing objective information, and therefore there was a suit before the

constitutional law as to whether the private broadcasters were admissible. The Constitutional Court then established that as long as the basic information is provided by the public broadcasters, that is, information in general terms, information as far as culture is concerned, information that is needed by the population, the private broadcasters are admissible and they do not have to fulfil these requirements. That means that the private broadcasters are dependent on the existence of the public ones.

Q1550 *Chairman:* If I can go back to your licence fee, the broadcasters have a cash amount for four years. That cash does not increase?

Herr Conrad: It does not increase.

Q1551 *Chairman:* But the value of that cash obviously decreases.

Herr Conrad: Yes.

Q1552 *Chairman:* Therefore, if ZDF did not have advertising would that system be sustainable? In other words, they can obviously try and increase their money from advertising to fill the gap but if that advertising was not there and it was entirely dependent upon the licence fee would they be able to sustain it?

Dr Wegner: Basically you have to bear in mind that KEF assesses the fees over a period of four years. In practice the broadcasters get an excessive amount during the first two years which is then reduced during the third and fourth years so that all in all they get over this period a sufficient amount, and when we assess the licence fee we take into account the estimated advertising revenues.

Q1553 *Chairman:* So it is a difference without a difference, when you look at it?

Dr Wegner: Of course, if they had a higher advertising revenue than estimated by KEF they would have more range to play with.

Herr Conrad: Advertising revenues amount to approximately 6 per cent as opposed to the other revenues.

Q1554 *Lord King of Bridgwater:* It did but it has varied much in two years. It has changed a lot.

Herr Conrad: This is due to the activities of the private broadcasters. Previously the percentage of ZDF amounted to 40 per cent while at ARD it was 20 per cent and then there was a big competition from the private broadcasters and therefore these figures are no longer valid.

Q1555 *Baroness Howe of Idlicote:* I need to clarify something in my own mind. Do the private broadcasters get any of the licence fee?

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Dr Wegner: No.

Q1556 Baroness Howe of Idlicote: So the general information or whatever the public service broadcasting achieves is also done by all the other broadcasters we have been talking about, and I think I read somewhere they also do some cultural programmes; they do not get any of the fee but do not have to comply with it?

Herr Conrad: That is right.

Q1557 Baroness Howe of Idlicote: There are various means-tested approaches, I gather, for people who cannot afford the licence fee for one reason or another. Is that process very expensive, and who pays for it? Does it come out of the amount allocated?

Dr Wegner: At present the work of KEF costs €1.04 million per year. Of course, there is also a certain amount of expenditure incurred by the broadcasters for documents and reports that they have to prepare for KEF but it is difficult to put that down in terms of figures.

Baroness Howe of Idlicote: That is the cost of collecting?

Q1558 Lord King of Bridgwater: No, you are on the wrong point. The point which I think Lady Howe is making is, how much does it cost to collect the licence fee from the general public, allowing for the fact that if you have social provision that is all part of the cost when poor people do not have to pay?

Herr Conrad: I think the broadcasters have founded an institution of their own for collecting the licence fees. I think it is about 2 per cent but I could check it. I think GEZ need 5 per cent in terms of expenditure for the collection.

Q1559 Baroness Howe of Idlicote: I should explain the reason I am asking this question, which is that there has been criticism that the collection of the licence fee, which is done via an agency by the BBC, is quite expensive. It is about £150 million and another £150 million for enforcement. What I am really asking is, is this an expensive part of the work?

Herr Conrad: I would not say so. It is a pretty economic institution, GEZ, where all the broadcasters are put together.

Dr Wegner: If I might add this, the German post office collected the licence fee prior to the foundation of GEZ, the institution that does the collection now. At that time it cost much more. For instance, the churches, on whose behalf the state collects the contributions, pay a higher amount than GEZ costs, so it is very efficient.

Q1560 Baroness Howe of Idlicote: But given what you were saying, is there beginning to be a debate with digital switchover and all of this, "Why should

we pay a licence fee?" and so on? Are you getting quite a lot of backlash now about the licence fee anyhow, and how do you measure the financial needs of broadcasters? Do you measure them against any other form of organisational financial needs?

Dr Wegner: Up to now the vast majority of the German population have had no problem in accepting the licence fee. There has been a development that there are now more people who are opposed to a rise in the licence fee but in general it is still accepted.

Q1561 Chairman: Do you know how many refuse?

Dr Wegner: Ninety-5 per cent of households have TV sets or radios, and out of that amount 8.5 per cent approximately is exempt from paying the licence fee for social reasons, such as handicapped people or people with a very low income or no income at all. The amount for loss of claims is 1.75 per cent. That means 1.75 per cent do not pay the licence fee, but we expect this percentage to increase because that tendency is going up. The fact is that people have difficulty in paying the licence fee rather than that they refuse to pay.

Q1562 Baroness Howe of Idlicote: It is just lack of money?

Dr Wegner: Yes. Economic problems have their consequences.

Q1563 Chairman: But the licence fee is not a matter of enormous controversy?

Dr Wegner: No.

Q1564 Lord King of Bridgwater: I am not quite clear about this licence fee point. Whose responsibility is it to collect the licence fee? Is it the broadcasters' responsibility?

Herr Conrad: Yes.

Q1565 Lord King of Bridgwater: And the cost of collection is paid by the licence fee payer in the end?

Herr Conrad: Yes.

Q1566 Lord King of Bridgwater: Because it is part of your calculation as to what it will cost?

Herr Conrad: It is part of our calculation.

Q1567 Lord King of Bridgwater: Moving on from there, you presumably therefore have powers to investigate both the efficiency of the broadcasters to carry out value-for-money studies, to make an informed judgment on their need for certain expenditure levels, and the efficiency of the collection process as well?

Herr Conrad: Yes. KEF has existed for 30 years. That means that KEF has developed many methods for reviewing and checking the efficiency of the

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broadcasters and also the conduct of the broadcasters. Perhaps you are interested in a few examples. For instance, we have been having an inquiry for many years into the profitability of the production institutions, and we have ascertained in the course of many years' experience that it was also due to the pressure exerted by KEF on these institutions that they get more profitable all the time in terms of efficiency. This even goes as far as the fact that TV institutions now produce one minute nominally more cheaply than they did in 1983. Another example is a comparison by benchmarking, for example, on expenditure for administration and so on.

Q1568 Lord King of Bridgwater: Do you have full rights of access?

Herr Conrad: Yes.

Q1569 Lord King of Bridgwater: Can you choose any part of the organisation that you wish to look at in terms of their efficiency?

Herr Conrad: Legally, no. It is sometimes tough to get the figures that we want from a specific department but the broadcasters do not have the right to refuse to deliver the figures.

Q1570 Chairman: Therefore you do have the powers to require that?

Dr Wegner: Yes, we do have the powers. We can get all the figures that we want but we are not entitled to go to the institutions and check their affairs there as the public prosecutor can.

Q1571 Lord King of Bridgwater: How many people have you got?

Herr Conrad: KEF has 16 members. They are not really honorary members but they are not doing this as a principal profession. For instance, in my case my main job is that I am a Vice President of the Supreme Court of Audit.

Q1572 Lord King of Bridgwater: In your Länder?

Herr Conrad: Yes, in Bavaria.

Q1573 Lord King of Bridgwater: I really meant the staff. What staff have you got?

Herr Conrad: Dr Wegner is our Managing Director. He does this on a full-time basis. We have a secretary. All of the 16 members have a small fund that they can use to hire one employee but not a full-time employee. It is maybe one quarter of an employee. We have some members who are university professors so, they have assistants and they hire these assistants for a certain period. The members of the Court of Audit have more man-power. In my case it is one employee.

Q1574 Lord King of Bridgwater: I do not know whether this is a fair question. How do the costs of production of news programmes in ZDF compare with the costs of production of the BBC?

Herr Conrad: We cannot say that. We have no figures from the BBC. We have no possibility to make a comparison between international broadcasters.

Q1575 Lord King of Bridgwater: On the collection of fees situation how does the cost of collection in Germany compare with the UK?

Herr Conrad: I do not know; I am sorry.

Q1576 Baroness Howe of Idlicote: How long do the 16 members serve for? Are they, say, one or two terms of five years?

Dr Wegner: For five years but they can be re-elected.

Q1577 Baroness Howe of Idlicote: For how long? How long is the longest one?

Dr Wegner: Every federal state nominates one member of the commission, so it is 16.

Herr Conrad: One member has been there for 30 years. In my case, I have been in KEF since 1985.

Q1578 Chairman: A good innings!

Dr Wegner: So there is no limit.

Q1579 Chairman: Do you encourage the broadcasters to increase as much as possible their commercial earnings?

Herr Conrad: Again, this is a very interesting question. First of all, we are interested in the licence fee not going up too much. There are other revenues which come from advertising, merchandising, participating interests, sponsoring. All these help to ensure that the licence fee does not increase too much. However, there are problems with the private broadcasters and with the European Commission. The European Commission sees the public broadcasters nearly exclusively from economic aspects and therefore from the aspect of competition. Therefore, we are arguing with Brussels especially regarding the issue of commercial activities.

Q1580 Lord King of Bridgwater: When you say "we are arguing", do you mean KEF are arguing?

Herr Conrad: KEF is not in the first line, but if the EU writes a paper of 100 pages covering that topic on 40 pages you will find KEF.

Q1581 Lord King of Bridgwater: Who do they send it to?

Dr Wegner: To the federal government.

Herr Conrad: That is another problem. The federal government does not have competences.

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Q1582 Chairman: We are getting into a slightly difficult area, are we not, because on several terms now we are finding the European Commission taking quite an interest in state aid and now in commercial activities? Do you see this as a future problem?

Herr Conrad: Yes, and the public broadcasters are not the only ones who get into difficulties. We have had problems in Germany with the public savings banks. Now we have problems with the university clinics that allegedly have to show neutral conduct as opposed to the private clinics although they are not comparable, and the problem is that here everybody, the Bund, the federal states, the broadcasters and KEF, are of the opinion that the fee is not an aid within the meaning of European aid and one might have to aim at a decision of the European Court of Justice but there are always compromises. Instead of fighting for such a decision there are always compromises which render life difficult for us.

Q1583 Chairman: Absolutely. This sounds to me like the beginning of a really massive debate. I think perhaps at this stage we had better note what is happening but leave it here for the purpose of this particular meeting. It has been immensely valuable and important. A number of issues have come up which have undoubted echoes as far as the United Kingdom is concerned. We are very grateful for your help and advice. If we have some other questions on reflection perhaps we might come back to you.

Dr Wegner: I will be present this evening if you have specific questions.

Q1584 Chairman: Thank you, but maybe later on when we have sat down and looked at all our notes we can write to you.

Herr Conrad: I have to apologise that I will not be present this evening because I have to go back to Munich.

Chairman: We will be there tomorrow. Thank you very much.

Examination of Witness

Witness: PROFESSOR THAENERT, Chairman, Association of Broadcasting Regulatory Authorities, examined in Germany.

Q1585 Chairman: Professor, thank you very much indeed for coming. We are very grateful. We are looking at the Charter renewal of the BBC which takes place roughly every 10 years. We are taking evidence in the United Kingdom and also overseas to see if there are examples there which may be of help to us. We are a House of Lords select committee. We were set up a few months ago and we have to report by the end of September. The aim is to have our report available so that the British Government can have it when they are making their decisions. Perhaps I could start by asking what are the principal duties and responsibilities of the association?

Professor Thaenert: Let me first thank you very much. It is a great honour for me to be here with your committee. Let me introduce my colleague Mrs Schriefers and let me also express my sympathy with your nation because of the terrorism in London. Thank you so much for being here and for giving time to the German media system. What are the principal duties and responsibilities? There are a few. The first task of media authorities is allocating transmission capacities for broadcasting services to public sector and commercial broadcasters and co-operating in decisions of the states regarding the allocation of transmission means. The second is participating in frequency planning and the promotion of technical innovations like digital audio broadcasting, at which we are not as successful as Great Britain, or digital video

broadcasting terrestrial, which you call DTT and we call DVB-H or DVB-T. The third task of media authorities is licensing commercial broadcasters (radio and television) and registering notifications of telemedia services. Telemedia services are services with no or only limited relevance for the formation of public opinion. The fourth is supervising, that is, monitoring that the legal requirements are adhered to by commercial broadcasters and providers of telemedia services. This is a strictly ex-post control which is limited to a check as to whether the services or contents transmitted meet the current regulations or not. In broadcasting this means in particular that the general programme requirements (constitutional order, human dignity, etc) and the provisions concerning the protection of minors and the advertising rules are fulfilled. The fifth task is promoting projects fostering media competence or enhancing media literacy. Let me say something to explain this. The protection of minors in the media, ie, broadcasting and telemedia, was revised on a national level only recently. The responsibility has been assigned to a joint body of all regulatory authorities which will certify self-regulation organisations of the television broadcasters and internet service providers. This joint body will only act in very few cases where the voluntary self-regulatory bodies of the service providers have failed. For this reason the German system for the protection of minors is frequently described as

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“regulated self-regulation” or “co-regulation”. The overall strategy pursued in Germany for the protection of minors in the media does not only imply that minors must be protected against potentially harmful contents which might impair their development, but also aims at providing them, as well as those in charge of their education, with guidance and support so that they learn to use the media with a critical eye. The promotion of media competence or enhancing media literacy thus represents but one component of our overall strategy for the protection of minors in the media: on one side protection, on the other side enhancing media literacy. The sixth task is allocating cable capacities. Analogue cable is still subject to a comparatively intense system of mandatory allocation of channels for radio and television services. For digital cable the obligation of the network providers to provide certain services (“must carry”) has been slimmed down. The media authorities exert a kind of control of misuse via the settlement of disputes concerning the digital cable capacity. The seventh task is ensuring equal, non-discriminatory access to distribution platforms for digital broadcasting services. The eighth is promoting and operating citizen’s media services (so-called “open channels” or non-commercial local radio). Such public access channels are, among others, incorporated into a network for media literacy in the states of Hesse or Rhineland-Palatinate, while in other states (Bavaria, Saxony) the regulatory authorities support the training of people working in the media via such channels, such as education channels or journalist channels for universities.

Q1586 Chairman: It sounds as though you are pretty busy!

Professor Thaenert: That is right.

Q1587 Chairman: We will come to a number of those in a moment. Lady Howe will probably be very interested in what you have to say on minors and children and the whole issue of standards and taste. You license commercial companies. We have not heard too much about commercial companies yet because we have been doing public sector broadcasting, in particular with ZDF. If I wanted to start a commercial company would I have to come to you for a licence to do so?

Professor Thaenert: You have to come to me, to our media authority, or to one of the 14 other media authorities between Munich and Hamburg or Cologne and Dresden.

Q1588 Chairman: I could not come just to one? I would have to come to a number?

Professor Thaenert: No, no.

Q1589 Chairman: I have a choice?

Professor Thaenert: You have the choice. You have to come to one of them.

Q1590 Chairman: As a matter of interest, if I came as a British company would I be able to get a full licence to broadcast?

Professor Thaenert: Yes, you would. You are very welcome, not only personally but due to our European legislation you have to be licensed.

Q1591 Chairman: Anyone inside the EU could do that?

Professor Thaenert: Yes.

Q1592 Chairman: One of the obvious differences between the UK and Germany is the importance of the Länder. How do you manage to get the same standards of compliance throughout the nation, which I presume is something you wish to do?

Professor Thaenert: We have some corporate units. We have established unified bodies concerning advertising on national TV, protection of minors on national TV and open access to digital services, and there is another corporate body of the media authorities which deals with media concentration and pluralism. All matters of nationwide interest are dealt with in these corporate units which solve them in the same way, not looking if they are done at Hamburg or Munich.

Q1593 Chairman: I understand. Therefore, on plurality you would wish there to be a choice of companies in each of the Länder?

Professor Thaenert: You definitely have the opportunity to apply with any media institution of a federal state, but any media institution would do the voting as to admissibility and the like in the joint and common bodies, so you can be sure to be treated in the same manner irrespective of whether you apply in Munich or in Hamburg.

Q1594 Lord King of Bridgwater: If I wanted to produce what might be considered some pretty unacceptable material, maybe religious or gambling or porn or other things, and I went to a Länder which was one of the poorer Länder and said, “This will bring a lot of jobs”, I think what you have just said is that that Länder could not say, “Okay, we will give you a licence” which might be for an all-Germany transmission without consulting with the other Länder. Is that right?

Professor Thaenert: Yes. Even in a poor state you would not get permission to do something which is not in compliance with the law because of our cooperation.

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Q1595 Chairman: Lady Howe is going to come in on exactly this issue in a moment so can we leave it for one moment. What I would like to ask you as my last question is this. We have been talking about the commercial side. This has transformed the position as far as German television is concerned. That transformation has taken place since the beginning of the 1980s?

Professor Thaenert: The 1980s, an interstate treaty.

Q1596 Chairman: Yes, but the actual presence of commercial companies and their audience share has grown. As a very expert outsider do you see public service broadcasters maintaining their share or inevitably reducing in audience share and reducing overall?

Professor Thaenert: From my point of view there is no reduced share of public broadcasters. It is almost the opposite. The audience share of public broadcasters is growing from nearly 30 per cent to 33 per cent in the last two or three years.

Q1597 Chairman: Just tell me the components of that because I have added ZDF and ARD together. That does not get me to 33 per cent of audience share. Should it?

Professor Thaenert: Yes, it should. It is more than 30 per cent.

Q1598 Chairman: Where has that grown from?

Professor Thaenert: For some time we have been facing financial distress within the dual broadcasting system. There are two causes of that. First of all, there is an advertising crisis. The second reason is that the public broadcasters have extended not only the number of their programmes but also the transmission time of their programmes. To give you some figures, during the last 20 years the public radio programmes have increased from 30 to 63. Just in the state of Hesse during the past five years we have had another three new public radio programmes, so we are in a situation now where the private ones fear for their future because of the competition.

Q1599 Chairman: So it is a very difficult time for the private commercial stations and, just to correct what I said, you are absolutely right about the figures. In 2004 ZDF had 14 per cent market share, ARD, the German-wide TV, had 14.3 per cent, and ARD, the regional stations, had 13 per cent, so if you add those together you get nearer to 40 per cent than 30, do you not?

Professor Thaenert: That is right.

Q1600 Chairman: Therefore your reply in a nutshell is that it is a difficult time for commercial companies but at the same time the public service broadcasters are widening their appeal as a deliberate act of policy?

Professor Thaenert: That is right.

Q1601 Baroness Howe of Idlicote: Just to clarify what has just been said, is that more channels and/or is it 24 hours a day? What are the hours that the various public service broadcasters cover?

Professor Thaenert: Of the public broadcasters' added channels most of them are 24-hour channels. There are a few exceptions, a German/French channel and the children's channel.

Q1602 Baroness Howe of Idlicote: As the Chairman said, I was very intrigued by your range of duties, not least because I used to chair the Broadcasting Standards Commission in Britain, which very much had the same duties when it was a separate entity. Listening to the many tiers of regulation that there are, is it in your view an effective way of regulating and monitoring and supervising all the things you say take place?

Professor Thaenert: It has been effective for the time being. It has been up to now. Federal competition has been very successful. It will be very difficult for the future because we are at the beginning of digitalisation of cable networks and the German media authorities are not allowed to regulate questions of telecommunications. Telecommunications is in the competence of the Federal Republic of Germany; it is a national task. That is one obstacle on our way to the future. The other obstacle will be that we are not used to national planning of cable networks and others. In the future it will be much more difficult, as with Ofcom or the CSAV (Conseil Supérieur l'Audiovisuel) in Paris.

Q1603 Chairman: Much more difficult than Ofcom, do you think?

Professor Thaenert: Yes. There are two advantages to Ofcom. One is that Ofcom can regulate telecommunications affairs. We are not allowed to do that so we have to co-operate in the Federal Network Agency. The other will be that we are not allowed to regulate or oversee the public broadcasting systems. We are only permitted to oversee the private side, the commercial side of broadcasting services, not the public side.

Q1604 Baroness Howe of Idlicote: I was just remembering something we heard earlier on, which is that there will shortly be a European requirement for a licence fee to include those who are taking things via the computer from the internet. Do you have any oversight of that area or will you have in the future?

Professor Thaenert: We have a very complicated structure as far as the collection of licence fees goes. In Germany you pay this licence fee for having a radio or television set and for having the possibility of gaining access to programmes. If there is a

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television set in the household that is sufficient to have the possibility of receiving the programmes. If you select this standard then you will also have to include the computers for collecting the fee.

Q1605 Baroness Howe of Idlicote: Can I move on to what we certainly had to regulate—taste and decency issues and fairness and privacy? You have explained very effectively about the protection of juniors but, as Lord King was beginning to move into this area, we saw over our period rather more explicit broadcasting of porn and this sort of thing on ordinary channels and maybe after the watershed but not much after. I wondered what you were doing about that. The other issue is on fairness and privacy because, as I am sure you would agree, a programme seen on television can do at least as much damage if it is unfair or an unwarranted infringement of privacy as if you were taken to a court of law.

Professor Thaenert: We do not have any control over taste as the regional media institution. We only have subsequent control of compliance with laws. In this connection protection of minors but also human dignity is important. In Germany any type of pornography would be inadmissible in broadcasting.

Q1606 Baroness Howe of Idlicote: Who regulates that?

Professor Thaenert: The regulations with regard to pornography, protection of minors and human dignity are the same for the public as well as for the private broadcasters. For the private broadcasters the media authorities have the supervision, that is to say with the joint body, and for the public ones there are internal councils or supervisory bodies.

Q1607 Baroness Howe of Idlicote: So you are really saying you do not see any pornography on German television?

Professor Thaenert: There is no pornography concerning free TV or digital TV. Pornography is allowed within closed user groups but on free TV or on digital TV there is no pornography allowed in our programming.

Q1608 Lord King of Bridgwater: They get it on a Dutch channel, do they not?

Professor Thaenert: There may be Dutch channels, but—

Q1609 Chairman: You are confined to the private sector? You do not look at the public service broadcasting content. Who does that?

Professor Thaenert: Those are internal councils or supervisory bodies and decision-making bodies.

Q1610 Baroness Howe of Idlicote: Within the Broadcasting Council?

Professor Thaenert: Within ZDF or SWR or the broadcasting station of the state of Hesse.

Q1611 Baroness Howe of Idlicote: You mentioned the business of self-regulation, co-regulation and movement to less regulation.

Professor Thaenert: Not to less regulation.

Q1612 Baroness Howe of Idlicote: Lighter regulation but self-regulation. I mention this because that is very much Ofcom's approach, to pass it back to the broadcasters, certainly in the first instance. I think they retain fairness and privacy, looking at that as a long stop. Do you think that is likely to work in the long term?

Professor Thaenert: I think it is the only possibility with a glance at more than 100 channels.

Q1613 Baroness Howe of Idlicote: There is proliferation?

Professor Thaenert: We are getting regulation about digitalisation. It is not Germany's idea. The Germans love to administrate and regulate, really we do.

Q1614 Chairman: There is great similarity to the UK then.

Professor Thaenert: It was very hard to get used to the new kind of self-regulation. It is not our idea of regulation. For us broadcasting is something that has cultural value inside, but we have had to learn from Europe and we have had to learn from Ofcom. It is the British way of regulating: first give it back to the broadcasters who are responsible for their content.

Q1615 Chairman: Are you happy with just an internal public service broadcasting control system?

Professor Thaenert: Not at all, but it is much more important for our private broadcasting providers. They are not happy. People complain to them about this advertising and protection of minors. The public service broadcasters do not get these complaints. Consequently we are faced with problems of legitimisation in respect to the public broadcasters. If you have a look at the newspapers these days there is a big scandal about hidden advertising. The supervisory bodies of the public broadcasters did not fulfil their duty, but this does not exempt us from exerting control over private broadcasters and this may even involve administrative fines.

Q1616 Chairman: If it had been in the commercial sector a complaint could have come to you which you could then have investigated?

Professor Thaenert: Yes. With any complaint concerning the private broadcasters that comes to us we would have to react. It is our duty.

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Q1617 Baroness Bonham-Carter of Yarnbury: Do the independent companies have any public service broadcasting requirements at all?

Professor Thaenert: Yes, there are demands of the private channels but they regard the programme functions as constituting a certain amount of information and education.

Q1618 Baroness Bonham-Carter of Yarnbury: News programmes, that kind of thing?

Professor Thaenert: Correct, but we have a dual system. The public broadcasters have to fulfil a basic obligation. For the private companies there are less broadcasting requirements.

Q1619 Baroness Bonham-Carter of Yarnbury: But you oversee the public service broadcasting requirements within the private companies?

Professor Thaenert: No. We are only allowed to oversee the private ones, not the public ones.

Q1620 Baroness Bonham-Carter of Yarnbury: Getting back to advertising, we have read about the scandals about placement and so on. It is quite a curious system here, this combination of a licence fee and then a rather small amount of advertising. Would you prefer to see no advertising on the public service broadcasting channels?

Professor Thaenert: There are two possibilities to react. The first solution would be a clean separation on the basis of the British model: public broadcasters financed by licence fees and private broadcasters financed by commercials. The German federal states have a hard time drawing these conclusions because this would entail another increase of the licence fee. Therefore, there is a second solution that you can draw from the hidden advertising affair, that you have both supervised by an external supervisory body.

Q1621 Baroness Bonham-Carter of Yarnbury: So at the moment you do not think it is properly policed?

Professor Thaenert: I agree with you. It is not very realistic to say we are getting another supervision now of public service broadcasters. I think it is rather the second solution. (Difference between licence fee paid public service and commercial broadcasting).

Q1622 Lord King of Bridgwater: When you were talking about pornography I mentioned the Dutch channel. Is there any significant part of the German audit that listens to what you might call foreign commercial stations that are transmitting to cover part of Germany?

Professor Thaenert: There is an interest in channels transmitting in foreign languages, but that refers more to information programmes concerning BBC

World, TV Cinq, Eurosport and so on, but I think there is not a big interest in entertainment channels.

Q1623 Lord King of Bridgwater: The reason I ask is to find out whether you are trying to impose certain standards on the commercial companies in Germany and whether there is any pressure coming from outside, people saying, "This ties our hands behind our back and other people are not tied by the same regulations". It is not a problem?

Professor Thaenert: There has been no problem, not even in North-Rhine Westphalia which is at the border into the Netherlands, not even at the border to Austria or Italy.

Q1624 Lord King of Bridgwater: We know for constitutional reasons that broadcasting responsibility and competence is a Länder responsibility and therefore split up among the 16 Länder, but your effort is to overcome that and restore it as essentially a control function because you do not want to have a whole lot of different standards in different Länder, presumably particularly for those transmission areas which are not respecters of Länder boundaries. That is what you are trying to do, to get a common approach across the whole of Deutschland, is it not?

Professor Thaenert: There is a common approach. There is also a common material legal foundation with our interstate treaty which says a lot about advertising and nationwide programmes, protection of minors and concentration and pluralism. That is all done in our interstate treaty so we also try to adopt this uniform harmonised legal foundation in practice and we do this in the common councils or commissions or bodies.

Q1625 Lord King of Bridgwater: To answer Lord Fowler's first question about whether he could come in and start a commercial station, could he come to any Länder he liked and set it up there but that Länder would consult with the others about what they aimed to do before they gave permission?

Professor Thaenert: Yes. They are obliged to consult or to co-operate.

Q1626 Chairman: But in principle you would not see any obstacle?

Professor Thaenert: In principle I would not see any.

Q1627 Chairman: Tell me about the commercial activities of public service broadcasters. In the UK we have quite a dispute when the BBC carries out commercial activities. It does not take advertising but it does do commercial activities. There is a feeling among competitors, obviously, that there needs to be fair play and fair trading. Is there any way that that is policed in Germany?

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Professor Thaenert: We have this problem to an extent that you would not even expect because here also the private broadcasters complain about commercial activities on the part of the public ones. This is in particular with regard to making phone calls during transmissions, for instance, in the transmission of sports events, and this creates an additional value. This is to a large extent on-line advertising and on-line selling, for instance, the sale of certain pots and pans that go together with the transmission of a cooking programme and on the side of that they sell the equipment. The states have just reacted to this when they made their recent state aid treaty. They strictly limited the on-line and accompanying activities.

Q1628 Chairman: So this an issue, but are the defences enough to handle that, to prevent unfair trading taking place?

Professor Thaenert: Since there is no common supervision that is competent for both parts of the dual system only the Länder can react which are in charge of the legal supervision, and they can only react to legal supervision or a new legal system. They have only a limited possibility to react.

Q1629 Chairman: Who represents the German licence fee payer in Germany? You do not really look after his interests, do you, because you are in the private sector?

Professor Thaenert: We have two. We are not the only one. There are pluralistic bodies within each media authority which have to represent the pluralistic society. They are employee associations, they are churches, they are industry associations, they are associations of minors or children. For instance, the pluralistic body or media authority in Hesse has 30 members who are sent out from pluralistic society members. They are sent out from their organisations.

Q1630 Baroness Bonham-Carter of Yarnbury: And they get elected onto the Television Council?

Professor Thaenert: To be elected they are nominated.

Q1631 Baroness Bonham-Carter of Yarnbury: To what though?

Professor Thaenert: To our pluralistic body. Each of the 16 media authorities has such a pluralistic body and they have to represent society.

Q1632 Lord King of Bridgwater: The Länder are nominating people to the Television Council?

Professor Thaenert: Not the Länder. The Länder nominate associations which can send their representatives.

Q1633 Lord King of Bridgwater: But pluralistic bodies are also nominating people to the Television Council?

Professor Thaenert: Yes.

Q1634 Lord King of Bridgwater: And they are nominating them to your authorities?

Professor Thaenert: Yes.

Q1635 Lord King of Bridgwater: So from each Länder is coming a parallel stream of people?

Professor Thaenert: Yes.

Q1636 Lord King of Bridgwater: Do they talk to each other when they go home?

Professor Thaenert: Yes. There is not only the conference of directors or presidents but also the conference of the chairmen of the pluralistic bodies.

Q1637 Lord King of Bridgwater: Realistically is there any sense of common purpose back home in North-Rhine Westphalia or whatever of the people who have gone doing the public sector job and doing the commercial sector job? In answer to Lord Fowler's question about who is going to stop unfair competition, would they get together at that level or is it two bodies at the central level which might start shouting at each other?

Professor Thaenert: I might have mis-phrased the sentence. Among the representatives there is only an exchange of opinion between the representatives of the media institutions of the federal states. There is no real or effective or lasting exchange between the representatives of the bodies and the media authorities and the institutions of the federal states. There is no co-operation between them. They have other issues. On the public side they have the issue of taking care of their own enterprise and handling that well, while we exercise external supervision on private ones.

Q1638 Baroness Howe of Idlicote: I am still a little unclear. You were describing your efforts to protect the young, the main one being in media education, no doubt both for their parents for guidance and indeed for the young in how to recognise when they are being got at in the way they might be. Ofcom has a responsibility too, of course, but right across the whole spectrum of broadcasting. You do your bit on the commercial side. Who is doing the public service bit? Who is keeping an eye on that and are you achieving the same standards between you? If I could just ask about another area, on digital television we know that there are something like 90-plus households which have access to digital television. I am not quite certain how much of that is digital terrestrial or digital via satellite because presumably with digital via satellite there would be a much

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greater range of, shall we say, all programmes but including less desirable programmes. What is going on there? Could you also tell me what the percentage of terrestrial digital is compared with the other group?

Professor Thaenert: If I may start with the first question regarding protection of minors in the public and the commercial system, there are common legal foundations but there is a division of the competence of the responsibilities. That means that the media institutions have to guarantee the protection of minors only on the private side, in the programmes of the private broadcasters and the teledmedia services. We have no duty on the public side of the broadcasting system. The internal bodies have to supervise the public broadcasts. And at the end of the day the länder have to see whether they fulfil their legal requirements.

Q1639 Baroness Howe of Idlicote: Public service broadcasting has no duty on it?

Professor Thaenert: They do it on their own, within internal pluralistic bodies. The second answer is that I agree with supervision, whether on satellite or on the cable system. There will be a lot of new channels which are not good for children or for minors, so we have to think about how to react to that. At the present stage in free TV we can still work with indications through the transmission period and time. As far as digital channels via satellite are concerned, we will have to work with technical blocking devices. We have a relatively low share of terrestrial TV. Fifty-eight per cent of TV sets in households get their programmes via cable, 35 per cent via satellite and up to 10 per cent via terrestrial.

Q1640 Chairman: Thirty-five per cent by cable, did you say?

Professor Thaenert: No, 58 per cent by cable networks, 35 per cent by satellite, and only between 7 and 12 per cent terrestrial.

Q1641 Chairman: That is a very high cable percentage.

Professor Thaenert: Yes.

Q1642 Chairman: Are you amongst the highest in Europe?

Professor Thaenert: Maybe. I am not sure.

Q1643 Baroness Bonham-Carter of Yarnbury: Going back to these groups who send their representatives to your authority and the TV Council, have these changed as Germany has changed and do you think it is a satisfactory way of having representatives of the licence payer?

Professor Thaenert: There were changes in the composition of the pluralistic organs within the media institutions. We have consumer associations in the state of Hesse and also in Rhineland Palatinate, and we also have children's associations and youth organisations and consumer associations.

Q1644 Baroness Bonham-Carter of Yarnbury: So it changes?

Professor Thaenert: They change. Those are also new.

Q1645 Baroness Bonham-Carter of Yarnbury: Do you think it is satisfactory, the way it works?

Professor Thaenert: It is satisfactory.

Q1646 Lord King of Bridgwater: What about immigrant communities? Are they represented?

Professor Thaenert: There is a refugee organisation and there is a representation of foreign citizens.

Q1647 Chairman: We have run out of time, I am afraid. We are seeing you for dinner, I believe. We will give you a small break and continue over dinner. Thank you very much for your advice. It is very valuable and interesting to us. Perhaps if we have any other questions even after our further interrogation we can write to you.

Professor Thaenert: Thank you so much. It has been very interesting for me to be here with you, and thank you for your kind invitation for this evening.

THURSDAY 14 JULY 2005

Present Bonham-Carter of Yarnbury, B Howe of Idlicote, B
 Fowler, L (Chairman) King of Bridgwater, L

Examination of Witnesses

Witnesses: HERR PROFESSOR DR ALBRECHT HESSE, Legal Director and Deputy Director-General, HERR ANDREAS WEISS, Director of International Relations, HERR CHRISTIAN BLANKENBURG, Foreign Co-ordinator for International Relations, and FRAU JOHANNA SPADARO-WILLMANN, Legal Adviser, ARD, examined in Germany.

Q1648 Chairman: Perhaps we could begin. Could I first thank you very much indeed for your hospitality and for giving your time for this meeting? We are looking at the Charter renewal of the BBC and in that we have a House of Lords select committee which will give advice to the government and our report should be going in in October. In that process what we are trying to do is look not just at the UK but also where we can find lessons and advice from overseas, and obviously in Germany public service broadcasting is extremely vital and important.

Professor Hesse: We are glad to receive you here for a special reason, for in the German tradition the BBC is the mother of public service broadcasting and the model was brought to Germany some 60 years ago. Since then it has proved a factor of stability and growing democracy which did not have a long tradition in Germany before. Therefore we are delighted that you have come to ask our advice.

Q1649 Chairman: We have read the papers but just as a start I wonder if you could describe briefly the background of ARD, where it came from and what it does. Please do not feel that that has to be a very lengthy explanation; just the essence of it.

Professor Hesse: Perhaps the easiest way is to look into history. After the war Germany as a state did not exist any longer and the reconstruction began at the regional level for political reasons. The constitutions of the Länder date from 1946–47 and once there were the Länder one was thinking about the reconstruction of broadcasting. The former Reichs Rundfunk did not exist any more. It was taken over by the Allies and here in Munich it was under American control and called Radio München. Our law dates from 1948, Bavarian broadcasting law, and Bayerischer Rundfunk began to run its programmes at the beginning of 1949 before the federal constitution came into force, which was only in May 1949. The same is true for the other Länder in the Federal Republic and therefore the regional stations are at the very heart of broadcasting in Germany. There were attempts from the federal government to gain control over broadcasting but this was defeated by the German Constitutional Court and since then

it has been taken for granted that broadcasting is a matter of Länder competence.

Q1650 Chairman: In terms of your organisation you obviously have stations and services at the Länder level but you have a national one as well?

Professor Hesse: Yes, but the basis is what happens in the regions, so this is the starting point. The next step was the introduction of television. This document I have here is for the First channel. Television was too expensive to be run in post-war Germany by a single regional station so they had to stick together and this was so to speak the hour of the birth of ARD. The roots are still regional and since 1954 we have had this television channel but on a regional basis. It means that a certain amount of programming is contributed by the regional stations, 15 per cent, for example by Bayerischer Rundfunk, 22 per cent by Westdeutscher Rundfunk, and this percentage corresponds roughly to the income of licence fees in the respective area.

Q1651 Chairman: What audience share do you have?

Professor Hesse: For the First channel, the most successful television channel in Germany, it is about 14 per cent. It varies but sometimes it is in the first place, sometimes in the second place. ZDF has a completely different organisational structure. It is derived from the Länder competence for, as I said, broadcasting is considered as a cultural medium and therefore it is the Länder who have to organise broadcasting in Germany, but it is a centralised organisation. I think you have been to ZDF.

Q1652 Chairman: Yes, we have.

Professor Hesse: Then we have the so-called Third programmes. The name has a historic background because in the middle of the sixties there were only two television channels, the First channel, the network of the regional stations, and the Second channel, ZDF. Then there were the regional programmes, what we call the Third programmes, at the beginning only for their respective area but since the middle of the eighties transmission via satellite has become indispensable for today 40 per cent of

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households receive their television programmes via satellite dish and if you do not distribute your programmes by satellite people cannot receive them. Therefore the regional programmes are distributed by satellite and you can receive them in the whole of Germany and their aggregate market share is 12 or 13 per cent, so they are in the third or fourth place. I mention this fact not because I am keen on market share that is not our public service remit, but because it proves that people are interested in regional and local content and nobody else can deliver this kind of programme.

Q1653 Chairman: It is a very important point, is it not, because people tend to think that it is only the national programmes, whether it is from London or wherever, that people are interested in, but all the evidence that we have been hearing suggests that people are extremely interested in what is going on in their own area?

Professor Hesse: Yes, and nobody else can produce and deliver these programmes because they would have to send correspondents and camera teams to cover the events that are taking place in your region. Private broadcasters could not do the same job because it is impossible to finance this kind of programme by advertising because local events in Würzburg or Regensburg are of interest only to people in Bavaria but not in Hamburg, so the target audience for advertising would be too small.

Q1654 Chairman: How do you define public service broadcasting?

Professor Hesse: It is a good question. On the way from lunch I was talking with Lady Howe about self-regulation. It is a long-lasting discussion in Germany, what is the function of public service broadcasting, what should its role be. Politicians are sometimes suspicious about our development for they say we are always inventing new channels and it is becoming always more expensive and the licence fee payer has to pay for all this, so once and for all there should be a definition of what public service broadcasting should be good for and if the activity comes under the definition it is all right but everything that is outside is a forbidden area. It is obvious that such a point of view cannot work. As an example I am using the Prussian King Frederick the Great who had ambitions to regulate everything in the country by law and the law book had more than 18,000 paragraphs and today nobody is speaking about that. The same is true for broadcasting, for broadcasting has to reflect life and society and therefore it is changing each day. That is one point and the other one is that the technical medium of distribution is developing very fast and therefore, even if you succeed in giving a description which is completely

true for the 14 July, it may be that you can live with this definition next year and the year after but in three or four years' time it will not fit our work and therefore we take the view that such a precise definition would be the end of public service broadcasting in the medium or the long term and this view has been confirmed by the German Constitutional Court.

Q1655 Chairman: Presumably you subscribe to broad aims like inform, educate and entertain, but you do not want to go into too much detail on it after that?

Professor Hesse: Yes, that is exactly the point. You can describe the aim and for ARD, for example, it would be complete and impartial information reflecting cultural life in the country and everything that is happening in the country.

Q1656 Chairman: ZDF said yesterday that about half their production in terms of what the viewer sees went in terms of news and current affairs. Is that the kind of figure you would have in mind?

Herr Weiss: If you are interested I have some figures for you also compared with the private broadcasters. We quickly adapted it so we forgot to put the headline also into English but I will give that to you and you can see very well the difference in the programme structure.

Q1657 Chairman: Would that be roughly correct, what I was saying?

Professor Hesse: The three pillars of our programming where we are different from our private competitors are information, regional content and culture. What is very important is that we would not like to be confined to this only because you also have to have entertainment, sport and so on. Otherwise people will say, "This is a boring educational channel".

Q1658 Chairman: We find in the UK that some in the commercial world of television think it would be an extremely good idea to confine the BBC to programmes that they do not do. I imagine that this is a pretty familiar market to you.

Herr Blankenburg: Correct. It is like that here too.

Professor Hesse: In these discussions I am using a notion which I found in papers of the BBC. It is the Himalaya option and that means that retreating to the highest peaks of culture would be the end of public service broadcasting as a service to the whole of society.

Q1659 Baroness Bonham-Carter of Yarnbury: As you know, we have visited ZDF and KEF and consequently know how your licence fee is established. KEF is there to protect you from

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political pressure, it seems, and yet what you have experienced over this latest supplement seems to suggest that they perhaps have not quite succeeded there and I was interested to know whether you are intending to challenge the Länder by going to the federal Constitutional Court. Secondly, is it the case that you are possibly contemplating the idea of arguing for an index linked licence fee and, if so, why?
Professor Hesse: The two questions are closely linked. Once more we go back into history. In 1994 there was a decision of the federal Constitutional Court which underlined our independence from state influence and which said that to guarantee independence there must also be financial independence. In its decision the court gave an example of how the procedure to fix the licence fee could be organised to prevent political influence on the one side and give sufficient finance to public service broadcasting on the other side. This means first that we have to write down the money we need and the second step is that this is examined by an independent commission of experts. "Independent commission of experts" means no politicians in it but people who are familiar with economics, with technics, with law and so on, and this examination has to take place to prevent the licence fee payer from paying more than necessary for the fulfilment of the public service remit. Once this examination has taken place the recommendation of this commission is binding upon the prime ministers and the parliaments who have to fix the licence fee afterwards by law. It is important that the recommendation is binding because this means that political influence is excluded. The court said that there is only one exception, and that is when it is inappropriate.

Herr Weiss: When it is socially insupportable.

Professor Hesse: If the licence fee is too high it may be that the examination has taken place in the correct way but that after that the licence fee is €50 per month and then the parliaments would be entitled to say, "No; it is too much".

Q1660 Baroness Bonham-Carter of Yarnbury: Because the programmes are inappropriate?

Professor Hesse: No, the amount. This is the only way to escape from the recommendation. In theory the system is perfect but if we have a look now at what happened at the last round, in the first step we presented to KEF an amount of less than two euros per month.

Q1661 Lord King of Bridgwater: An increase of two euros a month?

Professor Hesse: Yes which was roughly inflation of four years. Then the commission took off about half of it and they recommended €1.09 and then the prime ministers came and said, "No, it is too much.

Everyone is doing badly in this country so the same should apply to public service broadcasting", and they granted only 79 cents, so they took off 30 cents, but the reasons they gave were not in line with the judgment of the federal Constitutional Court. Nobody can pretend that 30 cents more per month is unaffordable. It is ridiculous. Therefore ARD said, "We have to bring this case before the Constitutional Court", which is possible because there is no court where you can challenge laws with the exception of the Constitutional Court. However, we said it could be considered as an impolite act and some politicians said, "If you dare to go to Karlsruhe", where the Constitutional Court is located, "mind our revenge afterwards".

Q1662 Chairman: That could be interpreted as political pressure perhaps.

Professor Hesse: Yes, which in my view is an additional argument for going to the Constitutional Court. However, we said it was better to try to have a discussion with the Länder about how to improve the whole procedure and the day before yesterday we sent a proposition with an indexation of the licence fee to the prime ministers. Once more it is derived a little bit from the British model. We proposed that the index should be the general inflation, not inflation in the media, which is higher, and as compensation we have to rationalise our production. In the procedure under the KEF, when we save money KEF comes and says, "You do not need this money, obviously. It is not necessary for the fulfilment of your public service remit". You have no incentive to look where you can save and now with this new model on the one side we have less than media inflation but on the other side there is an incentive for innovations.

Q1663 Lord King of Bridgwater: Would you keep your efficiency savings?

Herr Weiss: Yes, in this case.

Q1664 Lord King of Bridgwater: We met KEF yesterday and I asked them how many people they had got to do this important job. I was expecting an answer of somewhere between 50 and 100 and we were staggered to find how few people they seemed to have. I could not understand how they could begin to do the job that they are supposed to do.

Professor Hesse: Of course, they did not want to give you the correct answer. There are very few people.

Q1665 Chairman: "Very few" meaning how many?

Professor Hesse: There are 16 members in the commission, one per land, and then they have some kind of secretariat of two or three people, and all the work is done by our financial departments.

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Q1666 Lord King of Bridgwater: So they are entirely dependent on what you give them and they ask intelligent questions on what they are given?

Professor Hesse: Yes, but the present law entitles them to prescribe in what way we have to present our financial needs and that is a very time-consuming and difficult task.

Q1667 Lord King of Bridgwater: ZDF make a budget, they say what they need and they get their share of the licence fee money. Do you make a collective application for your 18 TV channels and 22 radio stations and do you then have to allocate that money around them all?

Professor Hesse: Yes. There is some injustice in the system and it is exactly the point you mention. As far as the commission is concerned they calculate the amount of the licence fee on a general basis.

Q1668 Lord King of Bridgwater: So you are examining the budgets of each one of those television and radio stations?

Professor Hesse: Yes.

Q1669 Baroness Howe of Idlicote: Following up the conversation we began on the way over, it is interesting to look at the representation on the Broadcasting Council. Quite clearly they are meant to be very representative of the community. Nevertheless, do they in your view have sufficient powers to enforce their decisions on whatever the programming is? In Britain also because of Ofcom there is to be a lighter touch form of regulation. To what extent is there proper redress for those who have been damaged? I am thinking both of specific damage, privacy and fairness, but also taste and decency, children exposed to things they should not be exposed to.

Professor Hesse: That is a very important point and first I would like to make some remarks concerning our system in general and then come back to the second part of your question. The control of public service broadcasting lies with the Broadcasting Council which is considered to be a representation of the whole of society and is composed of representatives of different social groups—the churches, the unions, the universities, the theatres, parents' associations, everything you can imagine, and also political parties coming from parliament. Its composition is a very important guarantee of independence and I will give you an example here of Bayerischer Rundfunk. When the last Director General was elected the prime minister tried to install the candidate he liked most and he sent his minister of finance who is also a member of the Broadcasting Council to speak to each member and at the end of the day he believed he would have quite a

comfortable majority for his candidate, but when the votes were counted—

Q1670 Lord King of Bridgwater: A secret ballot?

Professor Hesse: Yes, exactly, that is the point. When the votes were counted his candidate had lost and people who are very near to the Bavarian prime minister said that he had nightmares because of this for some months after this happened. The first point is the guarantee of independence. The competences of the Broadcasting Council are very far-reaching. They elect the Director General and they have to approve the directors of television, radio, technics, finance and law, and also the heads of large departments.

Q1671 Chairman: They appoint them?

Professor Hesse: No, the Director General appoints them but they have to approve the appointment. That gives them a lot of power not only in relation to retrospective control but also with a view to the future, for obviously it depends very much on the people who do the work how a task is fulfilled.

Q1672 Chairman: Would they appear before the council, these people they approve?

Professor Hesse: Yes.

Q1673 Chairman: Rather like a senate hearing?

Professor Hesse: Yes. Of course, there is a formal hearing but the Director General would not be very well advised if he presented his candidate with a “wait and see” approach in a formal hearing. Of course, he has to speak to the most important people in the council, “I am thinking of this or that person. Could you imagine agreeing to this proposal?”; otherwise it would be too risky.

Q1674 Baroness Bonham-Carter of Yarnbury: How low down does this go?

Professor Hesse: The level after the directors.

Q1675 Baroness Bonham-Carter of Yarnbury: So controllers of channels?

Professor Hesse: Yes or the head of the radio channel, for example. This is very important and the other point is that they have to approve the budget. Each minute of programming is somewhere in the budget and I have attended discussions where they have said, “There is too much money in entertainment. We want more money in youth and education”.

Q1676 Lord King of Bridgwater: This is station by station?

Professor Hesse: Yes, but I have one additional remark. On the regional basis I think there is a very good level of control and, of course, the Broadcasting

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Council is entitled to say, “The programme I saw yesterday evening was not in line with the principles laid down by law”. Of course, all the people working on the programme do not like to come before the Broadcasting Council to explain why this mistake happened, so everybody is careful to make sure that it does not happen, so this internal control is very effective, much more effective than external control by the media authority because when I look at what is happening in the field of our private competitors it is external control by media authority and some weeks ago I read a little notice in the newspaper that after 10 years of law suits RTL had to pay a certain amount of money because they did not respect some advertising rules. What is the value of such control if there are 10 years of law suits?

Q1677 Chairman: But, to be fair, you have got into trouble a bit, have you not, on the product placement position and that has a fairly long history as well?

Professor Hesse: Yes, that is a special case and the private sector is very lucky that the journalist who reviewed this case was more interested in the public sector for the scandal would be much greater in the private sector.

Herr Weiss: Product placement is not allowed in the private sector either. This is forbidden by law in general for television.

Q1678 Chairman: In a few words tell us how it happened. Is it conceded that it did happen?

Professor Hesse: Yes. The facts are beyond doubt. The problem is that it was hidden in a way which made it almost impossible to discover it and it was not only product placement but, as we say in Germany, theme placement. The story was bought by an interested person and then the author sat down and wrote the story as for pharmacies, dental associations, carpet associations, everything that you can imagine.

Q1679 Chairman: I had better declare an interest. I am Chairman of a pharmacy company in the United Kingdom. What did they try to do then?

Professor Hesse: They said that young people do not come very often to the pharmacies, so they want a scene which is playing in the pharmacy where a young lady is selling the products and she explains it in a friendly way, and this will be good for their image and make young people come to pharmacies.

Q1680 Chairman: And did money pass?

Professor Hesse: Yes.

Q1681 Chairman: But to the organisation, not to the individual?

Herr Weiss: To both.

Professor Hesse: To the production company or to a subsidiary of the production company, and it was declared as commercial income for licence revenue. For the auditors who examined the company each year it was impossible to discover. The film production company has an annual turnover of some hundreds of millions of euros and the income was between €200,000 and €300,000 per year declared as commercial income, so nobody was taking care and the auditors did not ask to be shown the contracts behind this €200,000.

Q1682 Baroness Howe of Idlicote: And these were independent production companies?

Professor Hesse: Yes.

Herr Weiss: Not so independent. That is the trouble.

Q1683 Chairman: Correct me if I am wrong. I think they are independent production companies in which you have a big stake?

Professor Hesse: Yes. Eighty per cent belongs to the public service broadcasting station and therefore now in public opinion it is nearly the same. On the other side, to be fair, we have to say that if it was not our own company we would not have had the means to go into that company and look at each sheet of paper. If it is really independent they can say, “You will not get in”, and then you are stuck because if you do not see the money behind it is impossible to disclose it.

Q1684 Baroness Howe of Idlicote: Whilst we are on this subject, I notice that sponsorship, not advertising, could be quite close to what we have been talking about. How much of your revenue is produced in this way and are there any dangers that you see?

Professor Hesse: It is difficult to express that percentage because as far as ARD is concerned 89 per cent of our income is licence fee, 2.12 or 2.13 per cent is advertising and the rest is selling of programmes and so on. Sponsorship is contained in the 2.12 per cent advertising. It is some millions but compared to the whole it is small.

Q1685 Baroness Howe of Idlicote: But is it not something that needs monitoring as it is a fairly new beginning in light of the falling of advertising revenue in some parts? It is certainly beginning to appear in Britain.

Professor Hesse: In Germany for public service broadcasting it has existed since 1991. The problem is that the income you can raise is relatively small but on the screen it appears as advertising. Advertising in public service broadcasting on television is allowed only in the First and Second programmes before

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eight o'clock in the evening and sponsorship is allowed everywhere.

Herr Weiss: And it is only 20 minutes a day.

Professor Hesse: So it makes people think. Sponsor trailers are very similar to advertising spots.

Q1686 Baroness Howe of Idlicote: From what you said it is the independence of the people on the council plus their particular competences which strengthen the independence, so how those people are appointed and their independence is important. In talking about the licence fee payer as such, do you think they are satisfied with the way their complaints are handled? I am just talking again from the British experience. There are a lot of complaints about taste and decency. Do you think the viewers and listeners feel they are well served?

Professor Hesse: As far as they are concerned as licence fee payers their interests are represented by the independent commission which takes care that we do not get more money than we need. That is one side, and it is not the task of the Broadcasting Council. To go to the complaints point, there is a complaints procedure in each broadcasting law. Everyone is entitled to bring a complaint before the Director General and if the Director General is not willing to accept it he has to bring the complaint before the Broadcasting Council, so the procedure is there. Our practical experience is that serious complaints are brought before the law courts if there is something going really wrong, and my explanation would be that if you go to a law court you may have a decision which entitles you to damages and money is more interesting, whereas if you go to the Broadcasting Council the Broadcasting Council may well say, "This programme was not in line with the principle of impartiality", (or decency or something else) and then you have a kind letter signed by the Chairman of the Broadcasting Council.

Q1687 Baroness Howe of Idlicote: It is not published in the papers or broadcast on television and radio as it is in Britain if a complaint is upheld?

Professor Hesse: No, it is not published. I think therefore if you have a decision of a law court it is more interesting for the people concerned.

Q1688 Baroness Howe of Idlicote: And expensive.

Professor Hesse: Yes. This kind of law suit has a long tradition in Germany. It was developed for press publications before the Second World War and I think therefore there was not such a great need to develop administrative procedures.

Q1689 Lord King of Bridgwater: In the UK is that the complaint of the commercial broadcasters is that they are competing against subsidised competition

and public money is used and so on, so it is unfair competition, but the BBC does not take advertising. Your position is that you do take advertising and actually you are trying to take more, and one of the problems, as it appears certainly from ZDF, is that they are getting relatively less advertising in euros than they were getting before. We were given a paper which I think came from ZDF in which they positively said that in radio, for example, "Without the advertising in the ARD channels half the radio listeners and consumers would no longer be reached by radio advertising". In other words, it comes across as a public duty that you have to advertise, and you have a public duty to use advertising, it says in other parts of the paper, because it helps to keep the licence fee down. You in that sense are in the market, not just competing on quality of programmes with subsidised funds but also competing for the advertising. Is that right?

Professor Hesse: Yes. You regard it from the competition point of view only if you can argue that there might be a distortion of competition, and of course we could say, "Let us take advertising out and replace the income by the licence fee", but then you have two problems. You have to explain to the licence fee payer why he has to pay more just to do a favour to private broadcasters and the private enterprises who are asking for advertising are interested in our programmes because our market share in radio is about 50 per cent and in television it is also about 50 per cent.

Q1690 Lord King of Bridgwater: Can I ask you the hard question: the way this paper was written implies that you have a public service duty to make sure that everybody in Germany can receive advertising. It is quite different. Maybe I am making too much of that sentence.

Professor Hesse: I would not go so far as to say it is a public duty but when I think of competition I would not look only to private broadcasters but also to private firms who want advertising for their products.

Q1691 Lord King of Bridgwater: What about the rates which you charge? Are they competitive? Are they considered by the commercial people to be undercutting them?

Herr Blankenburg: It is market driven.

Q1692 Lord King of Bridgwater: What does that mean?

Herr Blankenburg: I think that they are fair. They are in competition to the private sector and they are dependent also on the product of the broadcasting, for instance, if it is a sports event or a drama series. We only usually have access up to 8.00 pm. We have these slots for advertising and they are much

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orientated on the increasing volume of viewers, and this is also in comparison to the different programming or events we broadcast. We have only a few possibilities where we can also sell advertising in the afternoon hours. For example, at the moment we have the Tour de France where it works, but because these are figures made by media planners and media people who are looking for the best way for their product it depends on the competition and the prices are also competitive.

Q1693 Lord King of Bridgwater: Are the advertising rates constant across the ARD system or do they vary station by station?

Professor Hesse: To be absolutely exact, the price is calculated on the basis of what we call price per thousand viewers.

Chairman: So you have a rate card.

Q1694 Lord King of Bridgwater: But you have a constant rate? You set the rate for all your stations on a price per thousand viewers?

Professor Hesse: Yes and this price per thousand viewers are slightly higher than in the private sector.

Q1695 Chairman: What is interesting, which Lord King has touched on as well, is that public service broadcasting in the United Kingdom is seen as a rather questionable area. Yesterday ZDF were saying that advertising enables greater independence.

Herr Weiss: Yes we have a similar argument when we look not just at advertising but also at other commercial activities that, for example, the BBC is doing when they are participating in pay-TV operations, when they also say, "Our additional income helps the licence fee to stay down". The Constitutional Court in its ruling also said to us that it is important that we are not only dependent on one single source of income. This is one of the elements in that area.

Q1696 Baroness Bonham-Carter of Yarnbury: Here you look at the level of the licence fee every four years, which is much more often than back in the UK. Do you find that as a station gives you enough time to plan long term?

Professor Hesse: Yes.

Q1697 Baroness Bonham-Carter of Yarnbury: You are happy with the four-year renewal?

Professor Hesse: Yes. I think four years is appropriate. On the one hand it gives you sufficient perspective and on the other hand it is short enough to make corrections.

Q1698 Baroness Howe of Idlicote: How do you choose the programmes that go out on the national channel? Are they chosen from the best, as it were, that comes from each Länder, and who chooses them?

Professor Hesse: Each regional station has to contribute, for example, Bayerischer Rundfunk 15 per cent, and this 15 per cent applies to each category of programme. They usually accept the programme we bring.

Q1699 Baroness Bonham-Carter of Yarnbury: This is what you referred to as the daily miracle when we were talking earlier.

Herr Weiss: Yes, but we have a programme conference that defines the programme. It is not "the-best-of" programmes; it is just produced for the First national channel and it is the other way round. Many Third channels then take for repetition what has been produced in the First one.

Q1700 Lord King of Bridgwater: Do you own any transmitters or satellites?

Herr Weiss: We have terrestrial transmitters.

Q1701 Lord King of Bridgwater: You own your own terrestrial transmitters?

Herr Weiss: Yes, not all stations but all those in the old Länder.

Q1702 Lord King of Bridgwater: And do you carry other people's programmes on them and charge for that?

Herr Weiss: Yes.

Q1703 Chairman: You talked not dismissively about audience share at the beginning but you tended to say that it is not really so important for you. On the other hand I assume you have to keep a pretty good eye on audience share, do you not, because you do not want to become a minority channel?

Professor Hesse: Yes. If you are asking for a licence fee from everyone you have to make programmes for everyone; otherwise it will not work.

Q1704 Lord King of Bridgwater: Is your audience share going up? ZDF claimed theirs was.

Professor Hesse: So-so.

Chairman: That is a very good definition. Can I thank you and your colleagues very much not only for the time that you have given us but for the excellent way in which you have answered questions. We are extraordinarily grateful to you.

TUESDAY 19 JULY 2005

Present	Armstrong of Ilminster, L Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Holme of Cheltenham, L Howe of Idlicote, B	King of Bridgwater, L Manchester, Bp Maxton, L O'Neill of Bengarve, B Peston, L
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Examination of Witnesses

Witnesses: MR MICHAEL GRADE, Chairman of the BBC and MR MARK THOMPSON,
 Director General of the BBC, examined.

Q1705 Chairman: Good afternoon. I very much welcome you back. We will dispense of any introductions because we have met before. Perhaps I can start with some of the issues which have arisen in the last few weeks, not least from the Annual Report which you sent to us, and for which many thanks. Then we will move on to the more general issues in our examination. In the Annual Report one of the obvious issues which came up was the pay for senior executives, and I heard you being questioned, I think this morning, on that issue. At a time when you are seeking staff savings in the BBC, do you think it is right to pay senior executives bonuses of almost 30 per cent?

Mr Grade: The bonus payments which were paid in the year under review in the Annual Report and Accounts were contractual obligations. When I arrived at the BBC over a year ago at my first Remuneration Committee attendance I expressed my dissatisfaction with the bonus scheme. I had serious reservations about the quantum, the performance measures and generally, very serious reservations about the whole thing. During the course of the year, with some input from the Director General and with some independent advice, we rewrote the bonus scheme to reduce it to a level which I felt was more appropriate for a public service organisation with a fixed, a set income. On the principle of bonuses in the public sector, I think as far as the BBC is concerned it is a good tool at a sensible amount both for rewarding performance over and above what you would expect from an executive and, also, I think this is more important, as a means of demonstrating dissatisfaction where people have perhaps underperformed in the year. I am in favour of a limited bonus scheme. Obviously, from the current financial year the scheme has been revised.

Q1706 Chairman: How long did the old bonus amount of 30 per cent go on for?

Mr Grade: I will have to take advice on that, it is a scheme I inherited.

Mr Thompson: I would estimate it was roughly five or six years, that sort of duration. It came in either at the very end of the nineties or at the turn of the century. We can come back and give the correct information.

Q1707 Chairman: We should say that you did not take a bonus, I know that from the Annual Report.

Mr Thompson: I felt I was in a particular position different from the other directors. I came in during the course of this financial year. Also, I came in as an architect with quite a big change programme involving extensive redundancies in the BBC. I did not think it would be right and I would not have felt right taking a bonus myself. However, I took the view that the other directors who had begun the year with contracts and objectives in place throughout the organisation—although we are making very big changes, we are meeting our contractual obligations—had done a lot of very good and hard work through the course of the year, and I thought we should honour their contracts in the normal way.

Q1708 Chairman: They now have seven directors who are earning above £300,000 a year.

Mr Grade: Under the new Remuneration Committee Chairman Anthony Salz—and I sit on the Remuneration Committee, but I am not the chair of it—we looked at the BBC's general guidelines on senior executive pay and the policy was to pay people in the median of a comparable basket of comparable private sector and a few public sector organisations. We have reconfirmed that is where we need to be in order to attract and, more importantly, retain the very key creative leaders in the BBC. In terms of basic salary, we are in the median and that has been independently verified.

Q1709 Chairman: Basically, what you are saying is that the previous bonus policy of up to 30 per cent was a mistake?

Mr Grade: I was not party to the discussions which delivered that scheme. It may have been born at a time when any number of BBC executives were under offer from the commercial sector. At any one time I am sure any number of our senior people are under offer from various organisations. I would not like to be condemnatory. Every chairman going into a new organisation, particularly in the private sector—and I have done this many times, I have been on the boards of many listed companies—the first thing you

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do is rewrite the bonus schemes because you do not like it. Everybody has got their own ideas of how you define total shareholder returns and so on. It is terribly difficult.

Q1710 Chairman: It did not take you very long to change it?

Mr Grade: No, I was uncomfortable with it. I thought 30 per cent was too high, and I did not like the performance measures. For example, in the performance measures there was no incentive for efficiency and value for money which are the key drivers of the BBC.

Q1711 Chairman: I would like to ask another question on policy in general, which has obviously come up. Again, this is a familiar point to you, I think. It relates to the position after the terrorist attacks in London. As I understand it there was a memorandum sent to senior editors telling them not to refer to the people who planted the bombs as terrorists; is that correct? What status did that memorandum have? Was it an instruction or was it advice?

Mr Thompson: No, it is not the case. People who watched and listened to our coverage last Thursday, 10 days ago, and subsequently would have heard the word “terrorist” used many times. The BBC has an editorial guideline of some years standing which suggests that journalists and editors should think carefully about the use of words when terrorist attacks take place, but there was no ban from the use of the word “terrorist”. It was used extensively. Certainly, there were a number of emails about the coverage, but there was no kind of edict saying that the word terrorist should not be used on that day. Something like 31 million people watched our coverage on television that day, millions more on radio and online. We had by far the biggest day in our news website in its history, 110 million page impressions on the website. I do not think anyone could have looked at that coverage and thought that in any way the BBC was trying to minimise the horror and enormity of what happened. What is the case is that if you look at our editorial guidelines it is one of many subjects covered. We think journalists and editors should think very carefully about the use of the words they use to describe these kinds of events.

Q1712 Chairman: I am a bit confused with that answer. Are you saying there was nothing sent around or are you saying there was something sent around?

Mr Thompson: There was no overall edict or policy sent around saying that editors should not use the word “terrorist”. It may well be that editors were reminded to look at the guidelines and consider them when they used the word “terrorist”. The use of the

word “terrorism” was used, for example, in our headlines on *The 10 O’Clock News*, on *The Today Programme* and elsewhere. It was used not just by, as it were, people being quoted by the BBC but in the BBC’s report.

Q1713 Chairman: My concern about this is whether the BBC is becoming a bit too sensitive. It is an odd issue to get hung up on for an organisation which calls itself a strong, independent BBC, quite rightly.

Mr Thompson: There was a rather similar set of stories in the newspapers after 9/11 pointing to the same editorial guideline. I thought we reported the events of 7 July very well in all of our media. There is no suggestion, I think, from anyone that the public were misled or in any way did we minimise what happened. Our headline on *The 10 O’Clock News* was: “London’s Worst Terrorist Attack”, on *The Today Programme* last Thursday, “Police are searching a house in Aylesbury where they think the fourth terrorist lives”. Beneath the surface we have—I have them here—a big stack of advice for editors which asks them to think carefully about what they do. A couple of newspapers have blown up a couple of sentences in these guidelines and said there is a big story. I have to say, I think our coverage of this event, recognising, of course, that it was a very severe terrorist attack, has been frankly exemplary in my view. I am not convinced that there is a matter of substance to be concerned about here.

Q1714 Chairman: Therefore, are you saying that nothing was sent around?

Mr Thompson: We have 7,000 journalists and we have many, many dozens of continuous news services, and what I am saying is there was no general communication from me or from the Head of News suggesting that people should not use the word terrorist. What is true is we asked people to think carefully about the words they used in describing terror attacks. It may be that there was some communication about that, but there is not a blanket ban, and certainly there was no edict on Thursday 7 July around a blanket ban.

Q1715 Lord Maxton: Can I ask what the sentences are the Director General referred to? You said there were a couple of sentences in your guidelines.

Mr Thompson: Terror: “We must report acts of terror quickly, accurately, fully and responsibly. Our credibility is undermined by the careless use of words which carry emotional or valued judgments. The word terrorist itself can be a barrier rather than an aid to understanding. We should let other people characterise while we report the facts as we know them. We should not adopt other people’s language as our own. It is usually inappropriate to use words like liberate, court martial or execute in absence of a

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clear duty et cetera”, it goes on in detail. “We should use words to specifically describe the perpetrators, such as: bomber, attacker, gunman, kidnapper, insurgent and militant . . .”

Q1716 Chairman: I do not want to cut you short, but perhaps we can have a copy of that at some time?

Mr Thompson: Certainly.

Q1717 Lord Maxton: I want to return to the salaries but not, however, with the executives. Do you publish the salaries of your senior news people, those who are on screen? Do you publish their expenses and their interests? After all, they often seem to be very obsessed with the salaries of the public servants who are elected in Parliament. Are the public not just as entitled because certainly they are as influential, in fact more influential than an average backbencher MP? Are we not entitled to know what they get paid?

Mr Thompson: We do not publish, we regard the remuneration of our staff as confidential. Directors of the BBC—I am one of them—voluntarily comply with the same level of disclosure that you would expect a PLC to do and we publish all of those things. With other members of staff, including our presenters, we regard that as confidential.

Q1718 Lord Maxton: You must be the only publicly funded body where this is the case. After all, from the most junior civil servant down and up to the very top you can find out exactly what grade they are on and what salaries they are paid.

Mr Grade: When you employ freelance talent the notion of making their contracts public knowledge would make it virtually impossible to employ talent. There is a duty of confidentiality when employing, whether you are employing Bruce Forsyth or French and Saunders or Ricky Gervais. The idea that their contracts would be made public is against any kind of confidentiality.

Q1719 Lord Maxton: Footballers’ weekly salaries are disclosed.

Mr Grade: They are speculated upon in the newspapers quite often, they are not disclosed by the clubs themselves at all.

Q1720 Lord Holme of Cheltenham: I have to say, not wishing to promote dissidence in the Committee, I have a lot of sympathy with what Michael Grade has just said. Mr Thompson—I am not sure I heard it right—did you say the present contracts, including the bonuses which my Lord Chairman identified as unsatisfactory, go on for five or six years?

Mr Grade: No.

Q1721 Lord Holme of Cheltenham: I misheard you. Can you say it again?

Mr Grade: The Director General was asked how long the 30 per cent bonus had been in place in the past. Historically, that bonus scheme is about four or five years old.

Mr Thompson: The position is that the contracts of the directors have been renegotiated to take effect in the current financial year. Within the current financial year of 2005–06 the new bonus arrangements of a bonus up to a maximum of 10 per cent have already taken effect. When we come to report our directors’ remuneration next July it will reflect the new bonus system.

Q1722 Lord Holme of Cheltenham: Will the contracts conform to Higgs in terms of being one year contracts for directors?

Mr Grade: Yes, one year rolling contracts.

Q1723 Chairman: I am going to use my position as Chairman to ask you something which I think has come up. I intend to take a leaf out of Lord Maxton’s book. I am a great listener to the 3 o’clock *Sunday Radio Play* and I listened to episode one of John Buchan’s *Greenmantle* and I tuned into episode two and it had totally disappeared. Why have you taken it off? This was something which was written in 1916 in the middle of the First World War, what was the sensitivity there?

Mr Grade: It is about an Islamist plot to take over London and a common sense judgment was made.

Q1724 Chairman: I know that, but it was not to totally take over London.

Mr Grade: To disrupt London.

Q1725 Chairman: We will not have a textual argument on this.

Mr Grade: I am not a “Bucham-ear” myself. I imagine the executive took the decision that it was common sense that following what happened in London the audience was not in a mood to listen to a piece of drama about an Islamic plot.

Q1726 Chairman: But not to take over London?

Mr Thompson: You will appreciate that after major tragedies or major news events we scan forward through the television and radio schedules to consider whether or not individual programmes might in some way upset or give offence to the audience. Of course, in the real world in some ways you are damned if you do and damned if you do not. In other words, something which might have given offence to licence payer A, if you remove it licence payer B will say: “What on earth is going on, I was looking forward to that. Certainly I would not have been offended”.

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Q1727 Chairman: The one thing which licence payer A and licence payer B have in common is that they might have an explanation on why it was done.

Mr Thompson: I think that is fair comment, and if we did not explain it fully to the listeners of Radio Four then we were remiss, we should explain.

Q1728 Chairman: You did not explain at all.

Mr Grade: It must be right for those in charge editorially of the BBC to be sensitive and material which is perfectly run-of-the-mill, ordinary, exciting or whatever can become tasteless to some people in the light of world events.

Q1729 Lord King of Bridgwater: After that difficult question, can I ask you a much easier one. We have just come back from Germany where we went to look at public sector broadcasting in general. One of the advantages of going outside of your country is to see how others see you and it reminds us of the extraordinary respect in which the BBC is held among the public service broadcasters in Germany. The BBC had in part set up most of German broadcasting in its present form. I suppose that respect is due to the history and achievement of successive unitary boards of governments and the management of the BBC who have discharged responsibilities as they have. You were both, I was going to say, buccanistically moved into your new and very important positions, and it is a heavy responsibility for you at a time of great sensitivity after the previous row between the Government and the BBC over the Iraq experience. I looked at your Chairman's statement which you just published and you said: "Our task now is to ensure the smooth transition to the new governance system announced in the Green Paper, in which all the governors will be replaced by the BBC Trust". This is a Green Paper, it is not a White Paper, it is not a Government decision. You have already taken the decision, as I understand it, and you are now going to implement it. Since we last saw you we have taken further evidence, and we were struck by the evidence of Sir Christopher Bland, one of your predecessors, who said: "I think there are strong arguments for the unitary process and the two channels will cause difficulties. I have given up because I think that battle is lost". Then I asked him did he recommend what is being proposed. I asked him whether he thought the Unitary Board would be best and his answer was quite simply, "yes". In the present situation, we have not found much support for this proposal. My impression—and this maybe quite unfair—is that in the political realities of the climate you were in after Hutton and all of that, you felt it was impossible to defend the BBC's existing structure, albeit improved and sensitive to complaints, and actually throw out the baby with the bathwater and invite a system which has every

prospect of a lot of conflict, a lot of disagreement between two tiers and a lot of confusion as to who is responsible in the BBC in the public eye. Do you really sit here and say on reflection—now the waters are slightly calmer after slightly more history—it is justified to go for a change in the BBC system which has, as I said, plaudits around the world and is regarded not by its competitors but by others as having very great achievements? It is one of the few things in international terms this country is seen to have done rather well?

Mr Grade: I would agree with you and I would agree with Sir Christopher if these were panic measures in response to Hutton. It is my belief, and in applying for the job it was my belief, that with the system of governance there were many, many symptoms whereby the system of governance was showing signs of its age and was in desperate need of modernisation. The problem centrally was that the governors, in a sense, had been captured by the management and could only act in response to the management. Forget Hutton—I am speaking colloquially—put Hutton to one side, and the human tragedy involved in that, the other symptoms of disrepair seem to be the fact that the governors were making major policy decisions about new services they were going to launch on the basis of evidence supplied purely and simply by the management who have goodwill and a sense of adventure and let us get on and do this and gung-ho and all the rest of it, and the governors can sign it off, the service would be launched, the licence fee payers' money spent, uproar in the private sector, the DCMS police would have to come in afterwards and you end up with Lambert on *News 24* having to do an inquiry about the market impact, you would have Graf on online (services) showing how the BBC, having created a market in online was interfering, with competition and growth in the sector and so on and so on.

Q1730 Lord King of Bridgwater: Can I interrupt to say that a lot of these problems arose pre-Ofcom, pre the existence of some external regulator whose duties could be amended to cover many of the problems you describe. What do you think about that? I accept entirely that some of the wrong people were put in as BBC governors, and I can report one or two really good ones that were not people who were going to be affected but were certainly captured by the management. If you have the wrong people the Trust will be captured by the management as well. Once again, the issue is that you are bound to get the right people, have Ofcom as a good independent regulator and do not lose the baby with the bathwater by chucking out a unitary board which could be made to work.

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Mr Grade: Nothing would have made my life easier than to have argued for the status quo. I do not believe the status quo was an option. I and my fellow governors put forward our proposals—in fact, my proposals were contained in my manifesto which I wrote when I applied for the job about the changes which were necessary—and we were content that was a path on which we were happy to go down, the kind of reforms of existing structure. In the Burns panel debate and in the public debate that surrounded that and discussions with DCMS, it became clear that the weakness of my reforms were that they were behavioural and not structural and would entirely depend on the goodwill and the good sense of the existing regime. That is not sustainable, that is not future-proof, so a structure had to be worked out. The structure which the DCMS came up with, I know is in the Green Paper, but it is now a Government policy, this is what the structure will be.

Q1731 Lord King of Bridgwater: We still have a Parliament.

Mr Grade: Indeed. I am repeating what the Government has said, it is not my interpretation. Government came up, they listened to the Burns panel, they listened to our arguments and so on. We laid down a number of principles against which any model should be tested. We looked at the Government's model and we came back and said it met all our principles of accountability, looking after the money, is it workable, is there clarity, will it safeguard the independence of the BBC and so on, and we had to say we could make it work. We are absolutely certain that we can make it work.

Q1732 Lord Holme of Cheltenham: In the same sort of area, I think just about all the evidence we have had indicates that even those who are advocates of the Trust Executive Board division find a worrying lack of clarity in the respective roles of those two bodies. I want to explore the issue of the Trust vis-à-vis the board of the BBC and the new dispensation. If the functions out there are broadly regulation, governance and, as the paper says, oversight—I want to zero in on the issue of oversight—would oversight by the Trust of the BBC's board include, for instance, the approval of strategy, the approval of annual plans and annual budgets? Would it, for instance, include the issue which my Lord Chairman just raised about the remuneration of senior executives and the policy of the remuneration and recruitment of senior executives of the BBC because these are all things which I think one might argue are oversight issues? If your answer to all these questions is yes or to some of them, the problem is, at that point, how can the Trust possibly be an objective reviewer of whether the BBC is remaining within its public service remit, which I assume to be the main purpose of the Trust? Are you

on the right territory or have you strayed off the territory and to pull you back into the territory of public service? To me that is the main function of the Trust. There is this terrible lack of clarity over the moment the Trust has adopted strategies and plans, does it not own those plans and strategies? I will bring it to a point by saying what happens when the BBC management want a new service and the Trust at that moment says: "Of course you can have a new service but we have already approved your strategy which asked for a new service". At that moment have you not lost the objectivity and the distance which allows the Trust to remain in the position of guardian of public service broadcasting? It is this sort of area lacking clarity which I think is extremely worrying at this stage of the game.

Mr Grade: It is very clear to me, and I will try to explain it to the Committee. The Trust will be the BBC. It will be responsible for the money, it will be responsible obviously to Parliament in the usual way and it will have a role which is very, very much to make judgments. You cannot run the BBC by plebiscite, there are roughly 24 million licence fee payers. On the other hand, you cannot ignore the views of the licence fee payers. In setting the strategy the Trust, when deciding how much money will be spent on what service and so on, must in the future be free to be sure that it has systems in place to take the public's mind, to understand what licence fee payers are saying. They will all say different things and different amounts of them and some will have different views on different topics, but they can no longer afford to sit in a room and make judgments on their own. Those judgments, which they will always be called on to make because it is the only way to run the BBC and get a result, will have to be informed on a more systematic and transparent way by what the licence fee payers want. The implementation of the strategy, the actual day to day running of the BBC, will be delegated to the operating board, and because of that delegation you cannot just leave it to the executive. It is a sensible check and balance that the Government have proposed which is that there should be some non-executives as critical friends, as whatever you want to call them, to help the executive make their decisions and spend the money wisely. The roles are so very, very clear to me, I do not see any problem. In respect of existing services, the public service remit, in the licence payer's interest, will be managed through service licences. Every service which the BBC runs will be issued with a service licence which is designed and signed off by the Trust in the future. It is presently signed off by the Governors. Those service licences, the remit for each service, any alteration to that, will have to be argued and brought to the Trust if they want to change it. Similarly, if they have got an idea for a new service, the Trust will apply a public value test and make a

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decision based on potential market impact—which is another subject, we will probably get onto that later—versus public value created and we will have to make a judgment. That judgment will be evidence based and it will be transparent. That is a huge step forward from where we are presently, decisions made in the darkened room and nobody knows how the judgments were made or on what evidence other than the papers supplied by the management, it is a huge step forward.

Mr Thompson: Can I add one point referring back to one of Lord King's questions. This does not represent a complete break with the past. Historically, the BBC, successful over many decades, has been run with a board of governors signing off on strategy and monitoring the BBC's success in reaching its broad public purposes, but delegating the actual running of the BBC to a director general and the board of management. What is being proposed by the Government is a clearer separation and definition about what these two bodies will do to avoid the problems of perceived confusion or actual confusion between them. This is not an entirely novel way of thinking about the BBC, it still keeps many of the basic ideas in which the BBC system of governance has been grounded. It keeps those ideas but develops them, specifies them more clearly, in particular is more clear as to the setting of strategy and policy and the implementation of the policy, and also tries to separate the two historical roles of the governors as critical friends and supporters of the management which is not really sustainable with the role of governance and oversight, separating those out so that on the lower board you have non-executive directors who can be supporters of and advisors to the management day in day out from an entirely non-executive upper board whose focus has got to be on the interests of the licence payer.

Mr Grade: In your remarks you swept in regulation and many, many witnesses—I have been following in great detail those who have come before you and offered their points of view—talked about regulation as being a key role of the governors. As a result of the 2003 Communications Act most of the regulation previously has passed to Ofcom and it is also very separate from governance, which is stewardship of the public's money and making sure we are in a position to deliver the outcomes which the licence fee payers are telling us they want. That is not a break with the past.

Q1733 Lord Holme of Cheltenham: I think it is fair to say that the description you just gave of the role of the Trust, which was very interesting and very eloquently and powerfully argued, is by far the most proactive version we have heard in this Committee of what the Trust does. This is a very dynamic Trust you are

describing, it is actually providing the leadership of the BBC.

Mr Grade: On behalf of the licence fee payers, not on behalf of ourselves or the management.

Q1734 Lord Holme of Cheltenham: You are bringing me to my supplementary question. If they are playing this very, very active role, if it is a partnership—the way you describe it in Roy Malensky's terms, it is a partnership of a rider and a horse where the rider appears to be the Trust and the good old implementing horse is the BBC operating board—and if that is right, since you say it, it must be right, I wonder how much that leadership body can have this outward facing responsibility also to the licence payer in respect of maintaining the public service mission? If I understand you, it will totally own and lead the strategy. In what way is it being objective in saying: “Hang on, in our outward facing role that is not what we should be doing”?

Mr Grade: Very simply, the first and the biggest change is that the authority for the Trust really derives from its ability to demonstrate that it is representing the public interest, not because we say they are representing the public interest. We can demonstrate tangibly that we are representing the public interest. We have done surveys, we have talked to X thousand people, we have consulted, we have 500 people out there on our broadcasting councils and our regional advisory councils and so on who are feeding back information and telling us what the licence fee payers want and what they think of the services. We will then exercise judgments about policy and strategy which are informed by the views of the licence fee payers. That is the most radical. It should not sound radical, it should be the most obvious thing in the world. We are there to represent the interests of the licence fee payers. We have to work and make our judgments and our leadership role on behalf of the licence fee payer to make sure the horse here delivers the goods but the licence fee payers tell us what they want us to do.

Q1735 Baroness O'Neill of Bengarve: One of the features of this structure is that there will be two Chairmen. Which of them speaks for the BBC?

Mr Grade: The Chairman of the Trust undoubtedly. It will be very clear that the responsibility for the money from which everything really stems, obviously guarding the independence of the BBC and so on, ultimately who is to blame if there is a mistake in the money will reside with the Trust; there is no question about that. The Trust will be the BBC. This is an operating board.

Q1736 Baroness O'Neill of Bengarve: What is the attraction of chairing the operating board?

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Mr Grade: The Green Paper says it can either be the Chief Executive, the Director General or can be a non-executive Chairman. I have made it clear that the only way I can see this working is if the Chief Executive, the Director General, is the Chair of the operating board.

Q1737 Baroness O'Neill of Bengarve: That is helpful because it tends to be more about the hypothesis that it was not the Director General because you think that would not work?

Mr Grade: I think it is a recipe for conflict. If I want to fire the Director General or if the Board of Governors and the trustees want to do so, they will go to him and tell him they are putting in a non-executive Chairman. It is a nuclear weapon, to be honest, and in my view it will not work with two Chairmen. It creates confusion. We are delegating as we do now, but this is much more formal. It gets the governors, the trustees, out of the day-to-day operation. We are far too involved in the day-to-day operation of the BBC. It creates clarity and separation and they can get on with it, but we will watch them like hawks. We will watch the money and we will hold them to account. We will hold them to account with the governance unit, which depends on the trustees for their pay and rations, not on the patronage of executives which has always been the way it has been before. We are getting absolutely objective advice on how they are doing. We will see the management accounts.

Q1738 Baroness O'Neill of Bengarve: On your agreement the Trust Board is for accountability, supervision and accountability to the licence fee payer and the Parliament, but has no regulatory task and no managerial task?

Mr Grade: We have some regulatory and we have responsibility for tier three which is impartiality, but we have very little regulatory function.

Q1739 Lord Maxton: This is really a clarification issue on the service fee/service licence. I am not quite clear exactly what they are. BBC Parliament is probably the most public service broadcast you can get. First of all, if you change the nature of it in any way does that require a change in the service licence? If you then put it on another platform, for instance if you decide you are going to make it available on mobile phones or on any other form of GPSR type of device, does that require a new service licence in order to do that?

Mr Grade: I am not sure this is a particularly good example because I would imagine—I do not know for a fact, I am looking at colleagues here for advice—that the nature of the agreement with Parliament which enables us to deliver that service is a very, very carefully constructed contract.

Mr Thompson: It is.

Q1740 Lord Maxton: Okay. Give me another example, BBC 24?

Mr Thompson: There are some new mobile services, a BT educational service to mobile phones. I think it would depend on the scale of the service and whether it was an extension of an existing service and whether it went through a complete public value test and a complete market impact study.

Q1741 Lord Maxton: With regard to BBC 24 hour news, you decide if it is going to go onto a mobile phone provision so that anybody with a mobile phone anywhere in world can watch BBC 24 hour news. That is a massive change and that would require a new licence.

Mr Grade: It would require the approval of the Trust in order to do that if that had not been agreed. In that particular circumstance, I would be very surprised if at that point the Trust did not say: "This is a very interesting idea and this is a new way of delivering this. We must look at what the market impact of this is. There is obviously going to be some public value created. Are we going to destroy a lot of businesses if we do this?" We have to look at that. That is the world we live in. We co-exist in the sector with a lot of entrepreneurs and thriving businesses. It is not the BBC's role to damage the private sector and limit choice for the consumers. Our licence fee payers are consumers of those services as well. We do not want to deprive them of choice, so we would apply the public value test here.

Mr Thompson: Perhaps I should give a real example. In *Building Public Value* we have an idea there for a local television news service delivered by Broadband. That is one of the ideas of new services. The first stage is for the management side of the BBC to work out whether this is a credible idea. We are going to do a small time-limited pilot in one part of the country, the West Midlands, just to explore what that service might be and how it works. Even at that point we will talk to other local providers and make sure they understand what we are doing. When the pilot is finished we can then assess its success. If we think it has been reasonably successful it can then become a candidate to become a new service. We then begin to cost up and work out exactly what the service would be. If the operating board recommended it and approved it, it would then go to the Trust to be considered and the Trust would then conduct a public value test including commissioning an independent market impact survey. On the basis of that, and looking at what the Trust judged the net public value of the service to be, they would either approve it or not approve it. If it was approved, it would be approved with a service licence specifying exactly what it was intending to do and the

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parameters of the service. In the future, the performance of the service would be judged against the service licence.

Q1742 Lord Armstrong of Iliminster: In what you have said about the proposals in the Green Paper on governance, you have said that the BBC Governors “can make it work” was the phrase you used, I think. That does not sound like a ringing endorsement of what is proposed, it sounds like an acceptance that if that is the way things are going to be we may not like it but we will make it work. You say that the Chairman of the Executive Board will be the Director General and the Trust could fire him. That sounds exactly like the situation at present. Indeed, we have seen a situation in which the Director General, who I believe is the Chairman of the Board of Management, was fired. You say that the merit of the proposed system is that it would take the Trust out of matters of day-to-day management in which the Governors are far too deeply involved, but then you say that the Trust will watch what the Executive Board does and the management of the BBC “like a hawk” was the phrase you used, I think. The more I hear, the more it seems to me that what you are envisaging is something extraordinarily like what goes on now just changing the names to satisfy the requirements of the Green Paper. Would you like to comment on that?

Mr Grade: I certainly would. My fellow Governors and I would not have said publicly or privately that we could make this structure work if it did not meet the five principles we laid down right at the beginning of this debate against which any new system of governance or any changes to the systems of governance of the BBC were proposed. The principles were stewardship of the money: did any new system display with clarity who was in charge of the money? Was it best set up in order to protect the ongoing independence of the BBC? Was it workable? Was it practical? Would it work in practice? Is there a measure of accountability built in and transparency? All those five principles, it seems to me, would be very hard to object to in the Government’s proposal. The reason the Government came up with this proposal was what I said earlier: our reforms were not really future-proof and depended on the goodwill of the existing regime and from the long-term perspective that was not an acceptable solution, I accept that. The reforms that the Governors had already started before I arrived, that I have carried on, brought forward and accelerated, really lie at the heart of this structure. This is a structural solution rather than a behavioural solution and it meets the five principles and we can make it work; we will make it work.

Q1743 Lord Armstrong of Iliminster: Does it meet the five principles better than the existing system?

Mr Grade: Yes, it does, because there is greater transparency built in and on the issue of separation, which is where the problem starts, if you go to the nub of this and cut through, you peel the onion, right at the heart of that onion is the problem of separation and capture, the Governors’ capture by management and making decisions purely and simply on management information, lack of transparency, certainly lack of accountability. The views of the licence fee payers were incidental and lip service was paid and decisions were made which caused havoc in the private sector and caused the Department to have to come running in and see what on earth happened. The Governors should have been doing that work before decisions were made. It just did not work that way. This way we have a clear remit for the Trust which is to be—to use the jargon of the Green Paper—outward facing and to make its judgments, and it will be called upon to make many judgments, but those judgments must be informed by what the licence fee payers are saying about the services that they are getting.

Mr Thompson: If I could make two more very brief points. Firstly, one difference between what is proposed and at present is that the present Charter agreement has very little say about what the different rules of the Board of Governors and the management of the BBC are. My presumption is that the next Charter agreement would have a lot more clarity about the separation and clear protocols who did what, so you set out much more clearly who did what. I think that is a real difference from what we have at the moment.

Mr Grade: This process—forgive me, this is a coda, I promise—of picking the governance of the BBC up by the roots and examining it has taught all of us within the BBC just how lax and unclear the present arrangements are, what the responsibilities are, and in the end enormous power resides with the Executive, draconian powers exist with the Governors, but apart from the obvious accountability to Parliament there is little or no accountability to the licence fee payers and that cannot be right.

Q1744 Baroness Howe of Idlicote: This follows on from the point you are making. I am sure others will be very pleased to hear about the extra efforts you are making, very important efforts, to have contacts with the licence fee payers and, indeed, this business about membership, Governors, trustees, whatever we are going to call them. There is a lot said about new ways of how they would be appointed and you will know the criticism that there was a degree of cronyism and all the rest of it in the way they have been appointed in the past. We were quite impressed in Germany at how the members of the Supervisory Boards were representing—I do not mean delegates for—lots of

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differing groups quite deliberately: consumers, trades unions, universities and so on. I wondered whether you thought such an approach—I know the regions are taken into account too in the Green Paper—trying to get a broad spectrum of people with different skills as Governors, as trustees, was a good one?

Mr Grade: It used to be like that in a way, there was a sort of secret template for a Board of Governors: you had one spy, ex-spy, a trade union person, somebody from business, somebody from here, somebody from there, and, frankly, it did not work. I suppose if you pick people on the basis of their wisdom and their judgment they will bring with them specific expertise, whether it is legal, trade union, employment law or management, marketing or whatever. You have got to avoid the BBC being captured by any vested interest and it is very hard to run a board where people have to go back to their constituents—I do not mean in a parliamentary sense—and deliver something. You are always giving them something. “We have said no to them at the last three board meetings, we have told Charlie he cannot have this and he cannot have more programmes about . . .” usually they want more programmes about whatever it is, seaweed farming or something. There comes a point where you have got to give them something because you cannot cope with it any longer. The reality is to have people who in any sense feel themselves to be representatives of vested interests make running the BBC impossible. The only exception I would make is that I think in an age of devolution the system of national Governors making sure that the voice of Scotland, Wales, Northern Ireland and England is heard at the top table of the BBC is vital, and I will be arguing very strongly with the Government that we must preserve that system. I think that serves the BBC and its licence fee payers very well.

Q1745 Baroness Howe of Idlicote: I certainly was not describing the sort of people you were having to, as it were, give a sop to at one meeting if not at the next, quite the opposite. What are you saying are the characteristics of the people? I think one of the main things that came through to us was that they were strong people within their communities but that did not mean to say they were representing one particular group. What will you be looking for?

Mr Grade: One wants people of wisdom and judgment. Obviously you do not want everybody from within the sector. It is only recently that there has been anybody with any real hands-on media experience on the Board of Governors. The Nolan Rules, in my belief, have improved the calibre and the overall performance of the BBC Board of Governors beyond anything that I can remember in my time as an executive when I used to have to go and explain

why I was cancelling *Dr Who* to the Board of Governors in those dark old days. What one is looking for are people who are not going to bring vested interests, people who can leave their personal constituencies behind and when they come through that door the only thing that is on their mind is what is in the best interests of the licence fee payer who has paid £126.50 this year, and we want to make sure they are getting good value, not a narrow constituency. We want people of wisdom and judgment.

Chairman: Wisdom and judgment. Can I bring in Lord Peston at this point.

Q1746 Lord Peston: I am not sure wisdom and judgment applies to me. Every time I think I understand the governance structure someone says something and I realise I have not understood a word. My questions are also in that area. You said that when it comes to the regulation context you would like some more clarity. You said in response to the Green Paper: “The Governors believe there can be more clarity about the respective regulatory responsibilities . . .”

Mr Grade: This is in respect of fair trading?

Q1747 Lord Peston: It said in respect of competition.

Mr Grade: This is a specific comment about the regime for fair trading. It is not about the governance of the BBC.

Q1748 Lord Peston: Clearly it all follows from the way the BBC governance operates. To take an obvious example, if you take a Public Service Broadcaster, which you are, you would argue within that that your prime function is to be self-regulating, namely that you ought to do that.

Mr Grade: No, not at all.

Q1749 Lord Peston: Why do we call you a Public Service Broadcaster if your responsibilities are precisely the ones that you have said and you ought to achieve those responsibilities as part of the environment in which you take all of your decisions? You do not do the right thing because someone outside tells you to do it, you do it because that is what the BBC—

Mr Grade: If I may say, there is a distinction that has been made here between regulation and governance. Regulation is *post facto*: did you tick the boxes, did you do the right things, have you complied, have you done this or that? That is a very vital part of broadcasting in this country. Governance is stewardship of the public’s money and ensuring that you are in a position to deliver the outcomes that the licence fee payers expect you to deliver.

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Q1750 Lord Peston: Well, I really am thick because I cannot see the difference. If you have got a public service remit, which you have, and—

Mr Grade: Regulation is *post facto*.

Q1751 Lord Peston:—then you have got three million quid, it seems to me it would follow completely logically that your duty as a Public Service Broadcaster is to use that three million quid appropriately for your public service remit.

Mr Grade: That is not regulation, that is governance.

Q1752 Lord Peston: No, no.

Mr Grade: Regulators operate on the basis of complaint. Something has happened, something went wrong, we regulate: “You should not have done this”, and there is a sanction. It is after the fact. Governance is about the strategy of the BBC, the spending of the money, value for money, efficiency and about ensuring that the outcomes are in the best interests of the licence fee payers. You cannot do that by regulation because you are doing it after the fact.

Q1753 Lord Peston: Could I then give you some examples because I really do not understand a word that is being said here. It has been suggested to us that the National Audit Office ought to get involved with the BBC. I would assume that would mean, because they certainly were not getting involved in the programmes, that they were getting involved in the use of the resources.

Mr Grade: That affects programmes.

Q1754 Lord Peston: That is governance.

Mr Grade: That is accountability.

Q1755 Lord Peston: I have just been reading a history of the *Oxford Dictionary* and I realise now why we need—

Mr Grade: Are you asking me—

Q1756 Lord Peston: What I am trying to get to is a more general question. The question I really want to ask you is partly about regulation. The sense I get, and I thought you were making the same point, is that you are going to be over-regulated. In response to the competition question you mentioned the Department, you mentioned Ofcom, the Trust itself and BBC management; all of those were in your actual statement. We would add on the National Audit Office as a contender. As far as I can see the Office of Fair Trading might be a contender, or certainly they would like to make their empire larger. Parliament, of course, is a contender. Let us forget language for a moment, my main question is in terms of competition, which I see more broadly than you but I will accept your narrow definition of

competition, are you in danger of being over-regulated?

Mr Grade: No, not on competition issues. The present arrangements which emerged from the 2003 Communications Act are perfectly fine. It is slightly confusing that Ofcom and the OFT have concurrent responsibilities in respect of fair trading. That is a decision that Parliament made, nothing to do with the BBC, there was a slight confusion. What we were saying in the paper was we do not want to add to that confusion. The fact is that internally the BBC, as you would expect, has a set of processes to ensure that we comply with the law, with best practice, with our undertakings in various directions. That system works very well but, nevertheless, there are still complaints. We have a very, very good internal system for ensuring compliance. Anybody is entitled to complain about something the BBC has done. They can complain to us or they can go straight to Ofcom or—in an age of choice—they can go to the OFT, and that would be on legal grounds, that we have in some way broken competition law or we were acting in abuse of a dominant position, whatever the case may be. That seems to me perfectly fine and I do not have a problem with it.

Q1757 Lord Peston: I do not want to prolong this, there are many more important questions, but we had the commercial broadcasters telling us that you had too large a share of the digital spectrum and you should have less and they should have more. First of all, is that regulation?

Mr Grade: The allocation of spectrum ultimately lies with Parliament and it is delegated through Parliament to Ofcom. Ofcom dish out the spectrum, we do not control the spectrum.

Q1758 Lord Peston: No, but spectrum is fundamental to the competitive process.

Mr Grade: In the digital age there is no shortage of spectrum.

Q1759 Lord Peston: They told us there was.

Mr Grade: We are into the multiplexes now, quite complicated stuff. It is nothing to do with the BBC. We pitch for what we think is a good service and we either get the frequency, or the spectrum, or we do not. It is not in our gift.

Q1760 Baroness Bonham-Carter of Yarnbury: I think they were also complaining that you seemed to be heading for a youth market. I completely understand why the BBC cross promotes your programmes and so on, because we are now in a digital multi-platform age, and that is obviously the case, but why do you spend licence fee money on billboards, particularly advertising the cricket which,

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as we know, you did not bid for the television rights for?

Mr Grade: Test Match Special.

Mr Thompson: We have extensive radio rights in cricket. In the course of the last 12 months we have drastically reduced the amount of money we spend on off-air marketing. I think one justification for off-air marketing—posters, newspaper advertisements—is around trying to reach people who you cannot reach through your own airwaves. We do have a responsibility to try to make sure that the people who pay for the BBC are aware of the range of services and, in particular, that we try to make sure that people are aware of services we think they might enjoy. Sometimes, with some audiences, off-air advertising, for example through posters, can do that. It is my own view that it should play a much smaller part in our mix of messages than on-air and should be much smaller going forward than it has been in the last few years. I think licence fee payers rightly look pretty hard at why the licence fee is going into posters rather than into programming content. We are reducing the budget but we will continue to do it where we think it is a way of reaching an audience who perhaps we could not reach through our own airwaves.

Q1761 *Chairman:* We have got just over half an hour left, so we will try to keep the questions quite short. Can I just follow up one of the questions Lord Peston asked about Parliament. At our last meeting you were sceptical about the idea that we should move away from a Charter to a Statute. The other alternative argument to that is at the end of this process, the end of the process that we are doing now, basically what is going to happen is the Minister is going to decide and that is the end of it.

Mr Grade: Hopefully at the end of this process there will be a decent consensus about what the role of the BBC should be and how it should be structured. Not everybody will agree but by and large this process really is trying to reach some kind of broad consensus about the way forward for the BBC. It seems to me entirely appropriate in keeping with the need to meet the licence fee payers' expectation that the BBC is independent that the process is of trying to draw the balance between the BBC needing to be accountable to Parliament for its privileged position, quite correctly, but also creating a system in which it is accountable to Parliament on a 10 yearly cycle which is free of party political decisions, the date is set, if you like, it is going to be whenever the next Charter is—for the sake of argument let us say 10 years, we hope—everybody knows that in 10 years' time there is going to be a process. It will not be driven by party political considerations, it is just part of the process of the life of the BBC that every 10 years there is a moment in its time when it is called to account and

decisions are made about what the nation wants from the BBC in the years going forward.

Q1762 *Chairman:* A government—any government—could intervene in the lifetime of the Charter in any event, could it not?

Mr Grade: No. My advice is that the only basis upon which the Charter could be revoked, if that is the right phrase,—

Q1763 *Chairman:* Changed.

Mr Grade: Or revoked, is if we are in serious breach of the Charter or if, indeed, the BBC agrees.

Q1764 *Chairman:* Okay.

Mr Grade: That takes us out of the realm of party politics and it gives the licence fee payers security that at least the independence of the BBC is guaranteed for the next 10 years.

Q1765 *Chairman:* The difficulty with your argument is you have reached a consensus, but the consensus is mainly between you and the Department for Culture and the Government, it is not a consensus with Parliament. That is why the House of Commons Select Committee has—

Mr Grade: This is part of the process. This is my second appearance here and I have appeared elsewhere on these issues on public platforms. What informed the Government's Green Paper was an enormous amount of consultation. If you read the appendix and the sourcing of much of the facts and figures in that document, they went through quite a rigorous consultation process before they reached that view. In fact, one of the findings that their research showed up was that the licence fee payers wanted to keep Parliament further away from the BBC.

Q1766 *Lord Maxton:* Can we not find somewhere in-between, basically, if you like, a Bill every 10 years that gives you a Royal Charter but at least gives the ability to the elected House of Commons and to this House to examine and amend the Charter as it goes through? Once you have got it then I accept it is for 10 years, but there ought to be a better way of deciding rather than suddenly a Charter is placed before them and I am sure we will vote on it.

Mr Grade: It is my belief that if you tested that with the licence fee payers themselves, all the research shows they will not support that.

Q1767 *Lord King of Bridgwater:* That depends what the question is. If you say, "Should politicians be more involved in running the BBC" you will get a very quick answer.

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Mr Thompson: If I may say so, Ofcom asked that very question about whether they would like more political or parliamentary scrutiny of the BBC.

Q1768 Chairman: It is how you put it, “more political” or “more parliamentary”.

Mr Grade: Could I ask—

Q1769 Chairman: You are answering questions, not asking them at the moment.

Mr Grade: On a point of clarification.

Q1770 Lord King of Bridgwater: Were they asked, “Would you rather have an Act of Parliament to determine the future balance of the BBC for the next 10 years or would you rather leave it to a single member of the present Government to take that decision?” If the question is put like that you might get a rather different answer.

Mr Thompson: I am sure they did not ask that. My understanding of the situation is that there will be a debate in the House of Commons on the Charter and a vote.

Q1771 Lord King of Bridgwater: And a whip.

Mr Grade: I am trying to understand precisely where you would identify weakness in the present system. We are going through a year, probably 18 months, maybe two years, of the Charter review process which makes us accountable in all kinds of fora which I am perfectly comfortable with. I will come here as often as you can stand it and I will make the case for the BBC wherever I am required so to do.

Q1772 Chairman: The concern is the concern that I thought Lord Maxton put extremely well. As at the moment the consensus or agreement—we know that this is the agreement because it has been put to us several times, both inside and outside—is an agreement between the BBC and the Department, if you like the Government. What Lord Maxton was asking and I was asking was whether Parliament could be brought into that process and the agreement should be with Parliament. That does not exclude the prospect of a 10 year Charter, and I can see the advantage of that. I think the difficulty of the way we are going is, frankly, the Department can just say to any Select Committee, which it tends to do, “That is very interesting but we intend to go the way we thought of in the first place”.

Mr Grade: I cannot comment on that. All I would say is there is one missing step in your characterisation of the process which is that I think the British public trust the Board of Governors and, hopefully, in the future will trust the trustees not to do deals with Government that are not in the best interests of the licence fee payers. I certainly would not be sitting here saying that this is workable with my experience

and the level at which I care deeply about the impact of the BBC, signing up to something that I do not believe is in the best interests of the licence fee payers. There is a good check and balance in that system.

Q1773 Lord King of Bridgwater: Would you accept that the general public certainly believe that at the time that you agreed to this arrangement the BBC Governors had their backs to the wall, were fearful the nurse might bring something worse and settled for this? That is a very wide public perception, as I am sure your polling must show you.

Mr Grade: It may be the perception but it is not the reality. I was brought in after the debacle of the Hutton Inquiry and all that had happened before.

Q1774 Lord King of Bridgwater: Exactly.

Mr Grade: I came in with a very clear mandate. I applied for the job with a very clear idea of what I wanted to do. I had not discussed it with any of the Governors, the existing Governors or anybody. I sat down and worked out what I thought was wrong, what I thought needed doing and I went in on that manifesto and I was appointed on that manifesto. I specifically took the trouble to write it out so there could be no misunderstanding about the basis upon which I took the job. I do not believe that any decision the Government has made in the Green Paper about governance in any way runs counter to that. It moves further than I would have gone but I understand why and I am prepared to accept it. I believe the structure that they have decided upon after a huge debate, huge consultation, endless input, will work and will work in the best interests of the licence fee payers.

Mr Thompson: I think it is worth saying on the management side of the BBC as well that we believe this system is eminently workable and it has some advantages for the licence fee payer in terms of the effective running of the BBC and effective oversight of the BBC, and we would not say that if we did not believe it.

Q1775 Lord Peston: That was what you said in answer to Lord Armstrong and you were very clear. I thought he asked you the central question, which was not what you want but would this be workable. We, for example, as far as I know, are the first Committee that has ever scrutinised a potential BBC Charter. The question you are being asked is would it not be better, not that you should not have a Charter but you should not have a Charter until you have been scrutinised by a Committee like us, plus the Commons of course, and the House of Lords voted in favour of whatever was going to happen. All we are doing is we will write a report and, as the Chairman said, the Department will decide what it wants to do. Would it not be a much better state of affairs if none

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of this could go forward every 10 years, or whatever it is going to be, without proper scrutiny?

Mr Grade: I do not think this is a matter for me as Chairman; it is a matter for Parliament.

Q1776 *Chairman:* We have got the Minister coming tomorrow. We will move on to the Bishop of Manchester who will bring us back to earth.

Mr Grade: Half-way house, if I may say so.

Q1777 *Bishop of Manchester:* I want to go back to the commitment that the BBC made a little while back to do relocation up to Manchester. In the light of your earlier comments, I just want to emphasise that I am asking this question in the best interests of the licence fee payers and not the best interests of the City of Manchester, though indeed they may cohere. The word on the street, following the initial euphoria about this proposal and the imaginative idea of a media centre which the ITV and other independents would come in on, now seems to be that the BBC may possibly back off from some of that commitment. There are four questions that I want to put to you on this, and they are brief. First of all, will it happen? Secondly, if it does happen, how much of the original proposal will be kept to? Thirdly, what is it going to cost? Fourthly, do you feel in your judgment that whatever the cost will be, that will be a proper use of the licence fee payers' money?

Mr Thompson: Perhaps I should go first. At the moment the management is still working on the status of our proposal. Michael and the Governors have approved the out of London vision which we set out in *Building Public Value* and the framework of the Manchester vision, but we have not put detailed proposals, and in particular any investment proposals, to the Board of Governors yet, that will happen probably later this year.

Q1778 *Bishop of Manchester:* Does that mean that you are less enthusiastic?

Mr Thompson: Not at all. The Government made it clear when we first raised it with them in the autumn of last year that it is a sufficiently big investment that they felt they would need to be clear on the overall future funding of the BBC before they could commit to this big investment. In my view, as Director General of the BBC, I remain fully committed to making it happen. I cannot tell you what the funding of the BBC will look like beyond the end of the present Charter but I think this is a high priority for the organisation. My answer to your first question is I believe it will happen assuming we get a reasonable funding settlement. I believe we will make the case for it in the interests of the licence payer, and I will come on to that in a moment. How much of it will happen—the second question—all of it, I hope. I think there is a logic to it and I want the whole thing

to happen. How much will it cost? We made some numbers public last autumn and we have suggested a range of around £45 million a year extra, as it were, gross, but what we have yet to do is refine that number. Secondly, you have to net off from that number very significant savings of investment that would not have to take place in particular in London, refurbishing studios and so forth, over the same time period. The next figure will be well under £45 million a year and that is £45 million to be seen out of a licence fee of about £2,900,000. Do I think it makes sense in terms of the interests of the licence payers? I believe that both in terms of representing the whole of the United Kingdom and also capturing talent from the whole of the United Kingdom it is incumbent on the BBC to spread itself and spread its investment and its openness to talent more widely across the UK. In the last 10 years we have made very substantial fresh investment in the nations—Scotland, Wales and Northern Ireland. I think it is time to have a much bigger, more imaginative and more confident presence in the whole of the North of England. Although we are talking about a centre based in Manchester, it is very important that it reaches out not just to the whole of the North West but to the North and the North East as well.

Q1779 *Bishop of Manchester:* If I can just put one supplementary to this. One of the things that has emerged in various conversations that we have had in this room in the past month or two is that there is possibly a difficulty culturally for people who move from London coming up to Manchester, say, where some of them have been used to being in the centre and begin to feel that they are moved away from where the decisions take place. I wonder how you have thought about conveying a different sort of culture from the very strongly metro-political culture that there seems to be?

Mr Thompson: I think it is important that there are some decision-makers and senior managers in Manchester. It is worth remembering that over the last 50 years Manchester has been the home of some of the best network broadcasting ever, ever produced in this country, both from the BBC and also from Granada. There is a wealth of talent in the North of England and those who live in the North West know it is a great part of England to live in. Although, inevitably, it is a very disruptive process, I have got no doubt at all that we can not only build a great broadcasting centre in Manchester but also fill it with outstanding confident talent, which is what we want to do.

Mr Grade: May I just add one small gloss to that. What is driving this kind of what we label “out of London” policy is not a whim, it is not a fashion. The licence fee payers wherever I go—I do phone-ins around the country, I talk to licence fee payers—are

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noticing that the old wonderful monopoly, ITV federal region system, is no longer a viable system and the sense of place and the sense of regional identity, national identity within the UK, is something that the licence fee payers place more and more value on and the BBC is the only organisation equipped to meet that need. What is driving this is the talent that is out there: why should the talent of the UK have to come to London to work, why can it not work in Manchester, Leeds, Liverpool, Glasgow or wherever? It is partly that there is a pool of talent out there that would be good value for us and independent producers—why should independent producers have to work in London—and at the same time, our licence fee payers are telling us that this is what they value, local radio and regional news. Our regional news now is incredibly successful. We used to struggle behind ITV in the days that I worked in ITV—we were well ahead of the BBC—but all of that has changed. The federal system is no longer viable. What a great vision and role for the BBC. It is not just us, it is being driven by what the licence fee payers are telling us they value from us. They love the fact that there is a BBC in their High Street, that there is their own local radio, BBC does this for them, BBC does that for them. We are the only media network that talks to them in a way that they feel comfortable with and recognise as being where they live.

Q1780 Baroness Bonham-Carter of Yarnbury: Picking up the last two things both of you said, historically one of the most successful examples of regional excellence was Granada. Granada has produced programmes across the genres. I think at one point it was suggested—I cannot remember whether it was under you, Mark Thompson—that a channel should move. It seems to me that that, in some ways that would be a more sensible thing than just a specific sport and children's channel and, indeed, because I know you have already been asked once today, there does seem to be an irony in the fact you are moving sport up to Manchester just before the Olympics come to London. There must be a cost implication there. That is not the major part of my question. The major part of my question is if you are going to create a place where talent of all kinds can congregate, would it not be better to bite the bullet and move a channel?

Mr Thompson: As you perhaps know, we are moving two children's channels—CBeebies and CBBC—and Radio 5 Live to Manchester, three channels. In my view, the most important thing of all in terms of producing a broadcasting centre sustainable in the long-term—this perhaps goes back to the point about decision-makers—is bringing entities which are self-commissioning and where we know we have very long strategic interests as the core of that centre guarantees. We have just acquired with ITV the

rights to the 2010 and 2014 World Cups and we have the Olympics in 2014 as well, we are in—

Mr Grade: 2012.

Mr Thompson: I meant the Winter Olympics. 2012 in London and the Winter Olympics in 2014. We know that we are going to be in these strategic areas in the long-term and this will be a broadcast centre, we will broadcast those networks. We will also have very good production bases there as well as many factual programmes, current affairs, religious programming and local radio and regional news and current affairs as well. The idea is to make a big mixed centre with many genres, exactly as you say. Will it make sense in due course? Could it make sense at some point in the future to move another television network? That is possible, but that is not part of the plan. It is also worth saying on the point of moving sport to Manchester—a point I made last week at the Annual Report—the 2008 Olympics are in Beijing and we are not going to move our sports department to Beijing. Sport happens around the UK and it happens around the globe. London is going to be a fantastic thing for the BBC to cover and for BBC Sport to cover, the fact that they are based in Manchester will not in any way reduce our ability to do that.

Q1781 Baroness Bonham-Carter of Yarnbury: You do not think it will be a reason for a lot of people to move down to London?

Mr Thompson: It is perfectly true that for the three or four weeks around the Olympic Games in 2012 many members of the BBC sport department will be based in London. We are trying to create a broadcast centre in Manchester thinking of the next 25–40 years and a few wonderful weeks in one summer in 2012 should not put us too far off our stroke.

Mr Grade: They spent a lot of time in Manchester as host broadcaster for the Commonwealth Games.

Q1782 Lord Holme of Cheltenham: I have got a brief question. I liked what Michael Grade said about sense of place and I would wholeheartedly hope one of the directions it leads to is local television news which the technology now allows. I mean local, not regional. The question I have is, are you not perhaps over sharp-elbowed and over-competitive when it comes to scheduling? It seems to me that derives partly from your heroic history in the early days of the duopoly of the BBC and ITV, and we can think of several controllers who made their names by their competitive scheduling against ITV programmes. Now we have a more pluralistic broadcasting set-up and it does seem from the viewers' and the listeners' point of view pretty frustrating if two arts programmes appear in exactly the same slot or two wildlife programmes in exactly the same slot. Would it not be possible within competition law and within a public service remit just to have a little bit less

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zealousness in your competitive scheduling and a little bit more complementarity?

Mr Thompson: Firstly, broadly, I hope people would recognise over the last 12 months that we are trying to put a broader range of output on our main networks. For example, for the first time ever we had the first half of the *First Night of the Proms* on BBC1, our recent season of programmes about Africa in primetime and China Week had some programming in primetime. We are trying to bring more challenging and more distinctive output into the heart of the schedule, including the BBC1 schedule. Where we can, we do try to maximise the choice for audiences, for television viewers. One example is there was likely to be a clash a couple of years ago between a big ITV costume drama, *Dr Zhivago*, and *Daniel Deronda* on BBC1. Although in many ways that Sunday slot is a rather traditional slot for BBC1 drama, we decided that we would move so that we did not leave the public with the irksome task of deciding because we do not want to irritate the public, we do want to maximise the public's chances of seeing a broad range of genres and a good range of service.

Q1783 Lord Holme of Cheltenham: You do it with soap operas. It is very noticeable that *Eastenders* and *Coronation Street* are complementary.

Mr Thompson: I have to say, now that 60 per cent of the public have got digital, households have anything between 25, 30 and 400 channels and even analogue households have five channels, all of our colleagues on the other channels are trying to counter-schedule quite actively. It is difficult to make it an exact science. There would be competition issues if we formed a cartel, as it were, because all of these things have direct implications for the commercial impacts that the three commercially driven terrestrial channels have. Secondly, it is simply the way the schedule works. Best endeavours is right, absolute science is not possible. I know that my colleagues from Channel Five, and one understands starting a fifth network in these crowded waters is a tough job and in many ways they have done a good job, were anxious about the scheduling of the BBC2 *Culture Show*. The first thing about the BBC2 *Culture Show* is we are talking about a pretty serious magazine programme with a range of contemporary arts and culture covered, something that members of our audience have been crying out for for years. It is the only example of this kind of arts programme anywhere on British television. We decided not to bury it in the middle of the night, as perhaps it would have been a few years ago, but to give it a good peak time slot. It is a programme which is currently attracting 4 per cent of the available audience. It is not placing *Coronation Street* against anyone. We decided to put it at a time when we thought the audience who would like it would be available to

watch. As we look at our schedules going forward, of course we should look at clashes but given the sheer complexity—look at the *Radio Times* and what is going on—the idea that there is a kind of perfect world where you could absolutely move everything to fit is not possible.

Q1784 Lord Holme of Cheltenham: Of course, at some point the technology will make it unnecessary anyhow.

Mr Thompson: Already in many households people are using a combination of either narrative repeat on digital channels or tape or the new PVRs or hard disk, SkyPlus and so forth, so they can schedule their own viewing. We are very, very eager at the BBC to move to a point where we give people much better flexibility about how they use our content. We are going to do a trial later this year and we are very keen to move as soon as we can to a seven day catch-up where you will be able to sample, as you already can to some extent on the Web with radio, radio and television programmes from the last seven days whenever you want to.

Q1785 Lord Holme of Cheltenham: Meanwhile you will not be quite so hard-nosed.

Mr Thompson: If you look at BBC1 and BBC2 now and compare them with even 18 months ago, already you can see a broader range of output and less head-to-head competition.

Chairman: Can I bring in Lord Maxton just for a moment because he has been very patient.

Q1786 Lord Maxton: I think the point was answered to some extent about scheduling and by the end of the next period scheduling will be absolutely non-existent, nobody will worry about it. That is my concern, that we are getting slightly bogged down with governance and what not. It is where does the BBC fit into the future of the technological world that really concerns me and I have some difficulty seeing where that is going to be. If I was Tony Blair I would say, "please give me the vision".

Mr Grade: Creating content for British viewers. Whatever platforms are invented—mobile phones, converged this, that and the other—

Q1787 Lord Maxton: So you become a programme maker.

Mr Grade: The BBC's core business is to turn the licence fee receipts into content of all kinds and we will have to make that content available however the licence fee payers wish to receive it.

Mr Thompson: Instead of focusing so much as we have on traditional television channels and everything, it is going to be bodies of content, news, music, our recent *Beethoven Experience* on Radio 3 and BBC television, 1.4 million downloads of the

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symphony. That is an example. I think you are absolutely right, the biggest challenges we face are to what extent the BBC migrates into this new digital space and offers the public a really strong body of high quality content.

Q1788 Lord Maxton: Also making a fortune by selling large amounts of that high quality content.

Mr Thompson: Internationally.

Mr Grade: Absolutely.

Q1789 Baroness Howe of Idlicote: This is a rather mundane question after all this highfaluting stuff, but quite an important one on the collection of the licence fee. I think my memory serves me reasonably well that at some stage in the past rather less of the licence fee was collected than perhaps was anticipated and expected, so a tougher regime was imposed and the BBC was encouraged to use its powers to collect the money. In Germany, they do the same thing although the way of deciding how much the licence fee is is a little different and the actual sums are a bit meaner, but I think the percentage of the cost of the total collected that they have is something like 2 per cent. We would very much like to know what the figures are for you. As I understand it, half of your costs are on collection and the other half are on enforcement. They have a very special individual organisation that collects specifically geared to doing this perhaps in not quite the same way as a commercial firm that would be collecting instead, as it were. Could you tell us what the sums are?

Mr Thompson: The licence fee collection costs are currently 5.2 per cent of licence fee income.

Mr Grade: Including enforcement.

Mr Thompson: That is both collection and enforcement.

Q1790 Baroness Howe of Idlicote: The division between the two?

Mr Thompson: I do not have that to hand. I will get that to you. We think the German 2 per cent is not really comparable like-for-like. For example, I think the 2 per cent relates to the German licensing authority. The German broadcasters, AIB and ZEF, have got at least 1,500 collection agencies that are not included in the 2 per cent. We will try to work to get a comparison of the costs. It is worth saying that there are a number of ways in which we think we can reduce collection costs further. We would like to increase the number of people paying by direct debit from the current 55 per cent to 80/90 per cent, using that and using the Internet to migrate to paperless licensing for at least half of all households to improve our database, and to remove the requirement for people over the age of 75 to renew their free licences annually. There is legislation that requires them to renew free licences every year which seems like not a

good use of resource. Although the BBC has made significant progress, and also has reduced evasion enormously in recent years, we think there is more we can do to improve the way we collect the licence fee.

Q1791 Baroness Howe of Idlicote: Are you really saying you think those two figures would be quite close together?

Mr Thompson: I would be disappointed if we do not discover that our actual costs, particularly when you add, as it were, the success of collection measured by levels of evasion, do not compare favourably with the German model.

Mr Grade: We will ask the licence fee collection bit of the BBC to do a detailed analysis of our costs and KEF costs and we will furnish you with that as soon as we can so that you have got a proper like-for-like analysis.

Q1792 Chairman: It is a bit odd that this has not been done before, is it not? One thing that we did learn from Germany was that there is a vast amount of public service broadcasting taking place there, there is a licence fee, and one would have thought over the years you would have looked at other systems to see if they were being run well.

Mr Thompson: We have over the years but, as I say, my belief is that we have moved to, if not the best, one of the best in the world. Although our collection costs sometimes benchmark rather high against others, our evasion rates are in many cases far, far lower. Indeed, when people talk about other possible mechanisms for collecting the licence fee, for example Council Tax, you need to look both at evasion as well as at collection. Collection through the Council Tax would be far lower but look at the evasion rates in Council Tax.

Q1793 Chairman: If it is not too much trouble, perhaps you could provide us with what figures you have.

Mr Grade: We certainly will.

Mr Thompson: This is one of these areas where you can have as much as you want really.

Mr Grade: The reason we have not necessarily done all this work on comparators with other markets where there is licence fee collection is that the benchmark the BBC set itself when the BBC was given the responsibility for collecting the licence fee was what it was costing before. We have made enormous improvements in the efficiency of the collection business over the years since we were given responsibility for collection. That has been the benchmark. Now as we have reached a kind of plateau of efficiency we do need to look and see if there are better ways and more efficient models anywhere else.

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Q1794 Baroness Bonham-Carter of Yarnbury: What is your feeling about prosecution?

Mr Grade: Prosecution is for non-payment of the fines, it is not for not paying the licence fee, as I understand it.

Q1795 Lord Maxton: That is right.

Mr Grade: The criminal aspect of it is contempt of court for not paying the fine for not paying the licence fee.

Q1796 Chairman: We may return to this. I think I may draw to a close now. You were very generous—you will probably withdraw this offer immediately—and you will be pleased to know that this Committee is going to have a bit of an extended life, so although

we will have a report ready to be taken into consideration for the Charter and for the Department, and we will have that done by October, we have been given the ability to go on beyond that until probably January or February of next year to look at some of the subjects that we have not been able to look at in some detail. I think at some stage in those months we would like you to return. I am not sure if you regard that as unalloyed the best news you have heard tonight, that we are going to haunt you. Thank you very much indeed for coming. Thank you very much for your evidence, which was extremely clear, as always, and for all the help that the BBC has given us over this inquiry, we are very, very grateful.

Mr Grade: Thank you very much, my Lord Chairman.

Supplementary letter from the BBC

FURTHER FOLLOW-UP FROM EVIDENCE SESSION WITH MICHAEL GRADE AND MARK THOMPSON

11. *What the comparable UK figure is to the German figure of 2 per cent of the licence fee being used on collection;*
12. *Comparable licence fee evasion rates in the UK and Germany.*

GERMAN CONTEXT

It might be helpful for the committee to have some background information on how the German TV licensing system works and explain the differences between the UK system and the German system.

There are a number of different broadcasters in Germany which receive funds from the licence fee, not just one broadcaster, as in the UK.

GEZ is the administrative association of public broadcasting corporations, which collects the licence fee.

ARD is a working group of legally independent, regional broadcasting companies. This includes BR, HR, MDR, NDR, RB, RBB, SR, SWR, WDR, plus ZDF as the national independent broadcasting company.

COLLECTION COSTS

In the most recent GEZ annual report (2004), the cost of licence fee collection is given as 142.4 million Euro or approximately £100 million. As a percentage of total revenue (6,854 million Euro), this is 2.08 per cent.

A direct comparison can not be made between the 2.08 per cent collection costs of Germany and the 5.2 per cent collection costs, or £152 million, in the UK as GEZ break down their costs differently to TV Licensing and also operate within a different regulatory environment (for example, unemployed people do not need to pay the licence fee).

The current percentage collection cost is the highest in the history of GEZ. Between 1995 and 2003 the costs were between 1.62 per cent and 1.99 per cent.

The key reason GEZ gives for increasing costs is improved marketing and communications, including the establishment of call centres. In driving down evasion through marketing, communications and the use of call centres, collection costs inevitably rise.

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EVASION

There is a correlation between the cost of collection and the evasion rate. Evasion figures in the UK are half those in Germany. GEZ has informed us that estimated evasion there is 10 per cent, compared to an estimated evasion rate in the UK of 5 per cent at March 2005.

TV Licensing works hard to lower evasion as every 1 per cent of estimated evasion costs the BBC between £30–£35 million approximately.

UK CONTEXT: FALLING COLLECTION COSTS/INCREASING LICENCE FEE REVENUES

TV Licensing collection costs should also be seen in the following context.

- Collection costs have continued to fall from 5.4 per cent of total revenue in 2003–04 to 5.2 per cent in 2004–05.
- Licence fee evasion has also fallen from 5.7 per cent last year to 5 per cent as of March 2005.
- Licence fee revenues for the BBC in 2004–05 of £2,940 million were £142 million higher than last year. Of this increase, £80 million was due to inflation, £43 million was due to the above inflation increase in the licence fee and £19 million from collection improvements.
- Despite this growth in income, collection costs increased by only £1.2 million (0.8 per cent) on the previous year.
- This is due to the benefits of past system improvements being realised with the continuation of an integrated approach to marketing and enforcement. Efforts were also made to increase the use of less costly electronic methods of payment. Almost 57 per cent of licences are now sold by direct debit and 2 per cent were sold via the television licence online payment service.

BENCHMARKING THE BBC'S RUNNING OF TV LICENSING AGAINST OTHER BROADCASTERS

The BBC speaks frequently to other broadcasters for comparative purposes regarding TV Licensing. Recently we have spoken to GEZ (prior to the Committee's enquiry) and the Danish Broadcasting Company to compare our experiences of evasion. We have also had recent contact with the South African Broadcasting Corporation, NHK in Japan and with RTE in Ireland.

A major comparative study was done around 1996 to compare collection costs with other broadcasters across Europe. However, with the renewal of the BBC's Charter, the time seems right to revisit this work so, over the course of the next year, we will undertake a further study of collection costs and evasion through Europe.

7 October 2005

WEDNESDAY 20 JULY 2005

Present	Armstrong of Ilminster, L Bonham-Carter of Yarnbury, B Fowler, L (Chairman) Gibson of Market Rasen, B Howe of Idlicote, B	Kalms, L Manchester, Bp Maxton, L O'Neill of Bengarve, L Peston, L
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Examination of Witnesses

Witnesses: RT HON TESSA JOWELL, a Member of the House of Commons, Secretary of State for Culture, Media and Sport, JAMES PURNELL, a Member of the House of Commons, Parliamentary Under-Secretary of State, and MR ANDREW RAMSAY, Director-General (Economic Impact), Department for Culture, Media and Sport, examined.

Q1797 Chairman: Good morning, Secretary of State. Thank you very much for coming. I know that just now you have other important responsibilities, so we are particularly grateful. As you know, we have taken a great deal of evidence. We will have the main issues covered by your Green Paper and questions on your Green Paper ready by October, but we are going to continue to February to consider in more detail some of the issues which we have not had time to cover. I wonder would it be convenient for you to introduce your team at this point.

Tessa Jowell: It certainly would. Can I thank you very much indeed in anticipation of this session—as you know, as we move the Green Paper to its White Paper form so that we have the new Charter in place by the beginning of next year—the input from this Committee will be extremely valuable in helping us to shape the final form of the proposals. Most of that work will be done in the autumn. The Green Paper was quite deliberately framed in a way that was a bit like a pistachio ripple: there were some white proposals which had White Paper status, particularly on the regulatory framework and governance, and proposals which were very clearly for consultation and we thought it was important to have that clarity from the outset. Having said those few words by way of introduction, on my right-hand side is James Purnell, who is the Minister for Broadcasting, and on my left is Andrew Ramsay, who is our Director-General with responsibility for broadcasting.

Q1798 Chairman: We have met before.
Mr Ramsay: We have indeed.

Q1799 Chairman: I keep on meeting all my former civil servants! You are described as Director-General (Economic Impact), what does that mean?

Mr Ramsay: It groups together most of the issues in the Department that have more of an economic rather than perhaps a cultural flavour, like gambling, licensing, tourism and broadcasting. There are obviously social and cultural aspects to all of that, but that is the reason.

Q1800 Chairman: I should congratulate you to begin with on the success of the Olympic bid.

Tessa Jowell: Thank you very much indeed.

Q1801 Chairman: Mr Purnell, you are on board on the Olympics, are you?

James Purnell: Absolutely.

Tessa Jowell: It was just an aberration.

Chairman: I was just checking.

Q1802 Lord Maxton: He was not the only one!

Tessa Jowell: The BBC will be the host broadcaster in 2012.

Q1803 Chairman: Can I pick up on something you were saying, and also pick up something Michael Grade was saying late yesterday afternoon, about the status of the BBC Charter. Yesterday we were told by Michael Grade that once the Charter is agreed it cannot be changed over the 10 year period even by another government. I am shorthanding that. Is that basically your understanding of the position?

Tessa Jowell: The agreement which gives expression to the Charter can be varied by negotiation. The Charter, once it has been agreed—you and Michael Grade are absolutely right—stands in that form. That is why we have signalled in the Green Paper the opportunity for reviews towards the mid to latter stages of the Charter, reviews in relation to the licence fee as the appropriate means of funding the BBC post-digital switchover, but also the question as to whether or not any element of the licence fee should be available to other Public Service Broadcasters who, as I am sure you will have heard, are anticipating an adverse commercial impact with digital switchover into public access to a much wider range of channels.

Q1804 Chairman: Just to stay with the process for the moment, the process by which it is agreed is a Green Paper followed by a White Paper but then there is no legislation after that.

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Tessa Jowell: No. Custom is that there is a parliamentary debate in both Houses and I certainly hope that will be the case.

Q1805 Chairman: With a vote?

Tessa Jowell: That is a matter for the whips, as you know. The Select Committee of the Commons and this Select Committee obviously have taken a particular interest. I think it is fair to say that there will have been a pretty high level of parliamentary scrutiny over the Government's proposals as they have developed.

Q1806 Chairman: Basically it is an agreement between your Department, the Government, with the BBC?

Tessa Jowell: Under the seal of Her Majesty the Queen, as it is a Royal Charter.

Q1807 Chairman: Just to continue that for a second. You said to the Select Committee in the Commons that as far as alternatives were concerned: "I would mislead you, however, if I said that we had given detailed consideration to a structure of the BBC that moved it out of its constitution by Royal Charter". Is that still the position?

Tessa Jowell: No, that is not still the case because the House of Commons Select Committee made a proposal that the BBC should be established not by Royal Charter but by Act of Parliament. Of course, we gave that proposal very careful consideration in advance of, and reflected it in, our response to the Select Committee report. We decided against that because this Green Paper, this set of proposals that would be embodied in the Charter and the BBC agreement have been very heavily drawn from extensive public consultation. There have been some very clear messages from the public consultation, perhaps the loudest of which is the licence fee payers' wish for very clear independence of the BBC from Government but also from Parliament. It was in response to the strength of view expressed in that consultation, and we have made the results of the consultation widely available and I hope you have been able to study the reports that we have published, that we decided so clearly against changing the constitutional basis.

Q1808 Chairman: So you do not agree with what the Commons Select Committee said, that Parliament is a more transparent and democratic agency through which to establish the BBC?

Tessa Jowell: No. No, I do not agree with that view and after very careful consideration have set out the argument as to why we rejected that proposition.

Q1809 Lord Maxton: The problem with all of that at the end of the day is the Charter probably will be the same as the White Paper, but certainly we are looking at the Green Paper, we will not have an opportunity to look at the White Paper in any detail. The Charter does not necessarily even have to follow the White Paper, it can be totally different, and there is no way in which Parliament, which after all is a democratically elected structure within this country, can then say yea or nay to it. It cannot even say nay, it cannot even turn round and say, "We do not want this Charter at all" because there is not even a vote that will be publicly binding on it.

Tessa Jowell: I have to say that the extent to which Parliament is not instrumental in shaping the Charter has been the constitutional basis of the BBC for 70 or 80 years; it has not altered in that time.

Q1810 Lord Maxton: But surely in those 70 or 80 years we have moved forward democratically. Although we have changed structures, I would hope that we are a much more accountable society than we were 70 years ago.

Tessa Jowell: With respect, if I can just say this is the first Charter which has been so heavily based on the involvement of licence fee payers in shaping its proposals and recommendations. This is a set of proposals which have been extensively tested with the wider public, both before the Green Paper and as the Green Paper was being published, and that process will continue. To say that the public have been cut out of this process would not be applicable.

Q1811 Chairman: I do not think anyone is saying the public are cut out of it, I think the case is that Parliament is cut out of it and, when it comes down to it, it is an agreement between the Government and the BBC and as long as those two agree, that is it.

Tessa Jowell: And as long as the Queen is happy to approve the Charter, yes, that is the case. That is a settlement which has been accepted by successive governments since the BBC was inception.

Chairman: I am not disputing its history. We are wondering—we are not the only Committee, the Commons Select Committee said the same thing—whether it is relevant today.

Q1812 Lord Armstrong of Ilminster: You talked about the mid-term reviews of the Charter and the licence fee, and in the course of hearing evidence I think we have had some apprehension that might mean whatever is decided on the Charter and the licence fee runs for a shorter period than 10 years. Can we take it that if these mid-term reviews produced proposals for change they would be for after 2016?

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Tessa Jowell: Certainly in relation to the licence fee that is the case. I made clear when the Green Paper was published that the intention was that the BBC will be funded by the licence fee for the next 10 years. I would want to keep a degree of flexibility in relation to the possibility of some licence fee money being made available to other Public Service Broadcasters. The fact that I want to keep that flexibility does not—emphatically—mean that we do not have a view that it should be, I simply want to keep the necessary flexibility available at a time when we will be moving to digital switchover during this Charter period.

Q1813 Baroness O'Neill of Bengarve: Secretary of State, we have had a great deal of evidence on the Trust and we have also heard a great deal of disagreement about what it is. I am sure that thinking has developed since the Green Paper and I wonder whether you can tell us how separate is the Trust from the BBC. Is it an arm's length entity or is it a legal personality of the BBC? Is its function, in effect, to be a Board or is its function somewhat more supervisory?

Tessa Jowell: I see the Trust as the embodiment of the BBC. As such, the Chairman of the Trust will be the Chairman of the BBC applied in relation to current terms. The Trust will be part of the BBC but it will be charged with responsibility for the oversight of the BBC with the executive responsibility very clearly located with the Executive Board. It is unusual, and arguably it is a unique structure, but the BBC is a unique organisation and I believe that the governance and regulatory structure of the BBC needs to reflect that. The proposal for the Trust also reflects a second major change in the relationship between the BBC and the licence fee payer more widely, and Michael Grade talked about this yesterday. The responsibility of the Trust is to the licence fee payer and to ensure, if you like, proper guardianship of the licence fee on behalf of the 24 million people who pay it. In that respect, the relationship between the Trust and the Executive Board, which will be responsible for delivering the BBC agreement, is one which I think is clear.

Q1814 Baroness O'Neill of Bengarve: The possibility is provided for that the Chair of the Executive Board would not be the Director-General. Do you think that would work, having two Chairmen and a Director-General?

Tessa Jowell: If the Chair of the Executive Board were not the Director-General, and you are absolutely right to say that we have maintained the possibility of either, then the Executive Board would be chaired by the senior non-executive director. That person would not be the Chairman of the BBC. The person who will

have the public persona of being Chairman of the BBC will be the Chairman of the Trust.

Q1815 Baroness Gibson of Market Rasen: Quickly to follow that up, Minister. It does seem to me quite confusing still, the different layers and different people who are going to be doing different things. In your response when you were talking to the public, did it come across that there was confusion in people's minds about what was actually being proposed?

Tessa Jowell: It probably will not be surprising to you to know that governance was not in the top of the minds of the thousands and thousands of people who took part in the consultation, they were much more concerned about the quality and range of programming. In as much as governance was an issue, there was a view that the present arrangements could not continue because it is in the present arrangements that confusion exists. I do not believe that confusion exists in the model that we have proposed in the Green Paper, but if there is any lack of clarity and it is revealed by your report and the further consultation then we will obviously rectify that before the White Paper is published.

Q1816 Lord Armstrong of Ilminster: I had the impression from the Green Paper that the name "Trust" is not final.

Tessa Jowell: That is correct. I think we described it as a working title; a working title which does not carry with it the strict legal fiduciary responsibilities that Chancery law would demand. We are open to alternative titles for the Trust as presently described but its functions as set out in the Green Paper, subject to the need for any greater clarity, and we will obviously consider your report carefully in that respect, we intend remain as stated.

Q1817 Lord Armstrong of Ilminster: So that is pretty wide, is it not?

Tessa Jowell: Yes. I have made that clear throughout.

Q1818 Lord Armstrong of Ilminster: I think it would be quite useful as we look at the new proposals for the Trust to hear more from you about what other models you considered other than the existing model, whether you considered a unitary board along the kind of company model and whether you considered the continental model of the Supervisory Board and the Management Board and if you did consider those, as I am sure you must have done, why you rejected them in favour of what you have got?

Tessa Jowell: We did give an enormous amount of thought to the question of governance and we did consider a range of different models. We reduced those down to three candidates which we set out in

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the Green Paper: the BBC's *Building Public Value*, which essentially relied on behaviour change in the BBC; our Trust model which separates the delivery of the BBC from oversight; and the model which Terry Burns and his panel developed of a code-compliant oversight board. We set out in the Green Paper, I hope in some satisfactory level of detail, a critique of each of these and a pretty clear argument in support of the Trust model. If I can just summarise that by saying the point I made in response to Lady O'Neill, which was the BBC is a unique organisation, it is not like a plc. I think when Derek Higgs gave evidence before you he recognised this. He recognised that the compliant model was not a model that was necessarily applicable to either an organisation like the BBC or an NHS Trust. In the context of that proviso, having studied his evidence session to you, he feels that the Trust is a wholly workable model. Underpinning our thinking about the Trust were two things. First of all, the need for change but, secondly, the need for the BBC to be much more directly linked to the licence fee payers who fund it in addition to strengthening this arm's length relationship with Government and protecting the BBC from the public fear, the public perception, of its susceptibility to Government interference. Those three considerations really conspired to argue for the Trust model.

Q1819 Lord Armstrong of Iminster: Thank you. Flying further from that, the Trust would be wholly non-executive, as I understand it?

Tessa Jowell: Yes.

Q1820 Lord Armstrong of Iminster: The Executive Board would be a majority of BBC executives with a minority of non-executives.

Tessa Jowell: Yes.

Q1821 Lord Armstrong of Iminster: How do you see the role of the non-executives?

Tessa Jowell: On the BBC Board?

Q1822 Lord Armstrong of Iminster: On the Executive Board.

Tessa Jowell: Essentially as critical friends and we would therefore expect to see recruited to those non-executive places people who have experience and expertise in broadcasting and media more generally, people who have experience of business and can advise the BBC on the best way of conducting this. The best definition of their role is as the critical friend ensuring that the BBC takes all necessary steps to honour its commitments under the terms of the agreement. The Audit and Remuneration Committee will also be chaired by a non-executive member of the Board.

Q1823 Lord Kalms: Secretary of State, you stated that you are not comfortable with the Unitary Board. I have just looked through their report and accounts and it is a bog standard public company Unitary Board publication. The financial statements are as you would expect of any public company. I am not quite sure why you say you dislike it, it does not suit a public organisation. The interesting thing is whoever we have spoken to on this subject, and it has come up quite a lot, the model that you have chosen, which is a hybrid, has not been very comfortably accepted, it has got certain clashes and tensions within it. Are you satisfied that the model that you are proposing of the Trust Board with its own structure and administration and accountants who will be overlooking and challenging the BBC's own structure is the best model that modern corporate governance managers can produce?

Tessa Jowell: Yes, I do for the BBC. I think the ambiguity that you reflect on the way in which the accounts and annual report are presently published reflect a degree of hybridity in the way in which the BBC Governors currently operate. I do not think there is anybody, not even the Governors themselves, who feels that is proper and sustainable for the future. The BBC Trust will be subject to a very high degree of scrutiny in its performance. We expect it to be transparent and we expect it to be accountable. It will be accountable to the licence fee payers. The precise nature of that accountability is to be defined. We have described the relationship with the licence fee payer as if it were the relationship of that with shareholders. It is not a perfect analogy and we are in the process of developing White Paper proposals giving further thought to that. I argue very strongly for this—forgive me for repeating myself—because the BBC is a unique organisation in this country. It is a highly trusted and highly regarded organisation and it needs a form of governance which safeguards the public interest in that it spends £3 billion of the public's money every year. I believe that the oversight responsibilities of the Trust will provide those safeguards. It also needs lines of accountability that confirm its independence and confirm, if you like, its prime responsibility is meeting the interests of those who pay for it. It may continue to be a unique structure for a unique organisation.

Q1824 Lord Kalms: Can I just make one point. I take your point, although I am not comfortable with it. There is an area of conflict between the Executive Board and the Trust in the areas of budget, strategy, et cetera. The Executive have to produce all the figures and all the plans and normally the Unitary Board would sit there saying yes or no, whatever it is, but here the whole thing has shifted again to another group who are really going to do the same work and

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check and to me that seems a fatuous area. If the second group does not agree with the first group then we are going to have a problem and if the second group always agrees with the first group then we do not need the second group. I think that has to be thought out as well. Looking at a business model, although the BBC is unique it does conform to many bog standard commercial disciplines and you have created a moving plane in this. Perhaps we will come up with some ideas later but I would like to think you have got an open mind on this.

Tessa Jowell: We welcome any of your proposals and will give them serious consideration. Let me invite Andrew Ramsay to comment on this.

Mr Ramsay: The key thinking here was about separation in relation to the Unitary Board model: there were two sorts of Unitary Board in the way it was considered. The first was the sort you have been describing where the Governors and the non-execs sat together. As with the current model, we felt that the Governors and the non-execs were too close together and the Governors were absolutely reliant on the organisation for advice, they were too close and they would compromise their independence in looking at what the BBC was doing. If you moved away and had a kind of Unitary Board with an external regulator, the Terry Burns type of model, we thought the external model was too far away to bring sufficient leverage on the Unitary Board and that Unitary Board would develop power on its own and be too strong to deal with. What we came up with was a model where we thought the leverage and the distance between the two elements was right and we would get sufficient leverage but not too close for the Oversight Board to be compromised by what the Delivery Board was doing.

Q1825 *Chairman:* Can I be absolutely clear on this. Your concept of the Trust and the Management Board you have agreed on, have you not?

Tessa Jowell: Yes.

Q1826 *Chairman:* It is not negotiable?

Tessa Jowell: It is a White Paper proposal in our Green Paper. We thought it very important to settle the preferred model of governance earlier on. However, if you have proposals which you believe improve that model I would take those very seriously indeed.

Q1827 *Chairman:* But the model is the model and you have decided on the model?

Tessa Jowell: The model is the model and we have decided on the model.

Q1828 *Lord Armstrong of Iminster:* Do you foresee any overlap between non-executive Board members and the Trust? Would any of the non-executives on the Board also be serving on the Trust?

Tessa Jowell: No.

Q1829 *Lord Armstrong of Iminster:* They would be completely separate?

Tessa Jowell: Yes, exactly.

Q1830 *Baroness Bonham-Carter of Yarnbury:* Can I return to the matter of the two Chair people. Michael Grade made clear yesterday that he thought having two Chairs was a recipe for disaster. Where will the legal personality of the BBC reside?

Tessa Jowell: In the Trust.

Q1831 *Baroness Bonham-Carter of Yarnbury:* The Chairman of the Trust?

Tessa Jowell: Yes. This goes back to the point I made earlier when I was seeking to clarify that. The Chairman of the BBC will be the Chairman of the Trust.

Q1832 *Baroness Bonham-Carter of Yarnbury:* You can still envisage circumstances where there will be another Chair who is not the Director-General?

Tessa Jowell: Yes, who would be drawn from one of the non-executive members of the Executive Board. Andrew Ramsay has just added to that by saying the Chairman of the Executive Board would obviously be appointed by the Trust.

Q1833 *Chairman:* So who will own the BBC? Will it be the Trust?

Tessa Jowell: Yes, in that the Trust will receive the licence fee money and will then transmit the licence fee money to the Executive.

Q1834 *Lord Maxton:* They will also own the total properties of the BBC.

Tessa Jowell: They would be vested in the Trust.

Mr Ramsay: We are working in the Charter on how precisely the legal aspects attach to the two separate bodies within the organisation. What is undeniable is that the Trust is the sovereign body in the BBC.

Q1835 *Lord Maxton:* So if, as for BBC Scotland, there is to be a sale of property, would that go back to the BBC and would it be the Trust which decides how that money is spent or would it come to the Government?

Mr Ramsay: That depends on the delegation levels between the Trust and the Executive, the clarity of the relationship between the Trust and the Executive. What the Executive has to deliver will be clearly set out in protocols in the Charter and particular

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decisions will fall one side of the line or the other depending on their size, scope and significance.

Lord Maxton: It is non-amendable, non-negotiable.

Q1836 Lord Peston: Following on from Lord Maxton's question, if the BBC decided that it was ridiculous having Broadcasting House on that prime site in Central London and it could be sited perfectly satisfactorily somewhere else so they sold it for a vast amount of money, I was not clear would that money then belong to the BBC or would it belong to the Government?

Tessa Jowell: That money would belong to the BBC.

Q1837 Lord Peston: It would absolutely belong to the BBC?

Tessa Jowell: Yes.

Q1838 Lord Armstrong of Ilminster: It would belong to the Trust.

Tessa Jowell: Yes.

Q1839 Baroness Howe of Idlicote: Secretary of State, I want to ask you a question about the appointment of the Chairman of the Trust. You will have gathered from the earlier questions that the concern is whether accountability to Parliament is more independent than accountability, in fact, to the Government Department although, as you rightly say, it is a Royal Charter and it is the Queen. Under these circumstances, the Chairman of the Trust is going to be a very important person. You have set out that the Nolan principles will apply, but equally, maybe in the past, with the appointment of Michael Grade and so on there has been the involvement of the independent Commissioner on Public Appointments. We do not know what is going to happen to that particular body, it is still awaiting, but it will be very important to see that even more than the Nolan principles there is independence in the appointment of the Chairman. Can you expand on that?

Tessa Jowell: The short answer is that the Chairman of the BBC and the Chairman of the Trust will be appointed by the Queen on the recommendation of the Prime Minister. The process of the appointment, as you rightly say, will be subject to the Nolan rules. Michael Grade's appointment, because of the controversy there had been about the relationship between the Government and the BBC at the time, the circumstances following Gavyn Davies' resignation and so forth, led me and the Prime Minister to the view that we needed to ensure absolute confidence in the independence of the appointment of the new Chairman of the BBC, which was why we asked Dame Rennie Fritchie to appoint the scrutiny body. Certainly one of her panel described the process as "impeccable". It was

regarded as a process that was absolutely proper and transparent in every respect. Whether we see this as a position of such continuing importance and sensitivity that we would want to continue that is a matter we would want to reflect on at the time.

Q1840 Baroness Howe of Idlicote: Will you also be addressing the fact that there may not be a Dame Rennie Fritchie in future?

Tessa Jowell: Obviously we would have to take that into account. I cannot stress strongly enough the importance of ensuring that the person who is the Chairman of the BBC is seen to be independent and the process of their appointment is beyond reproach.

Q1841 Baroness Howe of Idlicote: And has not been unduly influenced by government, whatever government.

Tessa Jowell: Absolutely.

Q1842 Lord Peston: Secretary of State, Dame Rennie Fritchie became Lady Fritchie yesterday, so she is one of us now.

Tessa Jowell: I stand corrected.

Q1843 Lord Peston: Can I turn to the fair competition question. As you yourself said, the BBC is a unique body in that it is a Public Service Broadcaster but it is competing in a very peculiar way in the marketplace because it is clearly competing with private enterprises whose bottom line presumably is net profit whereas the BBC's bottom line is just to meet its public service commitment. I have great difficulty in understanding what fair competition means in this context. We have had one or two examples where all my instincts tell me the BBC have occasionally been unfair. If you take the commercial broadcasters, certainly they described to us that they were not getting a fair deal in trying to provide a local service. What was interesting, at least to me, was they felt they could provide a local service which was recognisably a public service and yet could make money, but they felt that the BBC was not giving them a chance. What is your general view of the marketplace, as it were? How does one provide the appropriate safeguards and at the same time not limit the BBC from doing its own job?

Tessa Jowell: It is a very important question and, along with governance, is probably among the three most important pieces that we have to consider in this Charter Review. By common consent, the present system is fraught with ambiguity and I hope that the White Paper will establish very clear ground rules. I think the first point to make, and this is where I think the argument about the BBC's competitive impact does not begin from, is the BBC is a £3 billion market intervention but it is not there by chance, it is there as

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a direct result of public policy. Here you have a major organisation which is an expression of public policy and public support in this country operating in an environment which is increasingly competitive and where, therefore, the likelihood of market distortion and unfair competition are increasingly justified charges. That is where we can bump up against the limitation of applying pure competition policy to the BBC. I think the way in which the process with which we are engaged helps is by defining much more clearly the BBC's public service broadcasting role because the tension with other broadcasters has been particularly sharp where it has been felt that the BBC has been acting in a gratuitously commercial way, acting as a commercial broadcaster but without the pressures of commercial broadcasters, keeping their advertisers happy, keeping their viewing figures up. Indeed, when I was first appointed as Secretary of State, one of my first decisions was to be asked to approve the two new digital channels and the digital radio services, and one of the things to which I gave a great deal of thought was the competitive impact of this. I think that is the context and we will make it very clear—this is a point that the BBC themselves and Michael Grade have been very clear about—we should not see the BBC acting in what I describe as a gratuitously anti-competitive way, going head-to-head with the commercial broadcasters as if the only purpose that the BBC has to achieve is the pursuit of ratings. The BBC is a different kind of entity and the relationship with its viewers is as important as ratings. Reach is as important as ratings and the range of genres the BBC offers is also important. I then want to draw a distinction between the BBC's commercial services which are not funded by the licence fee payer, which should very clearly be subject to all the strictures of competition policy, and the BBC's public service broadcasting responsibility which should also be subject to market testing and a very clear understanding of the market impact of particularly new services or modifications on existing services. In that respect I think we have set out a pretty clear way forward in the Green Paper and that will be further clarified and defined in the White Paper.

Q1844 Lord Maxton: Can I just turn this round. So far this morning the licence fee payer has been the dominant factor in all of your thinking, and surely for at least 40 per cent of the population at the moment, and even after switchover it will still be a very large proportion who have Freeview, the only broadcasting that is directly paid for by 40 per cent or 50 per cent of the population is actually the licence fee which funds the BBC. Are not those licence fee payers, and, to be honest, increasingly they are the poorer sections of our society, entitled to the sort of

programmes, whatever they might be, from the BBC because that is what they pay for?

Tessa Jowell: Well, it is a very important question and I will answer it in two parts. First of all, there is again a very clear settlement in this country about the universal entitlement to free-to-air broadcasting. Everything we are trying to do in the Green Paper, the way in which the switchover is being handled, the investment by the BBC in digital television and digital switchover, is an expression of that, maintaining the universal right to free-to-air broadcasting. Of course the amount of BBC television that people watch varies enormously in the same way that the call that people make on the National Health Service or their local education service varies enormously, but there is an important principle there that we intend to uphold. Your second point about the range of genres is one which we explored in quite a lot of detail in the consultation. We did not just have the website and we did not just do open meetings; we did citizen juries and a much more deliberative investigation and the public enthusiasm is for a range of genres. Yes, they want the BBC to entertain them—

Q1845 Lord Maxton: Of course they do.

Tessa Jowell: but they also want the BBC to do other things as well, very particularly to provide them with news and current affairs where they can, along with other public service broadcasters, uniquely trust in its accuracy and impartiality.

Q1846 Bishop of Manchester: Secretary of State, you mentioned earlier that there were 24 million licence-payers, but unfortunately there are the few who do not pay their licence, so we get the publicity surrounding elderly people who go off to prison for non-payment of the fine for not paying the licence fee. Now, there are four questions I would like to put to you to elicit information on where you are as a government over all of this. The first is to ask how far the Government has got in its considerations about decriminalising the non-payment of the licence fee, and I am aware that since the Auld report, there has been an undertaking on the part of the Government to look at that issue? The second question is to ask, simply as a piece of information, what it actually costs each year to make sure that that payment is enforced through the courts?

Tessa Jowell: First of all, we are looking to alternatives to the present criminal sanctions and it is worth of course underlining that people do not get sent to prison for not paying their licence fee; they get sent to prison, and I think there is a very, very small number of cases, for not paying the fine.

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Q1847 Bishop of Manchester: That is the point precisely that I made when asking the question.

Tessa Jowell: Yes, I say that only for clarity. We are looking at alternatives, as I say, particularly the use of fixed penalty notices which, in relation to traffic offences, have a pretty high rate of compliance. On your second point about—

Q1848 Chairman: You have been looking an awfully long time now.

Tessa Jowell: Well, I think we undertook—when did we first give an undertaking?

Q1849 Chairman: In 2001.

Tessa Jowell: Well, the Select Committee raised this and we will come forward with further proposals on this in the White Paper. This was a part of the Green Paper that was very clearly open for further consultation, so we are seeking views on it and there will be a clear position in the White Paper.

Q1850 Bishop of Manchester: Can I just add on to that because it is quite a long time since, if I may, again for the sake of clarification, come back to you, the Government did, in response to the Auld review of 2001, the review of the criminal courts of England and Wales, then undertake to look at that issue and it is now 2005 which is four years ago, so it is surprising if there is not anything further happening other than to ask for further opinion.

Tessa Jowell: No, I think this is an issue which is properly addressed as part of the Charter. There was a National Audit Office and a PAC inquiry into this, but any change to the way in which the licence fee is collected, any change to the enforcement is properly a matter for Charter review rather than, I think, for other processes. The second point is that you asked what the cost of enforcement is. The total cost of collection is £150 million. I will try to get for you a breakdown of that figure, what is attributed to general collection and what is specifically attributed to—

Q1851 Bishop of Manchester: Yes, that would be helpful, thank you. In that case, you have taken up one of my other questions for which I am grateful, but are there any ways in which the Government, in considering these issues, has looked at what other countries do in how they collect money? Germany is one example and some members of this Select Committee have just been over there. Are you satisfied that the way in which the licence fee is collected at present is economically, from a cost point of view, the most effective and the one that causes the least trouble in terms of complications that we have already addressed?

Tessa Jowell: Well, we have certainly considered this in the context of the German example where there is an independent body which advises on the level of the licence fee. We have rejected that proposal that there should be an independent body. We believe it is right that the Government should set the level of the licence fee. The £3 million, £30 billion over the normal period of the Charter, has a major impact on the economy more generally.

Q1852 Chairman: You mean the Treasury will never wear it!

Tessa Jowell: That was a rhetorical question from the Chairman!

Q1853 Lord Armstrong of Ilminster: You could not possibly comment!

Tessa Jowell: We have obviously considered alternatives and concluded that the right way to continue is that the Government should set the level of the licence fee, but that is another reason why having a licence fee running for 10 years is also important because you have to balance the Government's interest in setting the level of the licence fee with the need for stability and the independence then for the BBC to operate during that period.

Q1854 Baroness Howe of Idlicote: Secretary of State, the revision process of Television Without Frontiers is, one gathers, coming to a conclusion shortly and I wondered whether you could let us know what sort of effect you think that is likely to have on public service television generally, but particularly of course the arrangements as far the BBC are concerned and whether it will have any implications for the Trust idea, whether the Trust will be seen as sufficiently independent to do its quasi-regulatory as well as governance role?

Tessa Jowell: First of all, on the Television Without Frontiers Directive which, as you rightly say, is currently in the process of being revised by the Commission, we expect to receive proposals towards the end of our Presidency. It will actually be taken forward and decisions made with the Directive concluded in the Austrian Presidency which follows ours. The principal issue and I think the principal focus of debate in relation to the Directive will be this country of origin principle which we support the continuation of, the Commission support the continuation of and, I have to say, a small number of other Member States support the continuation of, but which causes some concern in particularly the Scandinavian countries who are perhaps the most vociferous about it. I hope that we will have an early sort of second reading discussion about this in our Presidency, but we certainly will not have it

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concluded and the Directive will not have taken effect by the time, or there is nothing in the timetable which suggests it will be concluded before we publish the new Charter at the beginning of next year. I have just been reminded of the second point which is the regulation of what would be broadly described as “new media”, online, broadband, telephony and so forth, and I think that again there is an interesting emerging debate which does clash with, for instance, our domestic policy of not regulating the Internet apart and inasmuch as it breaches the Obscene Publications Act or breaches established law.

Q1855 Baroness Howe of Idlicote: Following that up again, you obviously in the Department will be fully aware of how far the debate has gone towards revision, but are you saying that there is nothing in the way the Trust is set up which will be controversial?

Tessa Jowell: I think we are confident that the Commission does not have concern about how the remit is defined and delivered under the present structure. As you know, the Green Paper proposes to maintain the Government’s role in setting the BBC’s public service remit through the Charter and through the agreement and, in that respect, does not represent a departure from the present arrangements. The real difference is in the separation of the executive responsibility from the oversight responsibility. We are, as a result of that, confident that these new arrangements will fulfil the Commission’s requirements with greater clarity than is the case in relation to the present arrangements for the governance of the BBC.

Q1856 Chairman: We will come on to Lord Maxton in a moment, but could I just interpose a question on the BBC World Service. We have had an enormous amount of evidence that the BBC World Service is enormously admired and particularly we have been given some figures in the last few days which show how well it is trusted throughout the world, that it is not producing propaganda, but by objective reporting and, interestingly, it is the most trusted broadcaster in Iraq, for example.

Tessa Jowell: Yes.

Q1857 Chairman: Do you share this admiration for the World Service?

Tessa Jowell: I do share this admiration for the World Service, but I am going to ask my colleague James Purnell to tell you more about our thinking on this.

James Purnell: We completely share the great admiration for the World Service. The BBC is one of the most respected brands in the world and the World Service is a key component of that.

Q1858 Chairman: Therefore, if it is so well trusted and if it is doing so well, and everyone agrees that it is, would it not be sensible to extend into television?

James Purnell: Well, the current arrangement is for them to fund it out of the commercial budget and the loss which BBC World makes is funded out of compensated profits they make out of other parts of BBC World’s operations. Therefore, any movement in that direction would increase the grant-in-aid which would be required, so I do not think we would rule it out, but the arrangements at the moment are clear, that the grant-in-aid is not provided for television.

Q1859 Chairman: But are we not missing an enormous opportunity here? We have just agreed, the Secretary of State has agreed and you have agreed with the trust that the BBC World Service has. The BBC has put up a proposal, a perfectly sensible proposal it seems to me at any rate, that they should start an Arabic television service, and you must be well aware of that. Is that not a sensible thing for this country to do?

James Purnell: There would have to be a compensating increase in grant-in-aid if you wanted to fund that fully. The World Service’s radio service has continued to be important and indeed the shortwave service has continued to be important, so the World Service has done a fantastic job in expanding into new technologies, getting itself on to FM in markets where that is appropriate and using its brand to create a very strong online presence as well. As I say, the key issue if you wanted to do that in television would be one of finding the costs to pay for that. We have no a priori view against doing it; it is just that there would have to be a compensating increase in grant-in-aid.

Q1860 Chairman: But have you got a view in favour of doing it? If the money and resources were available, would you support it?

James Purnell: As I say, we do not have an a priori view against it. If there was a very strong case that it was important in the Middle East, for example, which I know is one market which was discussed when the World Service came to talk to you, that is something that we would consider, but it would be wrong to make a commitment without then having the means.

Q1861 Chairman: I am not asking you to make a commitment. I am saying that if the money and the resources were available, would that be something you would back? You are sounding incredibly defensive actually.

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James Purnell: I am sure you know very well that making commitments on behalf of the Chancellor is something which would be brave!

Q1862 Chairman: I think I can take it from this that your Department is not pressing for any expansion.

James Purnell: Our Department is not responsible directly for the World Service. That is something which—

Q1863 Chairman: And it does not seem to have a view either.

James Purnell: The Foreign Office are the primary source of accountability for the World Service because they are the ones who spend the grant-in-aid. As I say, we do not rule it out and I thought the evidence which was presented to your Committee on that was interesting, but it would be wrong to make a commitment to do something where we do not have the resources to deliver.

Q1864 Lord Peston: Can you actually get the World Service on the BBC website?

James Purnell: Yes.

Q1865 Lord Peston: In that sense, is not the World Service obsolete or will it become obsolete because increasingly, following Lord Maxton's earlier comment, as the stuff will improve, people will go to the website?

Tessa Jowell: I think it stands a profit(?) in China, for instance.

Q1866 Lord Peston: I assume the Chinese would have—

Tessa Jowell: Exactly, but—

Q1867 Lord Peston: The one thing that puzzles me a bit about the concentration, and certainly I listen to the World Service when I am abroad, is that on shortwave the reception is pretty awful and you are constantly losing it, whereas if one had a tiny, portable computer, one would not have a problem at all.

James Purnell: Well, for a large part of the world, radio continues to be their primary medium and, therefore—

Q1868 Lord Peston: Well, I am taking the longer view.

James Purnell: you are maybe making an important point that the World Service should not be boxed into technologies which are becoming out of date, but radio does continue to be, I think, their primary medium and we should deliver it, so we should continue to make sure that we build on that. Indeed, in Britain radio has been the medium which has

actually increased as competition in TV and radio has increased, so I do not think we should write off radio, but we should also—

Lord Peston: If Lord Maxton has his way, we will write off radio and we will all be forced to use our computers!

Q1869 Chairman: Just to sum up, I should not hold my breath, it seems to me, that the Government is going to give any support for the extension of the BBC World Service into television.

James Purnell: I think that would be too negative an interpretation of what I have said. The evidence which you saw which you had from the World Service I thought was interesting. We are looking at the whole area of public diplomacy through the review which Patrick Carter is doing, but it would be wrong to will something into being without having the means to deliver it.

Q1870 Chairman: Secretary of State, do you want to add anything?

Tessa Jowell: No, I do not want to add anything. I think James has set out the position with great candour, which I am sure you appreciate.

Chairman: I will not make a comment on your definition of “candour”!

Q1871 Baroness Gibson of Market Rasen: Secretary of State, I want to ask you about the relationship between the National Audit Office, the licence fee payer and the BBC because, as I understand it, and we have heard evidence from the Comptroller and Auditor General, it is the only large public body which the NAO has not got a right of access to at the present time. How does that put it in, what I know you have told us right the way through your evidence, the best interests of the licence fee payer?

James Purnell: I think the NAO, when they gave evidence to you, said that they believed that the current arrangements were working relatively well and the system of having agreed specific reviews is one which has been of benefit to the BBC and indeed to the NAO, and I think that has been a useful process from their point of view. I think Bob Phillis said that that was a system which, if it was expanded further, might end up being excessive in its interference in the BBC, so I think it is important that we get the balance right, so it is an area we are considering, but we noted the evidence that you received that the current system was not a bad arrangement.

Q1872 Baroness Gibson of Market Rasen: So you are considering it, but you are relatively confident that it will remain the same?

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James Purnell: It was one of the issues in the Green Paper which was generally agreed and we are looking at evidence about that, but the evidence which you received I thought was interesting on that point.

Q1873 Lord Maxton: I wonder if I can turn to the so-called “public value test” in terms of new services produced by the BBC and major changes to the existing ones. I must say, I am very unclear as to what “public value” means.

James Purnell: I think what the experience of the last few years with the launch of new services has shown is that there needed to be a more robust process for examining the relationship between public value and economic impact, and we are working with the BBC on the right way of setting out what the public value test should be. There are different arguments between having something which is fairly flexible and is based on people’s sort of sense of when something has public value and something which is more rigorous. I think we want to have something which is more rigorous, but which is not so inflexible as to be trying to put a measure on things which are not perfectly measurable.

Q1874 Lord Maxton: What worries me a little bit is that it seems to me it is the commercial interests of other companies which is the public value and not what the BBC might be providing in terms of services to the public, so I hope we are clear on that, that that is not what “public value” means.

James Purnell: No, that is absolutely right. The whole point of having a public value test and a market impact test is to separate out those two very different questions. You have to decide what the public value of the service is in terms of what it delivers to licence fee payers and to society and then you have to evaluate that against the market impact assessment, so BBC1 would be a very good example of that. BBC1 clearly has an extremely significant market impact, but we judge, and have judged, for society that for a long time its value justifies that impact.

Q1875 Lord Maxton: I think the one where the service is provided now by the BBC is their superb, very innovative website. Now, that over the next few years will almost inevitably have major changes. We have already seen one very recently which allows you to record BBC programmes on to your i-Pod or on to your computer. That, in my view, will happen very quickly and will extend to television programmes where you will be able to watch them at any point during the next week on your computer or you might be able to watch them on your television. Now, those are all very major changes in the service and each time that happens, is the BBC Trust going to have to go through a process of whether it is public value? Will

their competitors be allowed to appeal in any way against it? What will be the role of Ofcom in terms of these new services and, if that is the case, is the BBC not going to be at a constant disadvantage in terms of it having to prove that what it does has met this public value test, whereas everybody else can introduce whatever service they like without any real control whatsoever?

James Purnell: You are absolutely right, that there has to be scope there for management flexibility on day-to-day operations and changes which are not as significant as major changes, but what we have also said in the Green Paper is that we need to respond to the concerns of other commercial organisations where there are major changes to the service that those should be properly evaluated. We have said quite clearly that should be where new services are brought in, but sometimes a change to an existing service could also be a major change, so we need to identify what those major changes are. In terms of the other questions that you asked, one of the advantages of the BBC Trust model is that that will allow a more clear route for outside organisations to make their representations to the BBC Trust about their views on proposed changes. We said in the Green Paper that we expected Ofcom to do the market impact test where the service was a new service. I know that Ofcom and the OFT have made representations on exactly how that will be done, as have the BBC, and we are considering that going forward to the White Paper, but what we are trying to do here is to achieve a balance between allowing the BBC to respond to market pressures and the need to serve the licence fee payers while having a framework which does take into account the significant market impact where there are major changes to services.

Q1876 Lord Maxton: Greg Dyke promised some time ago before he left, and as far as I know the promise is still there, that the BBC archive, the whole of the archive, would become available free at the point of use to anybody on the Internet who wants to use it. That is a very significant change in the use of the website. Would that be subject to these sort of controls?

James Purnell: The BBC archive proposal would be the trial run, we expect, for the new arrangements that we are putting in place, so I think there are genuine issues to be looked at there.

Q1877 Lord Maxton: But the licence fee payer has paid for that archive and is entitled to see it and use it.

James Purnell: Exactly and there are arguments on both sides. There are arguments in terms of maximising the value to the licence fee payer which are good arguments and, on the other hand, if the BBC was having an impact on, for example, the

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music industry which was having a very significant economic impact, one would need to take that into account, so what we need to do through this is to balance the interests of the licence fee payers and the economic impact and this would be a good test.

Q1878 Lord Maxton: But again the BBC, in terms of music, is being bound in the way that the every person who uses Napster or whatever it might be on the Internet is not.

Tessa Jowell: Can I just make two points in addition. The first is to say that the BBC's own proposal that every channel will have its own service licence I think will create much greater clarity than has been the case to date. The second is that I think that the tension with commercial broadcasters has arisen where you have had in a sense sort of PSB creep by the BBC in the absence of a very clear definition of what a service intends. There will be, I think, some tricky judgments to be made about when a proposal for a modified service is more than just a modified service and is in effect a new service. We had precisely that when the BBC decided that they wanted to launch BBC3 and BBC4 to replace Choice and Knowledge. There was quite a debate at the time about whether or not they could not simply amend it within the terms of the existing agreement, but because so much more money was being spent, that was the principal justification and it was agreed that they had to be treated as new services. Again I go back to the importance of seeing this issue of the PSB versus the commercial landslide as one where you have to take account of the public policy decision that is the long-term settlement in this country which is that we have a major public sector broadcaster which is the BBC.

Q1879 Lord Maxton: So if the BBC, and in my view they ought to do it, decide that they are going to have a sports channel, would that be acceptable? After all, Sky have stolen all the sport from them, so why should they not steal some back?

Tessa Jowell: I think that would certainly be subject to a market impact test and you then would have to make some pretty careful considerations which would involve not only the BBC Trust, but also Ofcom on the wider impact of that, rather in the way that we looked at BBC3 and its appeal to young adults in a marketplace which is already very crowded by broadcasters.

Chairman: We are hoping to look at sport a little later mainly because of Lord Maxton's insistence that we do!

Q1880 Lord Peston: I have just one very brief question for you, Secretary of State, which follows exactly what you were saying. If one hearkens back to when Selwyn Lloyd introduced his famous minority

report, and I was a very young Member, one thought the danger was the end of the BBC. We find ourselves discussing today that the BBC has literally wiped the floor with the opposition, leaving Sky for the moment on one side because, being given the resources, maybe they would have wiped the floor with Sky as well. Do you not think it is paradoxical that what we have now got is the BBC having done exactly what most of us thought it would not be able to do which is survive this intense competition and the other side then cries "Foul! We want rules, regulations and so on to protect us", when we thought the original problem was how to protect the BBC?

Tessa Jowell: I think that is likely to continue to be the theme that is going to underpin every debate on broadcasting in the next 10 to 15 years. What will be the impact of public service broadcasting post digital switchover? What is the impact on the commercial public service broadcasters when the advertising revenues take a downturn or when they peak? This is the context within which broadcasting policy needs to be shaped.

Q1881 Baroness Bonham-Carter of Yarnbury: Just going back to what you said at the beginning about flexibility of the licence fee, your wanting to have some flexibility, if in the fully digital age bits of the licence fee were to be allocated to other sectors, would the Trust oversee that?

Tessa Jowell: Yes, they would.

Q1882 Bishop of Manchester: Secretary of State, you have just used, as many of us have done, the phrase "public service broadcasting". I wonder if you have what you would regard as the definitive description. For example, as you know, in the Communications Act we came up with a definition which is there within that Act, but, on the other hand, we have heard on several occasions differing descriptions of "public service broadcasting" from other people whom we have seen. As Secretary of State, what is your definition of "public service broadcasting"?

Tessa Jowell: Well, I think that the definition in the Communications Act is a good definition. I think, however, we have to accept that there will never be an absolutely watertight, definitive definition of "public service broadcasting" and that reflects a number of things. It reflects the range of genres which, at different times, become more important in the public mind, but I think that overwhelmingly what I have been very struck by is that there is a much more confident understanding of what public service broadcasting is out there among licence fee payers than there tends to be among the broadcasting industry. We agonised about it. If you talk to licence fee payers, they know what it is and they define it in

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terms of particular kinds of characteristics, the top of which is quality.

Q1883 *Bishop of Manchester:* I am happy with that answer, but I am interested that something which is within legislation does not seem to have a more definitive role in what you describe.

Tessa Jowell: Well, the legislation defines it and that is the best start, but I think that the interpretation will be constantly susceptible to changes around the edges.

Q1884 *Chairman:* Can you just tell us one thing on the timing from now onwards. When do you expect the White Paper?

Tessa Jowell: Before Christmas. It must be before Christmas because the Charter has to be in place by the beginning of January. We like to give ourselves all the necessary latitude, but it will be published in the autumn and well before Christmas.

Q1885 *Chairman:* Well before Christmas?

Tessa Jowell: Yes.

Q1886 *Chairman:* Fine, and that will be followed, do you think, with a debate?

Tessa Jowell: I just want to get it absolutely correct. The Charter has to be in place by?

Mr Ramsay: We think we will have it finalised by the spring because it obviously comes into effect on 1 January 2007.

Tessa Jowell: I am terribly sorry about that. That was a complete brainstorm. Yes, exactly, the autumn of next year. Let me hand over to Mr Ramsay.

Mr Ramsay: The White Paper draft Charter and agreement we are hoping to have by Christmas. We need to have the Charter finalised by the spring of next year because it comes into effect on 1 January 2007, so that is the broad outline. We need a

settlement on the licence fee around the same time as the Charter is finalised in the spring of next year because that comes into effect in 2007 as well.

Tessa Jowell: I agree with every word!

Q1887 *Lord Armstrong of Iliminster:* And the White Paper will include the draft Charter?

Mr Ramsay: We are hoping so.

Q1888 *Chairman:* When do you expect debates on the Charter to take place?

Tessa Jowell: In the spring.

Q1889 *Baroness Howe of Idlicote:* Just as one final thought, obviously there has been quite a period of time since the Green Paper and various of the discussions we have had here today indicate some priorities in your thinking. I was just wondering whether there were any areas that you would like to direct our thinking rather strongly to.

Tessa Jowell: I think that if you have views about the sharper definition of the relationship between the Trust and the Executive Board, that would be very helpful. I will look forward with great interest to what you have to say in relation to licence fee collection and enforcement and also the position of the NAO. I do not think you need any invitation to offer your view on the World Service!

Q1890 *Chairman:* That may be the case. Thank you very much and, as we are going on a little further, a little longer than was originally envisaged, perhaps we could invite you back at a later stage to talk about some of the other issues which will come up.

Tessa Jowell: Yes, I would be absolutely delighted, yes, of course.

Chairman: Thank you very, very much indeed, we are very grateful and we are very grateful to your colleagues.

Letter from the Rt Hon Tessa Jowell MP, Secretary of State for Culture, Media and Sport

When I appeared before the House of Lords Select Committee on BBC Charter Review on 20 July this year, Committee members raised detailed questions about the enforcement of the television licensing system which I undertook to respond to separately. Your Clerk's office subsequently identified additional information of interest to the Committee, which is also covered in this response.

The record of the hearing currently available, and on which this response is based, is an uncorrected typescript of the proceedings and I apologise in advance if, as a result, any of my references to the proceedings depart from the precise comments of Committee members.

The Committee enquired about the cost of enforcing the television licensing system. Unfortunately, isolating the enforcement costs has not proved possible. The BBC has indicated that the Corporation's enforcement costs cannot be identified separately from the overall collection costs—£152 million in 2004–05—as they are part of an integrated operation in which the collection and enforcement functions are not readily separable or mutually exclusive. Nor is it possible to estimate accurately the cost of processing television licensing cases through the courts, as court costs are not recorded by type of offence.

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The Committee asked, with reference to Lord Justice Auld's 2001 "Review of the Criminal Courts of England and Wales", how far the Government had got in considering the possibility of decriminalising non-payment of the licence fee. It is important to note that, although the Auld report considered the possibility of decriminalising licence evasion, it concluded that this was not a straightforward option and indeed specifically recommended that the use of a television without a licence should remain a criminal offence.

The Auld report also recommended that licence evasion should be dealt with in the first instance by a fixed penalty notice discounted for prompt purchase of a licence and payment of penalty, subject to the defendant's right to dispute guilt in court. I can understand the Committee's criticism that the Government has yet to respond to this recommendation, although the practical considerations involved are complex. The Lord Chancellor's forthcoming White Paper on Supporting Magistrates to Provide Justice will address this issue, together with options for streamlining court procedures in relation to television licensing.

The Committee also expressed concern about imprisonment for default on fines imposed for licence evasion. I noted that these cases were very few in number, though that was not intended to downplay the Committee's concerns. Imprisonment is available to the courts as a final sanction for fine default, for television licence evasion as for other offences. However, the courts are required to take into account the means of an offender in imposing any fine and, if a fine remains unpaid, the courts may resort to imprisonment only if satisfied that non-payment is due to the offender's wilful refusal or culpable neglect and if all other methods of enforcement have been tried or considered. The following detailed information may help to put such cases in context.

NUMBER OF PROSECUTIONS

The data collected by the Home Office for England and Wales relates to all offences under the Wireless Telegraphy Acts of 1949 and 1967; the data collected by the Scottish Executive relates to all offences under the 1949 Act. The great majority though not all of the offences committed under these Acts involve television licence evasion. The number of people proceeded against for such offences in England, Scotland and Wales, in each of the last 10 years for which information is available is set out below.

<i>Year</i>	<i>Number of people proceeded against</i>		<i>Total</i>
	<i>England and Wales</i>	<i>Scotland</i>	
2003	93,915	2,957	96,872
2002	110,170	1,501	111,671
2001	96,484	1,393	97,877
2000	121,137	2,016	123,153
1999	68,790	605	69,395
1998	96,641	1,403	98,044
1997	92,749	2,981	95,730
1996	188,118	5,781	193,899
1995	130,956	6,862	137,818
1994	188,711	6,933	195,644

(1) These data are on the principal offence basis.

IMPRISONMENT

The numbers of people imprisoned for default on fines imposed for these offences in each of the last 10 years for England and Wales, and in the last eight years for Scotland, together with the average term of imprisonment imposed (rounded to the nearest day), are set out below. The sentence served will normally be substantially lower; where a prisoner has been sentenced to a term of less than 12 months custody, it is the duty of the Secretary of State to release him or her unconditionally at the half way point of his sentence.

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Receptions to prison establishments for default on fines under the Wireless Telegraphy Acts, by year of reception and average sentence.

<i>Year</i>	<i>England and Wales</i>		<i>Scotland⁽¹⁾</i>	
	<i>Number of receptions</i>	<i>Average sentence length (days)</i>	<i>Number of receptions</i>	<i>Average sentence length (days)</i>
2004	28	14	18	7
2003	20	11	12	7
2002	14	14	9	7
2001	30	10	16	8
2000	36	11	12	9
1999	80	11	10	8
1998	145	11	22	7
1997	232	11	25	7
1996	327	10		
1995	728	10		

⁽¹⁾ Information for Scotland is not available for 1995 and 1996.

The Scottish Executive have provided the following additional information on the 18 fine default receptions in Scotland in 2004:

- 16 were male and two were female.
- Three were people already serving a sentence and one person was in prison on remand. These four people would not have served any extra time for their fine default warrant, as the sentence would be served concurrently.
- Only four people had no previous custodial sentences on either a direct sentence or a fine default warrant.
- Although the average sentence imposed was 7.33 days, the average time served was about two days.
- Two were aged under 25, two were aged 25–29, two were aged 30–34, six were aged 35–39 and the remaining six were aged between 41 and 49.

COST OF IMPRISONMENT

Information on the costs of keeping television licence evasion fine defaulters in custody is not collected separately. The average annual cost of keeping a prisoner in custody in 2004–05 was £27,854 in England and Wales (source: HM Prison Service Annual Report and Accounts), while the Scottish Executive have indicated a figure of £29,276 for 2003–04. However, both have suggested caution in extrapolating from these averages, as the cost of imprisoning a fine defaulter is unlikely to be the same as for an average prisoner on remand or serving a longer sentence.

INTERNATIONAL COMPARISONS

The committee also asked whether the Government had considered the television licence fee collection arrangements that operate in other countries. We have looked at other countries' systems, but direct comparisons are not easy. For example in Germany, which was cited by the Committee, we understand that the costs incurred by the broadcasters themselves for their collaborative work in collecting the licence fee are not included in the official collection costs. There are other significant differences, including the range of sanctions for non-payment, an obligation on householders to notify changes of address and concessions. We also understand that the evasion rate is substantially higher in Germany, at approximately 10 per cent, compared with an estimated 5.04 per cent (as at March 2005) in the United Kingdom.

30 September 2005

Written Evidence

TAKEN BEFORE THE BBC CHARTER REVIEW COMMITTEE

Memorandum by The Advertising Association

1. PREAMBLE

The Advertising Association (AA) is a federation of 32 trade associations and organisations representing the advertising and promotional marketing industries, including advertisers, agencies, the media and support services in the UK. It speaks on behalf of an industry that was worth over £18.3 billion in 2004. Further information about the AA, its membership and remit, can be found on our website at: <http://www.adassoc.org.uk/>

The AA welcomes the opportunity to submit evidence to the House of Lords Select Committee reviewing the BBC Charter. This evidence represents the view of the majority of the AA's membership and is without prejudice to any submissions made by individual AA members (list of members is attached).

The AA is not seeking for any part of this submission to be treated as confidential.

2. OVERVIEW

The AA's interest in the future of the BBC arises from the fact that the BBC has a significant market impact on all parts of the commercial sector, including the media, advertisers and agencies. The BBC stimulates competition and plurality, but it also creates market distortions which can serve to undermine and weaken the advertising-funded media and thus devalue its advertising. This has become particularly evident since the generous "retail price index-plus" licence fee formula, implemented in February 2000, which enabled the BBC to fund its expansionist digital strategy at no commercial risk, but in direct competition with the commercial media.

The future of the licence fee is an important issue, but one on which the AA does not have a common position. However, there is common cause amongst our members on issues of BBC governance and regulation, as detailed in this paper. The proposals in the Green Paper to acknowledge calls for greater distance between BBC governance and management through the creation of a separate Trust and Executive Board, and the Governors' decision to hold BBC public services to account through individual Service Licences are constructive developments. However, the current proposals need to go further to ensure an appropriate level of independent, transparent and rigorous regulation of the BBC.

3. AA'S COMMENTS ON SELECT COMMITTEE'S QUESTIONS

3.1 *The role of Public Service Broadcasters and the BBC*

The BBC is an important brand and cultural institution. The competition for audiences between the publicly-funded BBC services and the commercially-funded radio and television sector has driven up quality and enhanced diversity. This has delivered public benefits in terms of a range of quality programmes from a variety of media sources, whether funded via the licence fee or by commercial means.

In recent years, the commercial media have expressed growing concern at the BBC's increasingly aggressive commercial outlook. In radio, for example, the BBC has been given considerable spectrum, but the commercial radio sector considers that the Corporation's services have not always been sufficiently distinctive to merit these special privileges. This is supported by many examples given in Tim Gardam's independent review of the BBC's Digital Radio Services.

The new BBC management has set a more public service course, which is welcomed by competitors and the advertising community. The latter wants to advertise in media that are distinctive in look and purpose from those of the Corporation and that deliver competitive and commercially-valuable audiences.

However, the BBC's performance in this respect tends to be cyclical. At times of Charter Renewal or reviews of the licence fee, the BBC can appear to become more public service-minded in its output. The Green Paper's proposal to incorporate into the Charter more detailed public purposes and distinctive characteristics for BBC licence fee-funded services is a sensible way to ensure the BBC keeps to its public purposes at other times as well. Secondly, the Green Paper's acknowledgement that the licence fee will become increasingly anachronistic

as a result of technological change makes it all the more important that BBC services are in future distinctive and public service. For these reasons, the AA welcomes the Green Paper's proposal that there should be a fuller definition of the BBC's public purposes to ensure that the Corporation fulfils a distinctive role and that its public service objectives fully reflect the benefits it receives from licence fee funding.

Public Purposes and Characteristics

In principle, the AA therefore supports the concept that the Charter should contain more detailed public purposes¹ and distinctive characteristics² for all BBC licence fee-funded services than have existed previously. However, those proposed are very general. They do not, for example, include what should be a key public service obligation for the BBC—the provision of religious or spiritual content or the promotion of spiritual values in the UK.

They are so general that it could be difficult to ascertain how they will ensure the BBC's content will be different to that provided by those in the commercial sector with public service obligations. It should therefore be a key component of the Charter (as proposed in paragraph 1.20) to ensure that the vast majority of programmes or content on all BBC services should strive to fulfil the full range of public purposes and characteristics.

To be distinctive, the BBC needs also to ensure its content is providing something for everyone, including public service content not provided by the marketplace. In other words, there might be a number of different ways to measure whether it is delivering public service content. The AA supports the proposal (paragraph 1.21) that the Charter should require the BBC to put in place a system for performance measurement which would measure the extent to which audiences value programmes and services, their impact, and some measurement of the amount of each sort of programming that has been provided.

The AA also suggests that the Charter or Licence and Agreement (as appropriate) should contain requirements for certain programme genres or content at peak times in the schedules or in prominent places on the BBC website.

Finally, the Charter should make it clear that the public purposes and distinctive characteristics apply across all BBC content funded by the licence fee, including online and new media services. Currently, the sections of the Green Paper relating to the BBC public purposes sometimes refer to the BBC's programme output (implying only its broadcast services would be affected), and sometimes to content.

Service Licences

The concept of Service Licences will be crucial to supplement the general characteristics and purposes and should apply to each service. Service Licences should have specific, detailed and measurable remits against which the service should be assessed annually by the BBC Trust and reported on in the Annual Report & Accounts. This is essential in order to reassure both the public and competitors that each service is sticking to its core public purposes and to avoid complaints, for example, that public service genres such as arts programming are being moved from BBC1 to BBC2 or 4.

There should be some sort of recourse mechanism against the Trust's licensing decisions, with Ofcom as the arbitrator.

In addition, the Charter should clearly specify who has day-to-day responsibility for ensuring that each service is delivering on its public service obligations, whether this be the Director General or the respective editor or controller of the service.

3.2 The BBC's constitution

Over the next ten years (the period of the new Charter) there will be considerable market change. Following analogue switchover, the BBC will be but one operator in a multi-media marketplace and will therefore need more than ever to try and retain public support for its unique status and justify its privileged position in the market. The AA has therefore previously proposed that serious consideration be given to making the intervals between Charter renewal shorter.

However, the Green Paper makes some important points against shortening the Charter periods and changing its status (Section 1.3, pages 54–57). It is argued that the first would be disruptive, as it would involve a constant review process, and the second would jeopardise the BBC's independence.

¹ sustaining citizenship and civil society, promoting education and learning, stimulating creativity and cultural excellence, representing the UK, its Nations, regions and communities, bringing the UK to the world and the world to the UK.

² of high quality, challenging, original, innovative, engaging.

The AA acknowledges that the BBC needs some stability, though a new ten year Charter will give the BBC very long-term security at a time when huge technological change will challenge the concept of universal funding through the licence fee.

Ofcom has highlighted in its Public Service Broadcasting Reviews for TV and for Radio the challenges facing continued delivery of public service broadcasting in the commercial marketplace as digital switchover approaches. The seismic changes will impact on commercial public service broadcasters, cable and satellite broadcasters as well as radio broadcasters that all make a significant contribution in different ways to the public service offering. It will be incumbent on the Government and on Ofcom to ensure the continuation of competition to the BBC through the maintenance of a healthy and vibrant commercial marketplace. Whilst the AA does not have a view on the future method of funding the Corporation beyond 2016 and the possibility of wider distribution of public funding to the commercial sector, the approach in the Green Paper of leaving open the option of interim reviews (Paragraph 3.5, page 56) seems a sensible one.

3.3 *The governance and regulation of the BBC*

The BBC is such a major market player that it has a significant impact on all parts of the commercial sector. This is why there have been calls for more rigorous regulation via external regulatory scrutiny. The current structure of the Board of Governors is widely perceived to be inadequate because the Board of Governors is too close to the management of the BBC and because they are not perceived to have the broad spread of competition expertise and other skills that exist in a regulator like the Office of Communications (Ofcom), which has concurrent competition powers. The AA considers that the transparency and accountability of the BBC would be greatly enhanced if it were subject to a greater degree of external regulatory scrutiny.

Many in the commercial sector have proposed that one solution to this would be to transfer the regulation of the BBC to Ofcom. More recently, Lord Burns proposed the establishment of a new Public Service Broadcasting Commission. Both have been rejected in the Green Paper, in favour of the concept of the BBC Trust, which creates some separation from management without creating a whole new regulatory entity. This is an interesting proposal that goes some way towards tackling commercial concerns, but it must demonstrate that it will act entirely independently. There will otherwise be the danger that the BBC Trust could be open to regulatory capture, or at least accusations of it. In this respect, it is difficult to see how the Chairman of the BBC Trust can also chair the BBC itself without compromising the independence of the Trust. We therefore propose that the Chairman of the Trust should not be seen as head of the BBC (as at present). There should be a separate appointment made—that of Chairman of the BBC Executive Board.

The Trust should be responsible to, and representative of licence payers. However, it must also have a specific duty to take account of the BBC's impact on the marketplace, because competition in the marketplace delivers the benefits of choice and plurality of services to licence payers.

Public Value Test

The AA supports in principle the concept of the Public Value Test as providing a transparent mechanism for the approval of new licence fee-funded services. The AA acknowledges that the Trust has at the centre of its purpose the maintenance of value for money to the licence payer, and that it is difficult to take new service approvals out of this process. However, commercial operators will remain concerned that a BBC-facing body like the Trust is unlikely to be completely impartial when applying the Public Value Test. They will be uneasy that the Secretary of State's role in approving new BBC services will be limited to a rubber-stamping one, as, in recent years, the DCMS has demonstrated the value and rigorousness of a third-party approval process. It will therefore be crucial to have safeguards detailing the processes and protocols that must exist between the BBC Trust and any Executive Board (as proposed in Paragraph 5.30, page 72 of the Green Paper). These must be in the public domain. It will also increase transparency and accountability if the Trust's decision-making process is public.

The shape and methodology of the Public Value Test is essential to the transparency of the approvals process for new services. A key part of the Public Value Test must be to evaluate not only the value of a proposed new service to the public, but the impact it will have on commercial competition. The Trust must be able outwardly to demonstrate that it has taken full account of Ofcom's market impact test in reaching its decision. It will be very important to consult and reach a consensus on how public interest objectives will be weighted against market impact under this new mechanism. The AA understands the BBC will run a separate consultation on how the Public Value Test will be constructed and we look forward to participating in the consultation.

Ofcom's role as an independent third-party regulator with market expertise is crucial. Its market impact test should include research and a public consultation to provide a counter-balance to that which the BBC Trust will conduct as part of its Public Value Test.

The Trust must contain the right business and economic expertise in order to apply the Public Value Test effectively. If it only reflects "licence payer interests", it will be little different from the Governors. These skills cannot solely be provided by the Trust's secretariat. It is important that those actually making Public Value Test decisions have the relevant skills to make their own assessment of Ofcom's market impact test, rather than only relying on recommendations from staff.

The Public Value Test must evaluate the proposed new service against a specific and detailed remit. It should also demonstrate how the new service will be distinctive from what the market can offer, as well as the expected market impact. The annual review of the service should look at how it has developed in the context of the original assessment. It is not clear that new services or sites deemed by the BBC as part of an existing service would be subject to the PVT and market impact test, yet such initiatives can have a significant impact on the market. This has been evident in the online market, where the BBC's activities developed freely as a result of a general and unspecific remit agreed in 1998, and in the radio sector (Tim Gardam's independent review of the BBC's Digital Radio Services in 2004 gives many examples of market impacts caused by BBC radio services). It might also provide some assurance to the commercial sector about the boundaries of BBC activity in new markets.

Although the online remit has since been revised in response to the Graf Report, it has not been subject to any external scrutiny such as a public consultation or market impact assessment.

National Audit Office

The AA welcomed measures that were put in place during the passage of the Communications Bill for partial scrutiny of the BBC's spending by the National Audit Office. However, the BBC remains very much in control of the process. The AA supports the option in the Green Paper for increasing the NAO's powers of access (Paragraph 5.61, page 79). We respect concerns that there is a need to avoid jeopardising the BBC's independence as a consequence of increasing Parliament's powers over it, and there clearly needs to be proper safeguards in place to prevent this. However, from their other activities, including the scrutiny of the BBC World Service expenditure, there is no evidence to suggest that the NAO's role would extend to questioning editorial judgements. Their role is more about ensuring value for money, and proper, rigorous, transparent accounting.

Complaint-handling

The Green Paper (page 12) supports with the Governors' conclusions that the BBC's complaint handling process needs to be improved. The AA has submitted two complaints to the BBC about bias in its selection of interviewees on food advertising, both of which have been upheld. However, it has been unclear that there has been any subsequent change in editorial policy as a result. The AA sees no reason why all complaints about fairness and impartiality should not be handled externally to the BBC in the same way as complaints about commercially funded media.

3.4 The BBC's impact on competition

The Green Paper suggests that there is a case for drawing a clearer distinction between external competition regulation and internal rules of BBC behaviour. Many of the AA's members are commercial competitors to BBC Worldwide's commercial services and would endorse the view that "there is a lack of confidence in the current arrangements" (page 7).

The Green Paper suggests that one option would be to give Ofcom power of approval over the BBC's internal rules. The AA's members, which include the press as well as other commercial media, have no common view on this.

However, if the BBC Trust is to take over the Governors' existing responsibilities in enforcing the BBC's own Fair Trading Commitment, there will need to be some improvements over the status quo. The Trust will need to have competition expertise amongst the Trustees or the secretariat, and it will need to deal with complaints about the BBC's commercial activities publicly and transparently so that competitors can see how their complaints have been addressed.

6 May 2005

Members of the Advertising Association

British Market Research Association (BMRA)
 BSkyB Group plc
 CAM Foundation
 Channel Four Television
 Cinema Advertising Association
 Commercial Radio Companies Association (CRCA)
 Direct Marketing Association (UK) Ltd (DMA)
 Directory & Database Publishers Association (DPA)
 Direct Selling Association (DSA)
 Five TV
 Flextech Television
 GMTV
 International Advertising Association (IAA)—UK Chapter
 Institute of Practitioners in Advertising (IPA)
 Institute of Sales Promotion
 Internet Advertising Bureau (UK) (IAB)
 ISBA
 ITV Network Ltd.
 Mail Order Traders' Association (MOTA)
 Market Research Society (MRS)
 Marketing Society
 Newspaper Publishers Association Ltd (NPA)
 Newspaper Society
 Outdoor Advertising Association (OAA)
 Periodical Publishers Association (PPA)
 Point-of-Purchase Advertising International (POPAl)
 Proprietary Association of Great Britain (PAGB)
 Public Relations Consultants Association (PRCA)
 Royal Mail
 Satellite and Cable Broadcasters' Group (SCBG)
 Scottish Newspaper Publishers Association (SNPA)
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Memorandum by the British Internet Publishers Alliance (BIPA)

INTRODUCTION

The British Internet Publishers Alliance (BIPA) was formed in December 1998, representing the interests of a wide range of internet publishers. BIPA's key purpose is to press for the establishment of a fair and transparent regulatory environment in which internet publishing may flourish and which allows a wide diversity of entrants to this market on a free and fair competitive basis. This evidence represents the majority view of BIPA membership and is without prejudice to any submissions made by individual BIPA members.

We are pleased to submit responses to the questions posed in the Government's Green Paper reviewing the BBC's Royal Charter. The outcome of this Charter review and subsequent decisions taken regarding the future of the BBC's role, governance and funding will affect the whole of the media eco-system not least the rapid development of online content services. Our responses are limited to those aspects of this current review which relate to the BBC's role, purpose and funding as they affect internet publishing.

SUMMARY

- Government should assess “the Review of the BBC’s Royal Charter” within the overall context of European Competition scrutiny and EU current investigations.
- We call upon Government to reconsider its decision to rule out a full role for Ofcom and request the transfer of both powers of governance and regulation to Ofcom in order to deliver independent regulation required by Community law.
- It is essential that all content, even if belatedly prioritised as “core public service content”, should be not only justified and defined but clearly distinctive from commercial offerings. This must be rigorously enforced as part of a new service licence.
- To date there appears to have been insufficient effort taken by the BBC to ensure content is always innovative and distinctive which often leads to accusations of the plagiarism of competitive ideas and the replication of existing commercial provision.
- While the BBC may have offered the commercial sector undertakings and promises to avoid unfair competition, the pavements outside Broadcasting House are littered with good intentions and unfulfilled promises.
- BIPA submits that the time has come not only to hold the BBC to its promises but to devise structures and regulation that will define and confine the BBC to appropriate public service operations in the rapidly developing and expanding market.
- If as we suspect there will be backsliding from the BBC then BIPA would be reluctantly forced to refer the matter to the appropriate competition authority.
- Graf made several positive recommendations in order to clarify the BBC’s purpose and to address areas which created conflict with the commercial sector. These must be brought into account and considered fully as part of this current review.
- BIPA requests that, well before the end of the Charter period, a discussion on the BBC’s role and purpose takes place in tandem with the review of alternative funding models, as the two are inextricably linked.
- The suggestions in the Green Paper of how a new Trust, if established, would operate form the basic outline only and offer a rudimentary overview of its future terms and conditions. It is therefore difficult to assess a Trust’s actual impact or determine its likely effectiveness, particularly with regard to remedies for breach of any terms and conditions. We request further consultation on the whole area of Governance and Regulation.
- BIPA submits that the imprecisely defined Trust charged with Governance separate from Ofcom is an unsatisfactory model which would perpetuate the unfair and uncompetitive balance between BBC and the Private Sector. We therefore submit that Ofcom should carry out the dual roles of both Governance and Regulation.
- In order to give confidence to those outside the BBC, particularly in the private sector (and indeed the licence fee payer generally) we recommend that the appointments process to any new Trust be subject to the full rigours of the public appointments system and that those involved be required to follow the Commissioner for Public Appointments Principles and detailed Code of Practice when making these public appointments.
- Membership should include at least one person with contemporary new media market knowledge, another with specific experience of internet publishing and at least one other with expertise in competition law (at UK and EU level). One of these members should have the specific responsibility to represent and defend the new media market perspective.
- The Green Paper makes the sound proposal that “every BBC service would be held to a detailed service licence against which performance could be measured”. BIPA welcomes this approach on the proviso that: service licenses will be constructed in an explicit and clear manner, ruling out any opportunity for the BBC to expand the boundaries set by a licence.
- The Green Paper states that there should be a rigorous system of performance measurement subject to clear and transparent systems etc and presents several options for achieving a new level of rigour, all of which would be necessary as minimum criteria.
- Regarding complaints handling: whilst Ofcom should remain the final arbiters of complaints about standards of harm and offence, privacy and fair treatment, Ofcom should also handle complaints from commercial operators and be given powers to impose changes or withdrawal of service licence agreements.

-
- We call upon the Government to introduce clear commitments in the new Charter to impose a mandatory level of at least 25 per cent of all commissioned internet content as suggested by Graf.
 - We call upon the Government to establish a mechanism whereby investigations can be instigated into the market impact of existing services and removal of those services if adverse market impact is shown. The BBC been a past master at successfully expanding its remit incrementally despite constant, vociferous complaints from the commercial sector.
 - With regard to the public value tests for new proposed services, we query the proposed roles of Ofcom, the Trust and the Secretary of State and who decides what exactly in terms of adding or removing BBC services and request further clarification.
 - We recommend that the methodology for public value tests be subject to public consultation, run by Ofcom. The methodology should encompass qualitative and quantitative tests, including value for money and the intended scope and reach; and that there should be clear enforcement and sanctions for encroachment beyond the agreed limits.
 - In addition there must be an appeals process.
 - BIPA requests the BBC make its commitment to market impact assessments a reality to which it then observes and conforms in practice.
 - BIPA supports the option in the Green Paper for increasing the NAO's powers of access.
 - The Green Paper states that the Secretary of State should no longer be required to approve the launch of new commercial services, or the sale of existing ones. BIPA strongly opposes this proposal unless and until the Government stipulates precisely how such decisions will be taken in future, what consultation processes will be put in place to gather information from the private sector and market impact assessments from Ofcom. Just because licence fee money is not involved it does not mean that there will be no impact of the BBC's commercial business on the private sector. History informs us otherwise.
 - We ask that the statement be amended to read: "All commercial activity, current and future, must be related to the BBC's public purposes and must have a direct connection with publicly funded programmes or services".
 - We agree that there should be no cross-subsidy, and that all such services should be rigorously and transparently regulated. We look forward to seeing more detail as to how this regulation will be applied and by whom.
 - As Ofcom already has concurrent competition powers, BIPA believes it is appropriate that the regulator for the communications sector assumes absolute responsibility for scrutinising whether the BBC meets competition law requirements. We request a full transfer of powers to Ofcom in order to ensure fair competition.

THE EUROPEAN CONTEXT

Interestingly this review takes place at a time when the European Commission's Competition Commissioner has asked several Member States to explain what their public service broadcasters do and how they are financed. In particular the Commission is investigating whether the current financing systems break Article 87's state aid rules which exist to prevent government subsidies that distort competition. The Commission wants countries to:

- Define clearly what the public service remit is.
- Set up separate accounts for commercial and public service activities.
- Ensure that public service broadcasting is not in receipt of more funds than it actually needs (known as overcompensation).
- Establish an independent national authority to ensure compliance with these rules by the publicly funded broadcasters.

State aid rules allow public service broadcasters to receive government subsidies—including licence fees, because they perform a task in the public interest—also called "services of general economic interest". The European Court of Justice's Altmark case set four conditions in which state aid could be allowed if it is in the public interest: clear public service obligations, pre-established parameters for determining the payments, no overcompensation, and either a tender process to select the operator or funding in line with the costs of a typical, well-run business. So far no public broadcaster the Commission has examined has met the Altmark test.

Furthermore, following several Complaints from private media companies the European Commission is investigating the way in which some publicly funded broadcasters are:

- using their state aid to develop services online; and
- whether or not these services fall within their public service remit;
- if cross subsidy is involved (and cross promotion); and
- whether or not distortions of competition with the private sector arise from state funded activities online.

Private media companies throughout the European Union have brought some 20 complaints of unfair competition against publicly funded broadcasters before the European Commission. An important contribution to the debate surrounding these complaints, with strong pertinent evidence, was published last year by the European Publishers Council³ (EPC), the Association of Commercial Television (ACT) and Association of European Radio (AER). “Safeguarding the Future of the European Audiovisual Market” charged the EU in the audiovisual sector with, “a lack of political will, unimaginable in other sectors” by allowing market distortion through massive subsidies to publicly funded broadcasters. Based on data from the 15 member states before EU enlargement the report exposes the PFBS’ privileged position: PFBS received State Aid equalling a massive €15 billion (more than €82.2 billion between 1996 and 2001).

- This is the context in which we should assess “the Review of the BBC’s Royal Charter”.
- Responses to the questions in the Green Paper follow.

Responses to the Questions in the Green Paper

PART 1—THE ROLE OF THE BBC

Questions 1, 2 and 3 relating to the definition and range of the BBC’s purposes and Question 3 relating to the particular characteristics

The BBC Mission

The Green Paper states that the BBC’s mission is to inform, educate and entertain and that, in so doing, it should contribute to some core public purposes. BIPA requests that rigorous scrutiny of these core public purposes is undertaken by government with regard to the BBC’s remit online.

A broad, general mission to inform, educate and entertain is laudable. But society, communications and the market have all changed. There must be a more clearly defined mission with clearly stated limits in a world no longer populated by relatively few radio stations, terrestrial analogue TV and a print-only newspaper and magazine market.

We are only too well aware that the BBC’s original proposals for their online service in 1997 and 1998 were heavily weighted towards the provision of educational services. This proved an apparent encouragement to a massive expansion into many other areas.

- It is therefore essential that *all* content, even if belatedly prioritised as “core public service content”, should be not only justified and defined but clearly distinctive from commercial offerings. This must be rigorously enforced as part of a new service licence.

Nevertheless, the practical issues remain: the authorship and the nature of such definitions; the mechanisms for monitoring compliance; and the power to impose sanctions should the terms be breached.

- BIPA has consistently argued that Ofcom should be put in charge both of the BBC’s governance *and* regulation to ensure consistency and independence. Our position has not changed.

The Graf Review

The Graf Review of BBC Online concluded that the BBC Online should be subject to a clearly defined and appropriate remit with clear limits and proportionate budgets; that existing services falling outside such a clearly defined remit should be discontinued and any extension of existing services be subject to a market impact assessment before approval.

³ Several members of BIPA are also members of the European Publishers Council and/or ACT. The EPC/ACT/AER Report can be found at http://www.epceurope.org/presscentre/archive/safeguarding_audiovisual_market_300304.pdf

Further, Graf recommended that the BBC's excessive marketing and cross-promotion should be investigated. In 1994 the Sadler Inquiry examined the BBC's privileged use of its airwaves to promote its print titles. It is obvious that on the internet the BBC has escaped from the recommended restrictions that flowed from the Sadler Inquiry. Many of the new websites feed directly off existing BBC broadcasting resources: motoring sites based on *Top Gear*, music sites linked to *Top of the Pops*. These highly intrusive connections and exploitations make nonsense of commercial publishers' attempts to serve the same markets. There is a need for a new examination of the BBC's cross-promotion of its internet services, and the commercial use within them of material paid for by the Licence Fee.

While many of the BBC's services on the internet are proper extensions of its traditional broadcasting activities, many others are much more akin to publishing. They enter and compete in areas already well served by commercial publishers like ourselves.

- To date there appears to have been insufficient effort taken by the BBC to ensure content is always innovative and distinctive which often leads to accusations of the plagiarism of competitive ideas and the replication of existing commercial provision.

As an illustration, under condition 4 of the DCMS approval of the BBC's Digital Curriculum, the service is explicitly required to be "distinctive and complementary" to commercially-provided services; as yet the BBC has provided no convincing explanation of how this will be achieved.

Unfair Competition

Not only is the BBC's presence on the internet immeasurably enhanced by the use of the BBC brand, created over decades by public funding, but the BBC further benefits from unfair cross-promotional advantages as a result of the use of its existing broadcast and print opportunities to promote its internet services. In a previous submission we conservatively estimated this benefit at £20 million per annum, many times more than the promotional spend of the top 10 British commercial internet publishers combined.

- While the BBC may have offered the commercial sector undertakings and promises to avoid unfair competition, the pavements outside Broadcasting House are littered with good intentions and unfulfilled promises.
- BIPA submits that the time has come not only to hold the BBC to its promises but to devise structures and regulation that will define and confine the BBC to appropriate public service operations in the rapidly developing and expanding market.

Statements such as: "The BBC will in future be more sensitive about its potential market impact. It will also be more open about its intentions so that other organisations can plan their strategies . . ." are seen (sadly for a great organisation) as the words of a wolf in sheep's clothing. If as we suspect there will be backsliding from the BBC then BIPA would be reluctantly forced to refer the matter to the appropriate competition authority.

Graf's Recommendations

- Graf made several positive recommendations in order to clarify the BBC's purpose and to address areas which created conflict with the commercial sector. These must be brought into account and considered fully as part of this current review.

For example:

- (a) BBC Online content must be distinctive in its provision of a public service, not just simply in its differentiation from market alternatives. Graf named several sites which failed the test of being distinctive. Following the Secretary of State's announcement that this recommendation would be implemented specifically the Fantasy Football, surfing portal, games portal, Pure Soap site and the What's On listings service, and the BBC's public agreement to close these sites, the BBC ruthlessly disregarded the spirit of their commitment and flagrantly ran their Fantasy Football sites for a further football season which finally ended in May 2005. From their old site they now provide links to third party Fantasy games⁴. Meanwhile on their main site they introduced a new game "*Challenge Lawro*" <http://www.bbc.co.uk/fivelive/challengelawro/index.shtml> which appears to amount to the same thing as fantasy football, as well as continuing with Sportdaq at <http://www.bbc.co.uk/sportdaq/>
"What's On" listings services are still running, searchable by postcode or place name. eg www.bbc.co.uk/oxford

⁴ <http://news.bbc.co.uk/sport1/hi/football/fantasy—football/4518321.stm>

The web address <http://www.bbc.co.uk/surfing/> announces that the site is now closed but Surfing sites are still running, eg <http://www.bbc.co.uk/wales/southwest/sites/surfing/>
<http://www.bbc.tv/cornwall/surfing/index.shtml>
<http://www.bbc.tv/devon/surfing/>
 and

<http://www.onestopsurf.co.uk/websites/details/734.aspx> which explains on the site it is part of the BBC Surfing Wales site which, incidentally, carries commercial sponsorship.

<http://www.bbc.co.uk/celebdaq/> is still running.

The old Pure Soap web address has been replaced by individual soap sites such as <http://www2.thny.bbc.co.uk/neighbours/storyupdates/>

from which you can search and link to any other leading soaps

The games portal page has closed but invites you to use the search facility to search your favourite games which quickly links you to all the sub-portals, eg

<http://www.bbc.co.uk/drama/spooks/games/index.shtml>

http://www.bbc.co.uk/teens/lads/games/play/sexy__football.shtml

http://www.bbc.co.uk/teens/lads/games/play/zombie__attack.shtml

<http://www.bbc.co.uk/cbbc/games/index.shtml>

<http://news.bbc.co.uk/sportacademy/hi/fun/games/default.stm>

http://www.bbc.co.uk/history/multimedia__zone/games/

<http://www.bbc.co.uk/schools/magickey/adventures/index.shtml>

<http://www.bbc.co.uk/cbeebies/funandgames/>

<http://www.bbc.co.uk/sn/games/>

<http://www.bbc.co.uk/teens/girls/funstuff/games/>

<http://www.bbc.co.uk/totp/games/>

and dozens more.

- (b) This begins to follow the familiar BBC pattern: public promises but then retraction by stealth which undermines the integrity of the BBC's public commitments. The commercial sector remained powerless to overrule the BBC's decision to continue with its fantasy football site for a further season as no proper mechanism currently exists. This demonstrates clearly the need to put in place effective sanctions and remedies in similar cases.
- (c) Graf criticised the BBC's practice of "360 degree commissioning". The BBC's sites must in future be clearly targeted and distinctive, meeting clearly defined public service criteria.

The wolf's assurances no longer merit trust. We request that the full range of Graf's recommendations be brought into the current Charter Review.

PART 2—BUILDING A DIGITAL BRITAIN

Question 4 relating to the BBC's role in the development of digital technology, including digital television

This section is mainly about expansion of digital TV, but also about broadband delivery of BBC's content. However, the role that the BBC is seeking to carve out for itself as the cutting edge R&D innovator in the online world is miscast. The BBC's real role should be as a public service broadcaster. As such we believe its focus should be on the production of high quality, public service content and, to a lesser extent, the extension of this content to new delivery platforms as an enhancement of its broadcasting activities. We do not accept that the BBC has a right to use this opportunity to annexe either territories being mapped out by online publishers, or those traditionally occupied by print publishers.

In terms of technological advancement, the BBC should, as part of its public service obligations be encouraging digital switchover but not at the expense of the development of digital services in the private sector.

PART 3—THE BBC’S CONSTITUTION AND FUNDING

Question 5 relating to the BBC’s Royal Charter Funding and proposals for a further review of alternative funding methods, before the end of the next Charter period

- It is imperative that in a constantly and rapidly changing media environment the BBC’s funding should be reviewed well before the end of the next Charter period.

The BBC will be entering another period of substantial, guaranteed, risk-free funding during the forthcoming Charter period. Unlike the commercial sector the BBC has no shareholder pressure to deliver efficiency, profit or return on investment. This gives the BBC unparalleled market power which affects labour markets, investment opportunity and long term viability of private sector players.

Graf noted that BBC Online is “generously funded” and that its “numbers employed are considerably higher than other UK operators”. His request that costs should be broken down to clearly defined divisional levels (eg news, sport) and published, “making it easier to reconcile with data in the Annual Report” should be implemented as part of this Charter’s commitments.

The Green Paper states that after 10 years, the extent of change will require a further thorough review of the BBC’s role and purpose.

- BIPA requests that, well before the end of the Charter period, a discussion on the BBC’s role and purpose takes place in tandem with the review of alternative funding models, as the two are inextricably linked.

We want to ensure that in future the BBC is not granted funding for new services without clearly defined remits and accountability attached to the funding agreement. Therefore, future funding should have enhanced levels of reporting back and accountability attached.

Question 6 relating to any aspect of the operation of the licence fee: concessions, collection and enforcement

No comment.

PART 4—THE BBC’S GOVERNANCE AND REGULATION

Questions 7 and 8 regarding the roles of the BBC Trust and the Executive Board and how to define the public interest remit of the BBC Trust

BIPA has consistently argued in all its submissions to Government, Parliament, and the European Commission as well as to the Davies and Graf Inquiries that the current model of governance is unsustainable and in urgent need of reform. There must be independent scrutiny of the BBC’s activities, effective means of redress and sanctions for breach.

The Green Paper rightly recognises that the BBC governance system needs to be reformed and reconstituted in order to provide clear structural separation between the functions of delivery (devising strategy and providing services) and oversight (scrutinising strategy and assessing the performance of services). The establishment of a BBC “Trust” is proposed with a secondary tier Executive Board.

If you analyse past performance, the BBC has successfully expanded its online remit incrementally, apparently with no let or hindrance from its Governors or Government, in spite of numerous representations by BIPA and other private media operators. BIPA remains to be convinced that the proposed structure of a Trust would deliver the much needed reliability of operation and openness to scrutiny.

OFCOM—GOVERNOR AND REGULATOR

- The suggestions in the Green Paper form the basic outline only of how a new Trust, if established, would operate and offers only an overview of its future terms and conditions. It is therefore difficult to assess a Trust’s actual impact or determine its likely effectiveness, particularly with regard to remedies for breach of any terms and conditions. We request further consultation on the whole area of Governance and Regulation.
- BIPA submits that the imprecisely defined Trust charged with Governance separate from Ofcom charged with Regulation is an unsatisfactory model which would continue the unfair and uncompetitive balance between BBC and the Private Sector. We therefore submit that Ofcom should carry out the dual roles of both Governance and Regulation.

 ROLE AND TOOLS OF A GOVERNING BODY

a. Detailed Service Licences

- The Green Paper makes the sound proposal that “every BBC service would be held to a detailed service licence against which performance could be measured”. BIPA welcomes this approach on the proviso that: service licences will be constructed in an explicit and clear manner, ruling out any opportunity for the BBC to expand the boundaries set by a licence.

In particular BIPA seeks the following conditions and detail on definitions:

- A clear definition of a “new service” is needed to include extensions to existing services with full a market impact assessment for each new service authorisation.
- The Paper talks about “Significant Change to a Service”. What is the definition of significant? What is the definition of change? Who will determine these, and subject to what level of consultation and scrutiny? What measures will be put in place to allow for redress and remedial action, or for the imposition of sanctions for breach of any service licence?
- In the medium of online publication, this level of detail will be required to prevent the hitherto unacceptable unchecked expansion by the BBC of parts of its current online offering. The impact on the private sector of the addition of one small part—even a single page within a larger section of the BBC’s site, could have a major detrimental impact on the viability of the competing commercial service; for example: a new local interest page, a new interactive game, seasonal variations or pages of topical or short-lived popularity. It is essential that proper consultation and market impact analysis apply at the relevant levels of scale.
- The unchecked evolution of the BBC’s online service, with the continuous addition of new pages, new sites or parts of a site must be stopped if the new approach is to have any benefit to the private sector. Each and every new BBC venture, however seemingly insignificant, must apply for a service licence which may only be awarded following satisfactory market impact tests in order to provide certainty to commercial players. Each and every service licence must be subject to a clear and detailed remit with transparent procedures for proposed changes and agreements to changes to that remit.
- There should be recourse against the licensing body’s decisions, with Ofcom as the arbitrator, if separated from governance.
- The Charter should clearly specify who has day-to-day responsibility for ensuring that each service is delivering on its public service obligations, whether this is the Director General or the respective editor or controller of the service.
- Service Licences should be assessed annually by the BBC Trust and reported on in the Annual Report & Accounts.
- The Green Paper states that applications for a new service will be approved only on condition that they meet a new “Public Value Test” but leaves the development of the meaning of this test to the next phase of Charter Review. This is regrettable since the definition, role and application of such a test is crucially linked to the successful operation of the new service licences. We must therefore reserve our position until fuller and final details of the complete new system are open to consultation.

b. We await further details of the proposed Protocols for Trust Members and reserve our position meanwhile.

c. The Green Paper states that the Trust would be supported by a new Secretariat (separate from the new Executive Board) and that this would be based on the model of the recently established Governance Unit. BIPA requests that steps are taken to avoid pressure and influence of this new support unit from within the BBC’s own staff. This will in our view be difficult to achieve which is why we call upon Government to reconsider its decision to rule out a full role for Ofcom to supervise all BBC activities.

- We request a full transfer of powers to Ofcom in order to deliver independent regulation, required by Community law.

d. Meanwhile the Green Paper discusses the division of Regulatory Responsibilities between the Trust and Ofcom. With regard to:

- Standards of accuracy and impartiality, in BIPA’s view these would properly fall within the responsibility of the new Governance body.

- Competition scrutiny rightly resides with Ofcom. It is not clear from the Green Paper however whether final decisions lie with Ofcom or whether their role is merely advisory and therefore subsidiary to a final decision by the Trust. We recommend that Ofcom’s decision be final.
- The same question mark hangs over the market impact assessments. Although it is to be welcomed that Ofcom would be playing a key role in conducting these tests it is not clear who would have the final decision as to what is approved or not, or who might impose necessary changes prior to approval. Again Ofcom’s role must be pre-eminent, and impact assessments should be carried out by them in consultation with and the involvement of key market players.
- There is no mention of any punitive role for Ofcom. We recommend that Ofcom be charged with drawing up and enforcing new sanctions for breach of service licence terms and conditions.

e. The Green Paper establishes a basic blueprint for a “public interest remit” of the BBC Trust, none of which we oppose but we expect these bullet points to be expanded and clarified in order to give them real meaning and force.

PART 5—ACCOUNTABILITY

Questions 9 and 10 regarding the Trusts Statement of Promises, Performance Measurement and Complaints Handling

a. The Green Paper states that there should be a rigorous system of performance measurement subject to clear and transparent systems etc. We welcome this statement but would like to be reassured that this new era of rigorous and transparent assessment will achieve significantly more in practice than the current system of BBC consultations of the licence fee payers which merely act to endorse decisions that have already been taken by the BBC. Tendentious questions to elicit support of the licence payers for provision of “free” content without regard or reference to the potential impact on the market of such services should be ruled out. The Green Paper presents several options for achieving a new level of rigour, all of which would be necessary as minimum criteria.

b. The Green Paper also gives some options for making the Trust open and transparent which require further discussion. We would like to emphasise that, however the Governance is constructed:

- Agendas must be published in advance of meetings.
- But if the Trust were to hold its meetings in public, free and frank discussion would be hobbled. Instead we recommend that a detailed account be released, after each such formal meeting and that the voting records be made available.
- All supporting documents prepared by or for the governance body, including research, must be made public.
- Occasional webcasting or open public meetings would be welcomed.

Otherwise the “Trust”, if formed, would be the current BBC “Board of Governors” in all but name (also see our comments on the composition of the Trust in this regard).

- Regarding complaints handling: whilst Ofcom should remain the final arbiters of complaints about standards of harm and offence, privacy and fair treatment, Ofcom should also handle complaints from commercial operators and be given powers to impose changes or withdrawal of service licence agreements.

6. MEMBERSHIP OF THE TRUST

Questions 11, 12, and 13 regarding number, interests, skills and expertise of Trust members

The Green Paper is imprecise as to the exact type of body the Trust would be but indicates its members would be appointed by the Queen on the recommendation of the Prime Minister which is the current method of appointing the members to the Board of BBC Governors.

- In order to give confidence to those outside the BBC, particularly in the private sector (and indeed the licence fee payer generally) we recommend that the appointments process to the new Trust be subject to the full rigours of the public appointments system and that those involved be required to follow the Commissioner for Public Appointments Principles and detailed Code of Practice when making these public appointments.

The Green Paper sets out the range of expertise needed to constitute the governing body which we would endorse but in addition would emphasise that:

- Membership should include at least one person with contemporary new media market knowledge, another with specific experience of internet publishing and at least one other with expertise in competition law (at UK and EU level). One of these members should have the specific responsibility to represent and defend the new media market perspective.

Based on past performance where the BBC successfully expanded its remit incrementally, unchecked by its Governors or Government, in spite of numerous representations by BIPA and other private media operators, BIPA remains to be convinced that any such structure of two headed supervision (Trust plus Ofcom) would deliver the much needed independence of operation.

- We call upon Government to reconsider its decision to rule out a full role for Ofcom and request the transfer of both powers of governance and regulation to Ofcom in order to deliver independent regulation required by Community law.

7. MORE DETAILED ISSUES OF SCALE AND SCOPE

a. Organisation and Infrastructure

Questions 14 and 15 relating to a new “window of creative competition” and/or support for a raised quota for independent production in BBC television, and a voluntary or mandatory 10 per cent quota for radio

Commissioning

This section of the Green Paper deals with production and commissioning quotas as they relate to television and radio. The BBC has consistently failed to meet the 25 per cent quota for independent television productions so clearly this commitment is in need of review.

Meanwhile, no mention is made of online quotas in the Green Paper. This is surprising given that in the Graf report there was a specific recommendation for a 25 per cent quota online, for “external and independent suppliers” within the current Charter period. In October 2004, Ashley Highfield said that BBC Online had increased its spend on independently sourced content to 13 per cent.

- We call upon the Government to introduce clear commitments in the new Charter to impose a mandatory level of at least 25 per cent of all commissioned internet content as suggested by Graf.

Damaging online competition

The Graf Report also pointed out the dangers of the BBC acting as a “dominant gateway supplier” which in some cases could cut out competition in certain areas, including entertainment listings, access to retailers’ sites and even news. Graf emphasised that if BBC Online were to operate monopoly gateways there would be a further concern if it over emphasised its own content, compared to other providers, in its choice of information sources to which it links from its own pages. Graf points out that in some areas such as Lifestyle/Holiday, a single commercial provider link is supplied in a prominent position on the relevant lead page and alternative supplier links are deeply embedded within different sections of the site. In others, the only links are to other BBC content or to relevant public organisations. Graf says that his market analysis “does not prove or disprove adverse market impact” but adds: “there are indications that BBC Online may have an adverse impact on competition . . . by deterring investment by commercial operators”.

BIPA has no doubt that this has been the case and we welcome the fact that Graf has identified this as a real concern, made worse by indiscriminate commissioning policies, overabundant budgets and resources, and relentless cost-free cross-promotion. We call upon the Government to follow through.

b. Scope of publicly funded services

Questions 16 and 17 relating to proposed changes over the course of the next 10 years to the BBC’s range of services and Government’s proposals for handling new services?

The Green Paper states that the BBC’s current range of services has broad support and that there are no proposals to shut down or privatise any of them. BIPA suggests that even though there may not be any proposals to shut down existing online services at present, there must be provision under the new regime for the removal of services in response to market change. Although the Green Paper gives an overall framework for the approvals mechanism for new services, there is also a need for retrospective market impact assessment.

- We call upon the Government to establish a mechanism whereby investigations can be instigated into the market impact of existing services and removal of those services if adverse market impact is shown. The BBC has been a past master at successfully expanding its remit incrementally despite constant, vociferous complaints from the commercial sector.
- With regard to the public value tests for new proposed services, we query the proposed roles of Ofcom, the Trust and the Secretary of State and who decides what exactly in terms of adding or removing BBC services.
- It seems that the Trust would carry out the public value test and publish all relevant material in cases of adding or removing services;
- Ofcom would carry out the market impact test;
- For an existing service, Ofcom would agree (or would it establish?) the methodology of the assessment for any change to that service, but what else?
- For a new service approval, the Trust would make a recommendation to Government, which would be in the public domain;
- The Secretary of State then appears to have a rubber-stamping role only, unless he/she wishes to veto the recommendation on the sole grounds that the process (ie not the substance) had been flawed.

This means that the final decision to approve a new service or sanction the removal of an existing service would rest entirely with the Trust with no apparent recourse for those who feel they would be adversely affected by that decision.

What mechanisms would be put in place to allow a challenge to decisions of the Trust? What would happen if the Trust chose to disregard an adverse market impact assessment from Ofcom?

- We recommend that the methodology for public value tests be subject to public consultation, run by Ofcom. The methodology should encompass qualitative and quantitative tests, including value for money and the intended scope and reach; and that there should be clear enforcement and sanctions for encroachment beyond the agreed limits. In addition there must be an appeals process.
- BIPA requests the BBC make its commitment to market impact assessments a reality to which it then observes and conforms in practice.
- BIPA supports the option in the Green Paper for increasing the NAO's powers of access (Paragraph 5.61, page 79).

8. SCOPE AND REGULATION OF COMMERCIAL SERVICES

Questions 18 and 19 about how strictly the BBC's commercial services should be restricted to businesses that are linked to public purposes and public services. Also whether the existing fair trading commitment is a useful addition to the arrangements for regulating the BBC's commercial services

a. Launch of New Commercial Services

- The Green Paper states that the Secretary of State should no longer be required to approve the launch of new commercial services, or the sale of existing ones. BIPA strongly opposes this proposal unless and until the Government stipulates precisely how such decisions will be taken in future, what consultation processes will be put in place to gather information from the private sector and market impact assessments from Ofcom. Just because licence fee money is not involved does not mean that there will be no impact of the BBC's commercial business on the private sector. History informs us otherwise.

The Green Paper states that "all continuing activity should be related in some way to the BBC's public purposes and should have a direct connection to publicly funded programmes or services". The word "continuing" could refer to "existing activity" and not bind "future activity" to the same remit. The words "in some way" and the use of the subjunctive "should" raise more questions.

- We ask that the statement be amended to read: "All commercial activity, current and future, must be related to the BBC's public purposes and must have a direct connection with publicly funded programmes or services".
- We agree that there should be no cross-subsidy, and that all such services should be rigorously and transparently regulated. We look forward to seeing more detail as to how this regulation will be applied and by whom.

b. Fair Trading Commitment (FTC)

Currently the BBC is judge and jury in the Fair Trading Commitment and therefore commercial players have no confidence in its application. A fair trading commitment is only going to be useful if its operation is more transparent and subject to external scrutiny and appeal.

Therefore in future there must clearer competition regulation in order to improve transparency of the commercial guidelines and the fair trading commitment. These are not well laid out for either public or competitor scrutiny and this must be changed. In BIPA's view, Competition regulation should transfer to Ofcom. In our view it would not be sufficient for Ofcom merely to approve the terms of any Fair Trading Commitment (FTC). External regulatory scrutiny is essential; the co-existence of the FTC alongside the competition powers of Ofcom and the Office of Fair Trading would be confusing and ineffective, running the risk of the different bodies to pass the regulatory buck thereby allowing the BBC to escape effective regulation.

As Ofcom already has concurrent competition powers, BIPA believes it is appropriate that the regulator for the communications sector assumes absolute responsibility for scrutinising whether the BBC meets competition law requirements.

If the Fair Trading Commitment remains an internal BBC document Ofcom should at least approve its future terms, be given *ex ante* powers over its operation and enforcement, should investigate complaints and provide remedies and sanctions against breach.

Consideration might be given as to how competitive tendering might be introduced to allow commercial companies to share the use of BBC rights on fair and reasonable terms. We think it likely that, far from losing money the BBC would increase its revenues. It seems to us that competitive tendering is the most effective mechanism for the BBC to gain full market value for its assets.

9. A STRONG BBC, INDEPENDENT OF GOVERNMENT

Question 20: Do you agree that the case for a plurality of publicly funded broadcasters should be kept under review?

BIPA supports further discussion and review of the various proposals for a more generalised system of public service provision, including on the basis of contestable funding.

31 May 2005

Memorandum by the Broadcasting Entertainment Cinematograph and Theatre Union (BECTU)

INTRODUCTION

1. BECTU is the trade union for workers (other than performers and journalists) in the audiovisual sector and specifically in the BBC. We have 7,000 members in our BBC Division and thus a close and continuing interest in the future of the Corporation.

The Role of Public Service Broadcasters and the BBC

2. We broadly endorse the Green Paper's proposal that "Inform, educate and entertain" should remain the mission statement of the BBC (p23) but that this should be reinforced by a set of public purposes ie:

- sustaining citizenship and civil society;
- promoting education and learning;
- stimulating creativity and cultural excellence;
- representing the UK, its nations, regions and communities; and
- bringing the UK to the world and the world to the UK.

3. However, we would make two additional points of emphasis:

- Firstly, it follows from the requirement to "compete on the basis of quality" (p20) and to set a benchmark for other broadcasters that the BBC must retain the creative and technical resources to produce a critical mass of original programming in-house. We are seriously concerned that the Director General's programme of cuts and redundancies will jeopardise this.
- Secondly, while we accept the criticism that the BBC should not be reduced to merely competing for ratings on the basis of derivative programming, we also believe that the Corporation should never surrender the aim of universal provision for a mass audience. Retreating to the provision of what

other broadcasters fail to deliver would undermine public support for the licence fee and thereby the long-term viability of the BBC.

4. We agree that “The BBC needs to take a leading role in the organisation and funding of digital switchover, using the licence fee to bring the benefits of digital TV to all.” (p9). We note the BBC’s existing successful role as a digital driver through the involvement in Freeview, which stands as a stark contrast to the abject failure of ITV through ITV Digital. We hope that the Corporation will be provided with the funding and resources to continue its role in promoting digital switchover and to establishing digital television as a universal service rather than a subscription led initiative.

The BBC’s Constitution

5. We strongly endorse the Green Paper’s underlying proposal that the BBC’s Charter should be renewed for 10 more years from 2007. In doing this, we further endorse the existing model of Chartered status for the BBC—rather than statutory status by Act of Parliament. We entirely agree that the latter “risks making the BBC more open to Government intervention” (p9). We also agree that a 10-year Charter “is necessary to provide the certainty and independence that the BBC needs” (p56) rather than an interim five year Charter requiring further review in only two or three years.

Governance and Regulation of the BBC

6. We generally support the basic, underlying proposal to replace the Board of Governors with a “BBC Trust” and a separate Executive Board. We see this as different in detail but not in principle from the BBC’s own evolution towards a Governance Unit separate from BBC management. We believe this approach is clearly preferable to the use of an external regulator (whether a new body or Ofcom)—which would, in our view, be an unwieldy and ineffective solution, potentially too far removed from the life of the Corporation and therefore over-reliant on formal procedures. We support the provision of a separate body of expert staff for the Trust which, like the Governance Unit, should allow Trust members access to information and expertise unmediated by BBC management.

7. We believe greater clarity is needed about how “regulatory responsibilities should be divided between Ofcom and the BBC Trust” and we are particularly wary of Ofcom’s suggested role in relation to proposed new services. Our own view is that the BBC, through the proposed service licence agreements to be approved by the Trust, should be capable of conducting its own market impact testing and that the involvement of Ofcom may introduce at best confusion and at worst the self-interest of commercial broadcasters into BBC strategic decisions. The Trust would, in our view, be sufficiently independent of BBC management to take adequate account of these broader competition considerations.

8. We agree with all of the listed proposals for accountability and openness in the operation of the Trust. We believe that by de-mystifying their proceedings in this way, Trust members can win additional public confidence. We do agree, however, with the additional option of external, independent appraisal of Trust members, with the option for licence payers and stakeholders to submit views on their performance.

9. We fully agree that “Trust members need to be able to reflect the interests of a wide range of different UK communities” and that they need expertise in the “broadcast and media industries” (p12). We have long argued that the balance and composition of the BBC Governors is a matter of concern and we favour a system in which Trust members would be more broadly representative of the country as a whole. Specifically in terms of interest groups, we believe representation from among those who work in or for the BBC would bring a desirable extra layer both of accountability and of expertise.

The BBC’s Impact on Competition

10. We are pleased that the Green Paper acknowledges “There is widespread support for the idea that the BBC should make money on behalf of the licence fee payer out of assets paid for by the licence fee payer” (p99). We further support the view that “The BBC should be encouraged, as it is now, to generate as much income as it can through commercial activity” (p99). Based on this, we can agree in principle that the commercial services should be linked to public purposes and public services—especially in the light of the European Commission’s recent rulings in respect of the commercial activities of public service broadcasters in Germany, Holland and Ireland.

11. We do, however, have a clear disagreement with the Green Paper’s and the BBC’s attitude to parts of its commercial services which are clearly, in our view, still linked to its public purposes ie the possible sale or transfer of BBC Broadcast and BBC Resources. BECTU opposed the initial establishment of Broadcast and

Resources as separate commercial subsidiaries of the BBC. Management's justification at the time, in relation to Broadcast, was that this would secure significant amounts of commercial work. This has not materialised and we believe the only major attraction to the market is the contractual guarantee of seven more years work from the BBC. When that contract expires, the BBC itself will be at the mercy of the market. We have in Broadcast a competitively priced operation producing a high quality product overwhelmingly for the BBC itself. We see no justification for a sell-off other than a cynical wish to reduce the BBC headcount. Similar arguments can be made in relation to Resources.

12. We believe the BBC's original decision to make Broadcast and Resources into commercial subsidiaries was demonstratively a mistake. We regard these as essential parts of the BBC's long-term future operations. We therefore oppose the proposed sales of BBC Broadcast and BBC Resources and urge the Government to reconsider its attitude on this issue.

13. In terms of the regulation of commercial services, we consider that BBC's Fair Trading commitment provides a robust and proven framework for ensuring compliance with competition law. The track record demonstrates, in our view, that this system has been entirely effective. We see no justification for an extension to Ofcom's existing role and certainly not for Ofcom to have the right of approval over the BBC's internal rules in this area. Giving Ofcom the potential right to full examination of the BBC's financial operations would, in our view, be totally inappropriate for a regulator with close interests in the commercial broadcasting sector.

The Future of Public Service Broadcasting

14. While welcoming the Green Paper's rejection of any immediate move towards "top-slicing" of the licence fee (ie diverting some licence fee resources to other PSB providers), we would strongly oppose any subsequent move in this direction. We are not convinced that, even with an enhancement of the licence fee, such a proposal would not be at the expense of funding needed for the BBC itself, either initially or in the future. We further believe this would lead to an erosion of public support for the basic BBC licence fee. The possible additional introduction of an external body such as a Public Service Broadcasting Commission would, in our view, simply insert a layer of chaotic competition; redirect scarce public resources to private profit; and, as a final consequence, produce an inferior broadcasting service for viewers.

15. Our own view on the appropriate source of funds for the broader PSB system—and specifically for the proposed Public Service Publisher—is to favour a levy on the turnover of UK licensed broadcasters (other than PSB providers)—eg BSkyB. This could be extended to all deliverers of broadcast programmes—which could in the future include telecom and internet service companies. Such a levy could be linked to the provision of original PSB programming ie the more such provision, the less the levy.

16. In the light of this we do not favour the proposed interim review concerning the possible use of licence fee income for broadcasters other than the BBC. Such a review would, in our view, be extremely destabilising for the BBC only part way through the Charter period and would be almost equivalent to having a interim five year Charter review. There is no reason why ideas for the future of PSB cannot continue to be explored and debated in the industry without the need for a formal review. We believe the decision to grant the BBC a clear 10-year licence period is wise and that it should not be undermined in this way.

Commissioning of Programming

17. The BBC needs, in our view, to retain a strong in-house production base. As primarily a programme producer rather than a mere commissioner, the Corporation commands a broad range and critical mass of creative and technical skills in its labour force. This, we believe, is a guarantor of high quality programming across all genres and provides the necessary space to develop talent and innovation. This said, the in-house production base is—in the direct experience of BBC members—already ridden by chronic job insecurity and by "staffing" figures that mask large numbers on fixed term rather than permanent contracts.

18. The successive rounds of cuts recently announced by the Director-General will further undermine this production base both directly and indirectly (through cuts in essential support services such as occupational health and safety, training and film/tape libraries). Ironically, some functions will simply be outsourced and thereby provided less efficiently but with increased transaction costs and profit margins funded by the licence payer.

19. The Green Paper refers to the changes—favourable to independent producers—introduced following the ITC review of the programme supply market; to the BBC's proposals for a "window of creative competition" (which, in effect, provides for a 40 per cent independent quota); and to Ofcom's forthcoming review of the production sector. The future direction of policy is posed as a choice between the BBC's WOCC (where the Green Paper can "support the principles" (p87) but requires a more detailed examination of how it will work)

and the option of an increase in the statutory independent quota. Completely absent from the discussion is any critical view of the independent sector itself.

20. Having been created by an act of public policy the independent sector is now large (recent estimated annual turnover £1.5 billion for the top 150 companies); increasingly concentrated (with the largest 5 per cent of companies making 80 per cent of the programmes and broadcasters habitually dealing with small groups of preferred suppliers); and—in terms of the super-indie—extremely well rewarded financially. The independents are already the largest source of programme supply in some areas; the larger independents already dwarf many of the smaller ITV franchises; and yet the independents’ brilliantly effective lobby is for a remorseless further increase. We believe the independents are part of the broadcasting establishment and should now be treated as such—with increased responsibilities to match their increased rights under the new terms of trade. Their record on employment, on training, on equal opportunities, on regional production and on individual creators’ rights should be given the same close scrutiny as are the practices of the BBC.

21. In the light of this, we do not favour further changes in the independent quota. We question the all-but-spoken presumption that further realignment is necessary in favour of independents and against in-house production, and we do not believe further “quota-filling” will ultimately benefit audiences. We believe the value of the in-house production base (which, once taken below a critical mass, would be very hard to recreate) is undervalued, under-examined and under appreciated in a debate which seems to operate on terms set by the independents. We therefore think that the WOCC will be harmful rather than helpful to the future of the BBC and we do not support a raised quota for independent production.

April 2005

Memorandum by the Campaign for Press and Broadcasting Freedom

THE CAMPAIGN FOR PRESS AND BROADCASTING FREEDOM

1. The CPBF was established in 1979. It is the leading independent membership organisation dealing with questions of freedom, diversity and accountability in the UK media. It is membership based, drawing its support from individuals, trade unions and community based organisations. It has consistently developed policies designed to encourage a more pluralistic media in the UK and has regularly intervened in the public and political debate over the future of broadcasting in the United Kingdom in the last quarter of a century. It has recently published a pamphlet on the Charter renewal debate, organised a major conference on the topic in London in March 2005 and has established a web-site “Charternet”⁵ to encourage debate over the future of the BBC and public service broadcasting.⁶

2. The CPBF welcomes the opportunity to submit evidence to the House of Lords Select Committee on the BBC Charter renewal. The evidence is structured around the questions circulated by the Committee. Page references to the Green Paper⁷ are given thus, [6].

THE ROLE OF PUBLIC SERVICE BROADCASTERS AND THE BBC

3. The main purpose of public service broadcasting is to “inform, educate and entertain”. We therefore welcome the Green Paper’s statement that this rubric will remain “the BBC’s mission statement”. [6] The interpretation of this role should be flexible. Although the BBC should engage in the other activities listed on page 6 of the Green Paper, if these are enshrined as the only purposes of public service broadcasting in the UK then it could be very restrictive. For example, the BBC should not be seen as simply “representing” the UK; it should be engaged in reflecting the diversity of the UK and actively promoting public involvement in broadcasting. Also, although the Green Paper asserts that the BBC will be involved in entertainment, this is not listed amongst the five aims itemised in the Green Paper. Entertainment is as essential to the purposes of public service broadcasting as are informing and educating people.

4. But the BBC is only one part of the public service broadcasting system in the UK. These include ITV, Channels 4 and 5 and S4C. The regulatory structure of broadcasting in the United Kingdom should be structured so as to ensure that all of these broadcasters engage in the core activities of producing high quality programming in the public interest across their schedules. The National Union of Journalists has produced an analysis of the recommendations produced by Ofcom in its Phase 2 document.⁸ This points out that under

⁵ www.cpbpf.org.uk

⁶ See, T.O’Malley, *Keeping the BBC Public. The BBC and the 2006 Charter Review* (London, CPBF), March 2005) and CPBF, *Media Manifesto 2005*, (London, CPBF, 2005).

⁷ DCMS, *Review of the BBC’s Royal Charter. As strong BBC, independent of government*, (London, DCMS, 2005).

⁸ NUJ, “*The response of the National Union of Journalists to: ‘Phase 2—Meeting the digital age Ofcom review of public service television broadcasting. (London, Ofcom, 2004)’*” (London, NUJ, 2004).

the current policy framework significant parts of the public service system are being allowed to disappear by Ofcom. For example, Ofcom is currently allowing a drastic retreat from the production of non-news programmes in the nations and regions of the UK. Thus the BBC is left as the main bearer of a major responsibility in the area of regional and national production at a time when the BBC is undergoing massive internal job cuts. The BBC cannot be the only body responsible for public service broadcasting and, as we have argued elsewhere, the public service commitments of the commercial public service broadcasters should be reaffirmed and expanded in the next period.⁹

5. The Campaign believes that the BBC can play a big role in digital roll-out as its successful engagement with *Freeview* has proven. Two conditions should apply to this. Firstly the BBC should be aided in this by a separate government grant, not linked to the licence fee. Secondly, the roll out should be part funded by a special levy on existing major digital companies such as ITV and Sky—all of whom will benefit from this process. To make the BBC pay for roll out from the licence fee income would be an unfair burden on the Corporation and promote further attacks on the principle of the Licence fee.

THE BBC'S CONSTITUTION

6. The Campaign would prefer to see the BBC established by statute rather than a Charter. This would make it possible to have more regular Parliamentary scrutiny of the BBC's structure and practices. The present post 2006 settlement should run for 10 years, and should not be subject to a five year review as suggested by Ofcom. Ofcom's suggestion will inject instability into the system and waste valuable resources which could be used for programming.

GOVERNANCE AND REGULATION OF THE BBC

7. The Campaign is convinced that the BBC should be more democratically run, as should all bodies responsible for broadcasting. Broadcasting matters could be devolved to national and regional communication councils. These might include representatives of the national parliaments and assemblies in the UK and people appointed by nominating bodies. The nominating bodies should be organisations that represent people in their workplace and local communities, and they could select people for the communication councils through a process of internal election. They in turn would nominate candidates for election to the BBC Board of Governors and the Board of Governors of Ofcom. For these reasons we would like to see the issue of the BBC's governors viewed in the context of the governance of all broadcasting organisations, and any changes to make it more democratic must apply to Ofcom and the Channel 4 and S4C board.

8. Separating the governance of the BBC from its day to day management is a positive move. The "Trust" should have the role of ensuring that the BBC is using its money in accordance with its role as public service broadcaster. There should not, however, be "service licences". This is a model more suited to discrete commercial operations, not organisations where developing interlocking relationships evolve rapidly in the light of technological changes and shifts in public taste and interests. The "Trust" should have the role of viewing the functions of the BBC in the round.

9. The "Trust" should "make sure that the BBC . . . is editorially independent of Government and commercial interests" [11] but in addition it should have the role of defending the BBC's independence, which is a more proactive role than is stated in the Green Paper.

10. The idea of a "public value" [11] test suits the current climate of seeking to prevent the BBC from making programmes that might be profitably made by commercial operators. Similarly the idea that the "Trust" should somehow be involved in protecting the commercial sector from the BBC so that the Corporation "doesn't unfairly or unduly damage commercial media businesses" [11] is odd. There are competition laws in place. The BBC should not act in any way inconsistent with those laws, but equally should not be required to do more than the law expects. These ideas should be dispensed with. The Annual report of the "Trust" to Parliament should be of sufficient detail to allow a critical scrutiny of the Corporation's activities. It should be remembered that the BBC is not a commercial organisation and should be allowed to develop its profile organically without the artificial, and politically motivated, constraint of a public value test.

11. Ofcom should have only the most minimal of roles in relation to the BBC. Where the BBC engages in commercial activity, ie generating revenue in the market place, Ofcom has a role. Where BBC activity simply engages, for non commercial reasons, in an arena where others enter knowing that the BBC is an important organisation operating in the public interest, Ofcom should have no role. So, we would argue that there should be review of the current levels of Ofcom regulation of the BBC to cut back the extent to which that essentially

⁹ See, T.O'Malley, *Keeping the BBC Public. The BBC and the 2006 Charter Review* (London, CPBF).

commercially orientated regulator can interfere with the BBC's activities, and that includes Ofcom's role as the final arbiter of complaints [12].

12. Equally the references to the "Trust" operating a "rigorous system of performance measurement" [11] and maintaining a "contract" with the licence fee payers reads like fashionable rhetoric. The really important thing is that the BBC is held accountable, through democratic mechanisms, to the public. A contract is a commercial device, superbly relevant to a commercial transaction. The BBC is not engaged in a commercial transaction with licence fee payers.

THE BBC'S IMPACT ON COMPETITION

13. The idea that Ofcom should be involved in regulating the BBC's internal activities to determine their competition implications is misplaced for two reasons.

- (a) Reason *one*, because Ofcom is a completely different kind of body to the BBC, with a remit to promote commercial broadcasting and an ethos that has reflected this very clearly in recent months. Ofcom's decision to allow ITV to retreat from its public service obligations on national and regional non-news programming is a fine example of its ethos.¹⁰ Indeed it is possible to argue that like its predecessor, the Independent Television Authority in the period between 1954 and 1962, Ofcom has become a promoter, rather than a regulator of the sector. It was this which led the Committee on Broadcasting (1962) to recommend major surgery of the ITA and a rethink of its relationship to the sector.¹¹ The argument should be about overhauling Ofcom rather than giving it more powers over the BBC.
- (b) Reason *two* is because, according to Ofcom's research, there is no problem that needs solving. In paragraph 4.22 of its Phase 2 document Ofcom stated that "we do not have sufficient evidence to prove or to disprove the existence of overall crowding-out efficiency losses from the public funding of the BBC in aggregate". In other words, the idea that BBC is crowding out commercial competition is unproven. You would not believe this if you read the press or Ofcom's publications. For, in spite of the evidence, Ofcom concludes that the BBC does pose a problem in this area.¹² If the BBC acts in an uncompetitive manner, then it should be judged according to the law, post-facto. It is not common practice to subject the supermarket, car or pharmaceutical industries to internal scrutiny by outside bodies before they have taken commercial decisions. Why then should such unfair practice be applied to the BBC? The Campaign is not advocating that the BBC should remain immune from the consequences of its actions where they are shown to be in breach of the law. But we are against establishing a special regime of scrutiny, where there is no evidence to justify such a regime of which we, and it would appear Ofcom, are aware.

THE FUTURE OF PUBLIC SERVICE BROADCASTING

14. The Licence fee should be fixed at a level which accounts for broadcasting inflation and which allows money for further expansion of BBC services in the next 10 years. The BBC should not be subjected to subscription at any point for, as Ofcom has argued, because public service broadcasting should be "widely available" subscription "would not deliver this objective. Poorer people would save paying the licence fee but would probably have to pay more than now if they wanted access to BBC programming".¹³ Subscription is not an option if we want a UK wide public service system which is universally available and has at its heart the sets of public goals outlined here and in the Green Paper. The BBC's funding should be reviewed at the end of the next 10 year Charter period. If by then a system as fair and efficient as the licence fee has emerged, it should be given serious consideration.

15. The plurality of public service broadcasting in the digital age can be safeguarded in the following ways.
 - (a) Funding an accountable BBC to engage with all the new and emerging platforms to ensure it is free at the point of use and universally available.
 - (b) Using a range of incentives and regulations to make ITV remain a full range provider of public service broadcasting as well as making similar provisions for Channels 4 and 5 and S4C. In addition obliging major subscription and pay-per-view providers, like Sky, to make more quality programmes.

¹⁰ See, NUJ, "*The response of the National Union of Journalists to: 'Phase 2—Meeting the digital age Ofcom review of public service television broadcasting. (London, Ofcom, 2004)'*" (London, NUJ, 2004).

¹¹ See, HMSO, *Committee on Broadcasting 1960* (London, 1963, cmnd 1753).

¹² Ofcom, Phase 2.—Meeting the Digital Challenge: Ofcom review of public service broadcasting (London, Ofcom, 2004) paras 4.22, 6.24.

¹³ *ibid.* para 5.56.

- (c) Providing incentives to existing and new entrants to increase the range, diversity and quality of programming on offer. Ofcom, in its Phase 2 document has mentioned some of these, in particular in its discussions about ITV's position and its discussion of a Public Service Publisher. We have argued that the Public Service Publisher proposal is not, in the current context, a positive proposal.¹⁴ Yet we welcome the imaginative way in which Ofcom has begun to think around the issue of creating policy tools to promote public service broadcasting across platforms.

COMMISSIONING OF PROGRAMMING

16. The CPBF has always promoted independence and diversity in mass communications. It recognises that some independents have produced excellent work and will do more.

17. We think, however that public service broadcasters should retain a major pool of resources, technical and artistic, to sustain it into the future. Moving towards a policy of out sourcing 40 per cent of BBC production is a recipe for weakening that pool and replacing it by an underpaid, poorly trained and overworked workforce.¹⁵ We would argue that there should be no increase in the current quota.

18. Secondly, we think that the independent sector has escaped public scrutiny for too long. It is simply assumed in public policy discourse that the independents are both independent and desirable forms of organisation. We think there should be an independent enquiry into conditions of work, equal opportunities, training and commissioning practices in the independent sector. Once we are all a lot clearer about how this sector operates and how its practices impact on the pool of talent and resources we need to sustain vibrant creative industry in the UK, it might then be possible to revisit the issue of BBC quotas. But, as with Ofcom's touching faith in the idea that the BBC is guilty, without being proven so, of crowding out, so BBC management and the government have an equally moving and unfounded faith in the independent sector.

EVIDENCE

19. Deciding what kind of BBC and public service system is wanted is a question of value. It will be influenced by economic considerations, but not dictated by them. So the future of the BBC will, like it or not, be decided, by politics. This is right and proper.

20. Yet on key issues, crowding out, subscription, outside regulation of the BBC, and independents, there is little evidence to sustain the orthodoxies which appear in the Ofcom document and the Green Paper. We would urge the House of Lords Committee to bear this very, very, important point in mind when it deliberates on the issues.

April 2005

Memorandum by the Canadian Broadcasting Corporation

HOW THE CBC IS FUNDED

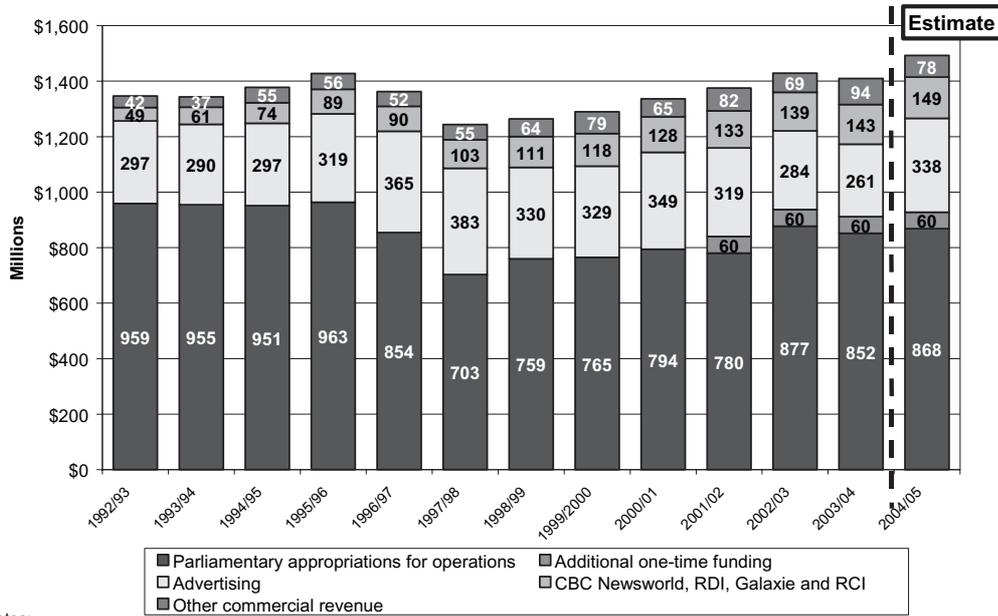
CBC/Radio-Canada's principal source of funding is its annual parliamentary appropriation from the Government of Canada. Apart from the appropriation, the CBC generates revenue from advertising, subscription fees (for its specialty services) and program sales.

CBC/Radio-Canada relies on advertising revenue for several hundred million dollars worth of revenue each year. Reliance on advertising creates some instability in our funding, as the advertising environment is cyclical.

¹⁴ See, T.O'Malley, *Keeping the BBC Public. The BBC and the 2006 Charter Review* (London, CPBF).

¹⁵ M. Darlow, "Behind the goatees", *The Guardian* 3 September 2004.

CBC/Radio -Canada Funding – 1992/93 to 2004/05



Notes:

- 1) During fiscal years 2001–2002 and 2002–2003, the federal government granted CBC/Radio-Canada additional non-recurring funding of \$60 million, which was used for developing new programming initiatives.
- 2) Not including parliamentary appropriations for downsizing of \$106 million in 1995/96 and \$42 million in 1996/97.
- 3) 2003/04 advertising, specialty service and miscellaneous revenue are year to date budgets

CBC/Radio-Canada’s appropriation is provided and renewed on an annual basis, creating considerable financial uncertainty. Specifically, with an annual renewal process, the CBC’s funding is subject to uncertainty from changes in governmental priorities and political swings. This has been a concern for CBC/Radio-Canada for many years.

This financial uncertainty affects CBC/Radio-Canada in several ways including:

1. CBC/Radio-Canada finds it more difficult to enter into multi-year commitments to third parties, such as independent producers for program supply.
2. While all media businesses face normal economic uncertainties, the additional governmental and political uncertainty faced by the CBC increases the risk and difficulty of managing program development cycles that normally run three to four years from concept to broadcast.
3. Changes in government priorities, such as those in the mid-1990s, resulted in major and sudden budget reductions for the CBC. The potential for such large budget variations has forced CBC/Radio-Canada to adopt more flexible and shorter-term employment contracts and commercial contracts than would otherwise be the case.
4. The CBC operates on a seven-year licence issued by the Canadian Radio-television and Telecommunications Commission, an agency of the Canadian government. This regulatory oversight places requirements on the CBC in regard to matters such as minimum levels of Canadian content in our programming, exhibition levels for certain types of programming, use of the independent production community, prohibition on radio advertisements, and the extension of our services across Canada. Since the CBC’s funding from government is renewed on an annual basis, but its licence conditions before the CRTC run over a seven-year period, the CBC faces on-going difficulty in managing seven-year regulatory obligations that may not be attainable through future and uncertain annual funding levels.

A number of factors determine the level of CBC/Radio-Canada’s appropriations in any given year. Generally, the following are key considerations:

- Canadian Government budgets are developed and adjusted annually, based on government priorities.
- The CBC is subject to this annual budget review and priority-setting process.

- CBC/Radio-Canada’s ability to remain a priority for the Canadian government and the government’s overall financial position determine in large part the annual impact on our funding levels.
- In the mid-1990’s, CBC/Radio-Canada experienced a sudden 29 per cent real decline in its annual governmental appropriations following a change in government priorities.

THE CBC’S INDEPENDENCE

Traditionally, the arm’s length principle has defined the relationship between CBC/Radio-Canada and the Government of Canada, balancing political accountability with the freedom of expression in journalistic, creative and programming activities.

The 1991 *Broadcasting Act* reaffirms this principle “to protect and enhance the freedom of expression and the journalistic, creative and programming independence enjoyed by the Corporation in the pursuit of its objectives and in the exercise of its powers.”¹⁶ For that specific reason, CBC/Radio-Canada was not designed as a department reporting to a Minister of the Crown but rather as a Crown corporation ultimately accountable to Parliament through the Minister, as stated in article 40 of the same act.

The concern about CBC/Radio-Canada’s accountability to Parliament is not a new issue. Going back in history, the 1957 House of Commons debates on government interference with the operations of CBC/Radio-Canada articulated two fundamental principles which have structured CBC/Radio-Canada’s relationship with the government: “The first is that the Canadian Broadcasting Corporation shall be responsible to Parliament alone and not to the government and, second, that there shall be, on the part of the government, no interference whatever with the operations of the Canadian Broadcasting Corporation in particular with its programming activities”¹⁷.

However, Parliament maintains committees to assist it in its function to exercise its oversight and scrutiny role. “One of the purposes served by the committee on broadcasting [. . .] has been that [Parliament] has created a forum before which the Canadian Broadcasting Corporation can be asked about its programming and all other activities, can hear whatever criticisms members of parliament have to offer and can answer such criticisms”¹⁸.

The arm’s length principle has meant, in practice, that CBC/Radio-Canada has had full authority and responsibility to establish its policies, priorities and programming within its mandate from Parliament. As Canada’s national public broadcaster, CBC/Radio-Canada is accountable to all Canadians, reporting annually to Parliament, sharing its strategic directions, priorities, finances and achievements through a number of formal mechanisms involving Parliament, the Minister of Canadian Heritage, the Canadian Radio and Telecommunications Commission (CRTC), the Office of the Auditor General (OAG) and Treasury Board Secretariat (TBS).

14 July 2005

Letter and memorandum by the Creators’ Rights Alliance

The Creators’ Rights Alliance thanks the House of Lords Select Committee on the BBC Charter Review for the opportunity to provide written evidence and hopes that we may also be invited to give oral evidence to support our views.

INTRODUCTION

The Creators’ Rights Alliance brings together 16 major organisations that together represent over 85,000 copyright creators and content providers throughout the media. We are also sponsored by ALCS and its 45,000 members.

Details of the current affiliated members are included in Appendix 1.

This submission represents a broad consensus reached by the Creators’ Rights Alliance.

We believe that it is of vital importance that the role of “home-grown” creative talent, without whom original British content would not exist, and the huge contribution made to the BBC’s content across all media is recognised and given appropriate prominence in the review of the BBC Charter. Without creators (including

¹⁶ Government of Canada. *Broadcasting Act*, 1991, Part II sect 35 (2).

¹⁷ (2822 29 March 1957) Hansard.

¹⁸ *Ibid*, 2823.

writers, directors, all visual creators—photographers, illustrators, journalists, composers, songwriters, musicians) there simply would not be any content for the BBC or any other broadcaster.

Although we appreciate that all aspects of the BBC to be examined by the Select Committee are important, we have elected to respond in detail to those areas that are of direct relevance to our affiliated members. The main area of interest and concern to Creators' Rights Alliance is in relation to the content and specifically the commissioning of programming by the BBC.

COMMISSIONING OF PROGRAMMING

We believe it is essential to develop a Code of Practice for the BBC's commissioning of freelances, that passes ethical business standards throughout the commissioning process and the whole of the supply chain. This will help to ensure that freelances are treated fairly and ethically by independent production companies as well as in-house producers and provide for a competitive environment based on creative excellence rather than a narrowly commercial approach to rights.

In 2004, and further to the Communications Act 2003, a Code of Practice was agreed between the BBC and Ofcom working with PACT. This was intended to ensure that there was a competitive, thriving independent production sector, stimulated and supported by the BBC as the nation's principal public service broadcaster.

The current Code of Practice between the BBC and PACT fails to recognise that the owners of the intellectual property rights contained within commissioned projects are not usually the independent production companies but are, in fact, the freelance creators—writers, directors, composers etc. This needs to be addressed and the freelance creators' rights respected and included throughout the commissioning process.

We believe that in order to achieve a thriving independent sector based on fair play and ethical principals a number of points agreed in the BBC/PACT Code of Practice need to be applied to dealings between both the BBC and PACT members on the one hand and freelances on the other. These include: commissioning in a fair and transparent manner; practising equal opportunities, health and safety policies and support for training initiatives; and application of the highest professional and ethical standards of objectivity, integrity, confidentiality, fairness and honesty.

The BBC has a responsibility to ensure that neither it nor the independent production companies it commissions, coerce freelance contributors into unfair agreements, or demand rights that they do not require to make or broadcast their productions or that they are not able or willing to fully exploit. Further, this should be backed by an obligation on the BBC to provide a forum of last resort in case of any dispute.

Due to its position in society, the BBC should be a beacon of equitable and ethical practice in all that it does including the way that it commissions freelance creators and independent production companies. The BBC has a responsibility to ensure that the independent production companies it commissions are not coercing freelances into unfair agreements or taking rights that they do not intend to fully exploit.

As freelance creators we have some concerns about mandatory quotas for the BBC. This is because most of the creators who belong to our affiliated member organisations are freelances. The BBC already directly commissions many freelances for its in-house productions, without these appearing in the statistics for external commissions. Freelances should be included as independents and/or SMEs. Our concern is that an increase in the quotas for independent production companies will be partially bought at the cost of a reduction in the number of freelances directly commissioned by the BBC. Although the freelances who lose work directly through the BBC may be commissioned by the independents, in our experience the terms are often less favourable and the freelances lose out financially.

It is unfortunate that freelances are virtually invisible to economists, regulators and politicians—because they are often individuals working alone, they are easy to overlook. However, collectively they do play an enormous role in the creative health and wealth of UK culture.

In fact, a large part of the creative input to the independent production sector comes from freelances. This brings advantages to the sector in that it allows the most talented creators to develop their skills across a larger number of specialist projects than would be possible in tied employment thus making the most cost-effective use of a scarce resource.

THE ROLE OF PUBLIC SERVICE BROADCASTERS AND THE BBC

We agree that the core public purposes of BBC services as defined in the Green Paper are appropriate. We would particularly like to highlight the need for the BBC to stimulate creativity and cultural excellence as outlined and are keen for the BBC to showcase UK talent globally—to act as a cultural ambassador not only in promoting UK creativity but also in exemplifying good / fair practices.

The BBC's constitution—

The BBC should continue to be constituted by Royal Charter and thereby maintain its independence from government. Ten years is the most appropriate time-span for a Charter, since it allows for planning and development that would be impossible within a shorter time-frame. We also believe that it would be very disruptive and expensive to have more frequent reviews. We would, of course, prefer to see money spent on original content and on supporting creative development than on teams of administrators handling reviews.

Governance and Regulation of the BBC—

The Trust and Executive Board does seem to be a satisfactory way to address the issues of governance and regulation of the BBC. Separating out the day-to-day management from the regulatory role will improve licence fee payer trust in the corporation and should make for greater transparency. We are not in favour of Ofcom taking further regulation of the BBC outside its current remit linked specifically with competition.

Governments will always be slightly irritated by the BBC, because it is an important part of the BBC's remit to hold governments to account. At the most senior level, therefore, it is important that the BBC is separate from political and commercial interests.

We also believe it is important that the BBC review its governance not merely at the senior level—which would benefit from a more transparent selection process—but right through the organisation. It is clear that decisions and responsibilities are not always properly delegated to the correct level in the organisation.

To provide the highest standard of public services, the BBC needs to operate to the highest editorial standards and also take creative risks. This is best achieved by nurturing a culture of professionalism and public service values, through proper editorial and management training, not through corporate control. The aim should be to let trained creatives take decisions, supported by trained, responsible managers and other professionals.

The result should be a dynamic creative environment, which produces challenging output, rather than a stultifying corporate environment, which produces bland results.

We believe that the Trust should include representatives who are aware of and thoroughly understand the role of creators within public service broadcasting and the importance of the BBC demonstrating fair play in all that it does.

The new measures proposed would appear to ensure that the BBC continues to broadcast accurately and impartially—these are its strengths and it would demonstrate exceedingly poor management to move too far away from a winning formula.

The BBC's impact on competition—

There will always be a balance to be struck between giving the licence fee payer good value for money and upsetting a market that is looking to gain financial benefits through exploitation of similar product. To date, the BBC and commercial broadcasters have mutually benefited in many ways and in the short term this will continue.

The Future of Public Service Broadcasting—

We welcome the opportunities that innovations in technology bring to the creative community, particularly in terms of broadening participation and training.

The BBC sets the standards of broadcasting in the UK. By also creating diverse and original content the very presence of the BBC ensures that other channels have to invest in new programming to protect their audience share. We are concerned that, if this balance were to change, the incentive to invest in new, meaningful, programming, that reflects the uniqueness of the UK, would be lost.

Over the current Charter period, the BBC has continued to be at the cutting edge of innovation and has maintained and developed a comprehensive mix of new programming and services, including the move into digital channels and BBC On-Line.

The BBC nurtures and provides opportunities for new talent in the UK that is unmatched by other organisations. Many people currently employed in or engaged as freelancers by the broadcasting industry received training and or experience with the BBC: from comedy writers to set designers; documentary makers to make-up artists; stage managers to film producers.

Technological advances also mean that community-based television can build on the success of local BBC radio, increasing access and opportunities in developing regional identity and local history to the benefit of the whole of the UK. We would hope that new initiatives in this area would go beyond simply providing news and information. There is also an opportunity, unique to the BBC, to redefine regional and community services to the benefit of people at grass roots level while at the same time providing relevant national and international services. The BBC is in an excellent position to be part of community-based initiatives to find, train and develop creative talent to the benefit of individuals, their communities and the wider world now and for the future.

APPENDIX 1

Affiliated Members of the Creators' Rights Alliance

Association of British Science Writers
 Association of Illustrators
 Association of Photographers
 Association of United Recording Artists
 British Academy of Composers & Songwriters
 British Association of Picture Libraries and Agencies
 Chartered Institute of Journalists
 Directors Guild of Great Britain
 Garden Writers' Guild
 The Incorporated Society of Musicians
 The Musicians Union
 National Union of Journalists
 Outdoor Writers' Guild
 Society of Producers & Composers of Applied Music
 The Society of Authors
 The Writers' Guild of Great Britain

Sponsor of the Creators' Rights Alliance

Authors' Licensing and Collecting Society

20 April 2005

Letter and memorandum by Equity

I enclose a copy of Equity's response to the above consultation. As you will gather from the submission we have a number of key concerns.

As part of the Green Paper we would wish to note the following:

- Strong support for stable funding through the continuation of the licence fee.
- Welcome stability of a full ten-year Charter through until 2016.
- The commitment to more original programming "not repeated or bought-in".
- Value of BBC Radio as an excellent example of quality and diversity enabled by the licence fee.
- Support for the new governance structure of a separate management board and more accountable BBC Trust.

In the White Paper we would like to see:

- BBC public purposes to include specific reference to best practice in employment, training and development, for both in-house and independent producers.
- BBC Trust to include creative representatives able to represent the views of those who work for the BBC.
- Clearer commitment to licence fee without the ambiguous consideration of "sharing" after digital switchover, which could act to undermine it.

- Rejection of another review of BBC services that assumes subscription is inevitable.
- Recognition of the strength and size of the independent production sector.

INTRODUCTION

1. Equity welcomes this opportunity to contribute to the further discussion surrounding the review of the BBC's Royal Charter. As the trade union representing 37,000 performers and creative personnel we recognise the importance of the BBC in our society. The BBC is the most significant employer in our sector and it plays an integral role in both the audio-visual industry and as a community focus for the whole of the UK.

2. We have followed the Charter Review process very closely over the past two years and made submissions at each stage of the consultation. In particular we have made written submissions to the Department of Culture, Media and Sport; presented written and oral evidence to the Culture, Media and Sport Select Committee of the House of Commons; participated in the seminars held by Lord Burns and his Independent Panel; and made representations on each of the individual aspects of the BBC's own internal review. This evidence is consistent with the policy expressed elsewhere, but seeks to address the specific issues outlined by this Committee in the call for evidence. It also addresses the specific recommendations that have now been outlined in the Government's Green Paper.

BACKGROUND

3. The BBC is one of four public service broadcasters in the United Kingdom, but we would argue that it is the most important. Each channel has a role to play in the public service television broadcasting ecology by providing a focus for communities, educating the public, and providing a shared sense of heritage. However, the BBC has a freedom to lead the other broadcasters on matters of standards, innovation and diversity only because of its unique source of funding.

4. Therefore Equity welcomed the Government's Green Paper and particularly the support for a continuation of the licence fee for the period of the next Charter until 2016. This was the key element that we argued for in the consultation period and we continue to believe that despite its imperfections the licence fee is essential for the survival of high quality, diverse and original programming on the BBC.

5. We were also pleased to see the specific references within the Green Paper to the BBC's responsibility to serve UK audiences by "providing more original programming (not repeated or bought-in) than any other broadcaster".¹⁹ This commitment from the Government coupled with the support for the licence fee is extremely encouraging—as is the Secretary of State's assertion that "it should not play copycat or chase ratings for ratings sake".²⁰

6. This combination of a stable and ongoing funding mechanism through the licence fee and a commitment to original programmes has been at the core of Equity's representations on the BBC Charter. Therefore we have given the Green Paper a guarded welcome and believe that it offers a sensible basis on which it can continue to be the cornerstone of public service broadcasting (PSB). This is essential as the BBC seeks to build on the achievements of the past in an uncertain future characterised by digital expansion, fragmented audiences and huge organisational change.

7. However, we are concerned that both the BBC and the Government should not jeopardise this future. The BBC is in danger of doing this by over-reacting to the inevitable pressure to be seen to be addressing its operations following the scrutiny of the Hutton Report and by Charter Review. As a result it is undermining its ability to deliver on the promises made by Director General Mark Thompson to be "totally focused on excellence" and provide "more quality, more ambition and more depth".²¹

8. There is currently great upheaval and uncertainty at the BBC, with at least 3,780 people who work for the corporation facing life changing decisions about their future. A large number of actors, performers and creative personnel also face another period of insecurity, in an already uncertain profession. As we have already stated, the supposed commitment to more original programming has been encouraging and we were pleased to see the BBC's own commitment that "investment will be made in: original British drama and comedy across radio and television" and that there will be "less: peaktime repeats on BBC One, derivative or formulaic programmes".²² Nevertheless we find it difficult to reconcile this investment and expansion with

¹⁹ Green Paper "Review of the BBC's Charter" para 1.24 (2 March 2005).

²⁰ *Hansard*, column 959 (2 March 2005).

²¹ BBC Press Release (7 December 2004).

²² BBC Press Release (7 December 2004).

indiscriminate cost cutting measures, including 15 per cent efficiency savings in output areas as well as 15 per cent savings in cost-per-hour prices for commissions from all supply sources.

9. We are also very concerned that the Government does not appear to have rejected the possibility of “top-slicing” or “sharing” the licence fee following digital switchover. Furthermore, while we do not object to the principle of a review of funding mechanisms at the end of switchover, we cannot support the inherent assumption that subscription is inevitable and deserves particular attention.

10. Therefore, while there is much to be welcomed in the Green Paper, Equity still has ongoing concerns that the future of the BBC may be at risk, particularly if another extensive review process is allowed to undermine the stability of the organisation and break the direct link between with the viewer, which the licence fee currently provides. These and other concerns are outlined in further detail below, in response to the points raised by the Committee.

THE ROLE OF PUBLIC SERVICE BROADCASTERS AND THE BBC

11. In response to Phase 2 of Ofcom’s review of public service television broadcasting we said that we broadly accepted its definition of the purpose and characteristics of PSB.²³ We continue to believe that the detailed and thorough analysis provided by Ofcom provides an excellent basis for future PSB provision.

12. The five core public purposes of the BBC as outlined in the Green Paper (sustaining citizenship and civil society; promoting education and learning; stimulating creativity and cultural excellence; reflecting the UK, its national regions and communities; bringing the world to the UK and the UK to the world) are appropriate and appear crucially to encapsulate the characteristics outlined by Ofcom. While we are not necessarily convinced of the pressing need to re-invent the existing purposes of the BBC (neatly summarised by a duty to “inform, educate and entertain”) we appreciate the need to assess what these purposes mean in a modern world.

13. Nevertheless we believe that there should be more explicit commitments to providing services that are of value and interest to the public, but which would not be met by the commercial sector. We are concerned that innovative programmes and those of interest to a minority audience may not be captured by the notion of “distinctive and original” under the third heading of “stimulating creativity and cultural excellence”.

14. Given the ongoing restructuring of the BBC and drive to greater independent production, we also believe that the public purposes would be improved by a commitment to best practice in employment, training and development. This should include higher standards both within the BBC and the independent producers it commissions. Such a commitment could be incorporated within a broader definition of the public purpose “sustaining citizenship and civil society”.

15. In respect of the BBC’s position as a world, national and regional broadcaster, it is important to recognise that BBC is much more than a broadcaster. It is part of our society, it showcases the UK to the rest of the world, it plays a crucial role in our economy, both as an employer and an exporter of goods and it acts as a standard bearer for the audio-visual sector in terms of quality, diversity, and innovation.

16. A particularly good example is BBC Radio, which has demonstrated that the unique system of funding alongside public service obligations can result in the production of high quality programming not available anywhere else. Radio drama and comedy is only found on the BBC. It produces a variety of programming across its channels, and continues to provide the UK with the finest radio broadcasting system in the world.

17. Through BBC Radio, the UK is able to access a consistent choice of high-quality programming across genres such as drama, comedy, music, schools, sport, education, arts, sciences, news and current affairs, not found on any other radio station. This dedication to diverse genre provision is particularly evident in drama programming—including the single play—which continues to excel and to push the barriers of imagination on radio. The BBC’s support across a range of music is also significant, with listeners able to access an outstanding range of choice, as well as supporting orchestras, singers, new and established composers, the proms and live concerts around the UK.

18. The network channels provide thousands of hours of quality programming and this equally applies to the Nations and regions. Additionally, developments with the internet and digital satellite broadcasting mean that BBC Radio is able to reach more people, including those resident outside the UK. This connection with other countries (also seen through the World Service) is one reason why the BBC radio is so internationally respected.

²³ Green Paper, box 1.3 (2 March 2005).

19. However, we are concerned that this reputation for quality and diversity is being undermined by the scale of budget cuts, including the decision to axe the popular drama serial “Westway”, which was already the only drama on the World Service.

20. While it continues to be in receipt of public money, the BBC also has a responsibility to be at the forefront of testing and developing new technologies. This includes a pivotal role in switchover to digital television, which has been pursued by both the Government and the BBC through the promotion of Freeview and the agreed arrangements for the funding and initial operation of *SwitchCo*.

21. However, we would not want to see these activities to be at expense of programme production for analogue radio and television channels. A proper balance must be struck between significant investment in the BBC’s core activities and quality programming, whilst allowing for innovation and expansion. The Government should not rely solely on the BBC for this innovation, especially because other broadcasters and platforms will equally receive any benefits. For these reasons we do not believe that the licence fee settlement should be linked or conditional upon the BBC’s role in the switchover process.

22. The BBC must be in a position to exploit new technology and drive the access to its programmes across new platforms, but this must not ignore the role of commercial public service broadcasters. In addition there must be adequate commercial arrangements that recognise the rights of performers whose work is exploited on the multitude of new channels and platforms.

THE BBC’S CONSTITUTION

23. We understand the strong case made by the Culture, Media and Sport Select Committee that the BBC should be constituted and established under statute.²⁴ However, following the plethora of reviews and investigations that it has been subjected to in the past two years, we believe that a degree of certainty is now vital to allow the BBC (and other broadcasters) to focus on future priorities and operate in an environment of greater stability.

24. Due to the level of public funding and public interest in the BBC it is correct that it should be transparent and accountable. However, we are not convinced that such a statutory arrangement would assist in achieving this. A statutory footing which could be subject to constant amendment (or repeal) would risk further upheaval through politically motivated changes that could be instituted at any time. A statutory measure could therefore be seen as undermining the independence of the BBC. We believe that it is preferable for the new governance arrangement (with a separate BBC Trust and new management structure) to be given the opportunity to function effectively.

25. That is not to say that the Royal Charter is a perfect way of constituting the BBC. The surge in activity and scrutiny that accompanies the review process risks destabilising the BBC periodically and at crucial points in its development. It can also bring about high-level strategic and managerial decisions that smack of panic.

26. However, for the reasons stated above, we believe that the benefits of stability that accompany a new 10 year Charter offer a sensible approach at this time, particularly if this can be drafted in plain English and be more accessible to licence fee payers.

GOVERNANCE AND REGULATION OF THE BBC

27. We support the Government’s decision to replace the BBC Governors with a BBC Trust and Executive Board and welcome the appointment of Michael Grade as Chairman of the Trust.

28. The greater transparency and accountability that is being proposed in the Green Paper is also welcome. Improved accountability, openness and transparency have been the theme of a number of reviews and investigations of the BBC and its governance, including Lord Burns and the Culture, Media and Sport Select Committee. Therefore the concept of webcasting of meetings of the Trust, the publication of detailed minutes, research and voting records are all welcome improvements that will help retain the confidence of licence fee payers, as well as those employed by the BBC.

29. Membership of the Trust is clearly of crucial importance, if it is to be truly accountable for the activity of the BBC and be an effective custodian of the licence fee. Therefore we believe that it is vital for the Trust to include members with creative and artistic experience and able to represent the views of those who are employed or engaged by the BBC, as well as the FTSE 100 corporate specialists, which the BBC and the Government have indicated will be required.

²⁴ “A Public BBC” Culture, Media and Sport Select Committee, p 64 (16 Dec 2004).

30. We would hope that the BBC Trust also shows more willingness to engage with those who work for the BBC than was demonstrated by the Board of Governors. The recent transposition into UK legislation of the Information and Consultation Directive (Information and Consultation of Employees Regulations 2004) will mean that from April 2005 employees in organisations with 150 or more employees have a right to be informed and consulted on a regular basis about issues in the organisation they work for. This should include employees being consulted on strategic decision making with bodies such as the BBC Trust.

31. We were pleased that the Government stood firm in its position on Governance and was not persuaded by the proposals advocated by Lord Burns' Independent Panel for a Public Service Broadcasting Commission to regulate and control funding for the BBC and other public service programming. However, as we have stated earlier in this document, we are concerned that this concept will be back on the agenda well before the end of the next Charter due to the Government's comments in para 5.21 of the Green Paper.

32. With respect to the issue of the BBC's independence and impartiality, we have already stated that we believe that the rejection of a statutory constitution is a positive step which will assist in countering the perception that this had been compromised. The high level of trust in the accuracy and impartiality of BBC is borne out by the Government's own research—underlined by the fact that the most common spontaneous response when asked about the BBC was “high quality programmes”.²⁵ However, we are concerned that the scale of the job cuts being proposed by the BBC are in danger of compromising this high quality.

33. The issue of scrutiny of BBC spending is another matter that should be addressed largely by the new BBC Trust operating in a more open and transparent way than in the past. Accountability for how licence fee money is spent is also available through the National Audit Office (NAO). We do not see a compelling case to review these arrangements at the present time, but understand the concerns expressed by the Public Accounts Committee of the House of Commons earlier this year²⁶ and believe that this matter should be kept under review. The scale of organisational change that is taking place at the BBC may strengthen the argument for NAO to assume a greater role in the coming years.

THE BBC'S IMPACT ON COMPETITION

34. The proposals in the Green Paper to regulate the BBC's impact on competition are more than adequate. It makes sense for Ofcom to assess the way in which commercial activities influence the rest of the broadcasting industry, but we oppose the creeping influence of Ofcom into the internal commercial operations of the BBC. Ultimately these are matters for the new Executive Board and the BBC Trust who should be protecting the interests of the licence fee payer, not a regulator which is primarily a body rooted in the commercial sector.

35. Co-operation and interaction with Ofcom is inevitable, especially as it assesses the impact of the wide range of BBC services. While this is to be welcomed it should not be seen as a step towards incorporating the BBC under the remit of Ofcom, in addition to its existing accountability to the Executive Board, the BBC Trust, the NAO and (most importantly) the licence fee payer.

THE FUTURE OF PUBLIC SERVICE BROADCASTING

36. For the reasons outlined above we continue to believe that the licence fee remains the most appropriate method of funding for the BBC. The Government, Ofcom, Lord Burns and the Select Committee all agree with this analysis for the time being. However, there is less of a consensus regarding the long-term sustainability of this funding method, particularly after digital switchover.

37. We accept that the licence fee should be subject to scrutiny and that funding for the BBC may need to be altered some way in future years, but we do not feel that it is appropriate to use this Royal Charter to set a date for a review or outline any pre-determined preferences at this time. In particular, we cannot support the inherent assumption that subscription is inevitable and deserves particular attention in this process.

38. Subscription would deny the public universal access to the BBC at the point of use. In addition the option to withdraw from BBC services and unsubscribe could lead to a significant fall in income unless the cost of subscription increased, which may in turn exclude those on low-incomes who would be priced out of the market. We are also unsure as to how this approach could be applied to radio services without a separation from television, which we believe would have a detrimental effect on the range of high quality programming.

39. We are also concerned that “top-slicing” or “sharing” the licence fee is still on the Government's agenda. In fact it appears to be explicitly committing itself to such a process by stating that “towards the end of the switchover process, there should be a review to consider whether there is a case for the wider distribution of

²⁵ Green Paper, box 1.2 (2 March 2005).

²⁶ “The BBC's Investment in Freeview” Committee of Public Accounts (3 February 2005).

public funding (including licence fee income) to recipients beyond the BBC”.²⁷ This is despite the fact that it is widely acknowledged that such a change would undermine the credibility and support for the licence fee in the eyes of those who pay it. Licence fee funding should fund BBC programme making and services and not be distributed to commercial broadcasters to support the dividends and value available to private shareholders.

40. Plurality in PSB provision is also widely acknowledged as vital to drive higher quality and innovation and is supported both by the Government and Ofcom. The key question which is identified by the Committee is how best to safeguard this plurality in a digital age and (crucially) how to pay for it. It is our view that the existing PSB channels remain the best way of providing this pluralist system due to the positive track record, brand value and wealth of experience in supplying successful and high quality PSB programming.

41. It may be that Ofcom’s proposal for a Public Service Publisher (PSP) also has a role to play in meeting the demand for programme making of this kind—and on a range of new platforms that exist due to advances in technology. However, the £300 million identified to fund a PSP is a major stumbling block which will not be overcome easily. In our discussions and submissions with Ofcom we have argued that the least worst funding option for a PSP would be a levy on existing commercial broadcasters, possibly on a sliding scale that would reduce if PSB output was high. Therefore it would also operate as an incentive for other broadcasters to provide more investment in original production and PSB programming. Further consideration should also be given about whether the PSP can operate closely with (or even be operated by) ITV, Channel 4 or Five.

COMMISSIONING OF PROGRAMMING

42. The question posed by the Committee in its call for evidence to this inquiry makes the same basic assumption that the Government has done in the Green Paper. That is that the independent sector of TV and radio producers are somehow being handicapped by a restrictive market and need more of a “fair chance” to get their ideas commissioned. This is confirmed by the further question regarding the consideration of mandatory quotas for external commissioning, as is being proposed by PACT the trade body with a vested interest in increasing these quotas on behalf of its members.

43. The UK now has an extremely strong and vibrant independent television production sector with an estimated annual turnover of £1.4 billion. Equity supports the opportunity for the independents to have a “fair chance” and many of our members are employed in excellent programmes made by these very organisations. However the sector is large and increasingly concentrated with the largest 5 per cent of companies making 80 per cent of the programmes. These “super-indies” are increasingly dominant and this trend appears likely to continue, with the further consolidation and reorganisation. This centralisation of the main independents has also been accompanied by improved rights and terms of trade in their favour. Therefore we would raise serious questions about the assumption that independents require further special consideration.

44. These changes, along with the BBC’s own Window of Creative Competition (WOCC)—which looks set to increase independent production to more than 40 per cent—appear to have already provided great advantages for the independents. At the same time the BBC’s valuable in-house production is being run-down to a much reduced capacity.

45. We believe that the BBC does have an important role in sustaining the independent production sector. However, there also needs to be greater scrutiny of the independents’ own practices—including their record on employment, training, equal opportunities, regional production and the rights of individual artists and creators. The time is long overdue for consideration of these matters of fairness, which goes beyond a simplistic analysis of what is good for the independents. While Ofcom should be expected to lead the way in this matter the BBC should also demand best practice in all these areas when commissioning programmes from the independents.

CONCLUSION

46. We welcome the inquiry being conducted by the Lords Committee and are pleased to have the opportunity to register our initial response to the Government’s Green Paper on the future of the BBC. While the stability of licence fee funding is welcome for the period of this Charter, there are clearly serious issues which will need to be addressed in the coming years. The debate over funding methods will continue to be contentious, especially as we move towards the decisions over the future level of the licence fee and the consideration of alternative or additional funding mechanisms.

²⁷ Green Paper, para 5.21 (2 March 2005).

47. We hope that the Committee will take note of our views on these matters, as well as our immediate and ongoing concern about the ability of the BBC to meet the challenge of high quality original programming in an environment of 15 per cent across the board budget cuts.

25 April 2005

Memorandum by Telewest/Flextech Television

INTRODUCTION

Telewest provides multi-channel television, telephone and internet services to 1.8 million UK households. Its content division, Flextech Television provides 10 wholly owned channels and is a 50 per cent partner in UKTV, a joint venture with BBC Worldwide, that provides a further seventeen channels. This makes it the largest supplier of basic channels to the UK pay-TV market. Flextech also has business interests in transactional channels such as Screenshop and bid-up.tv, as well as a media sales house (ids) and a content distribution business (Minotaur).

Telewest/Flextech's interest in the terms of the BBC Charter Renewal is based on:

- (a) the position of Flextech Television as a competitor to all public service broadcasters, including the BBC;
- (b) as a partner of the BBC in UKTV; and
- (c) as a provider of "converged" services over its fibre-based, broadband network; ie it provides telecoms services, digital television channels, analogue television channels, FM radio services and high speed (broadband) internet on the same "pipe".

As a consequence of this blend of business activity, it has first hand experience of changing customer trends in the use of television as well as other communications services. For example, it sees a trend towards a more on-demand, broadband based world and the BBC increasingly moving into all of these areas of activity.

THE CHANGING NATURE OF THE MARKET

Television is moving from a "push only" model, ie from scheduled linear broadcasting to time-shifted linear broadcasting and interactive broadcasting towards video on demand (VOD) and with personal video recorders are changing viewing patterns, the "push" world of broadcasting and the "pull" world of broadband internet are coming together rapidly with digital TV likely to become a significantly on-demand medium.

Whilst the market has evolved radically since the last Charter Review was undertaken, the changes are likely to be even more marked over the next 10 years and, whilst we do not advocate regular reviews that can create uncertainty, we do believe that convergence poses significant problems for determining the remit as well as the governance and regulatory model for the BBC. In summary, it will be impossible for the BBC to avoid providing a range of services that will impact the commercial market.

REMIT AND GOVERNANCE

Despite the changes predicted above, we would not wish to see the BBC's remit amended in such a way as to undermine the valuable contributions that the BBC makes to the market overall, ie in terms of setting quality benchmarks, in developing talent and in programme innovation. The remit should safeguard those roles.

We do agree with the wider view that much hinges on effective governance. Hence, we support the approach, which is reflected in the Green Paper, where the proposed BBC Trust will have a responsibility to ensure that public value exceeds the potential negative impact on BBC's competitors of its proposals for new services/activities. The Trust must have a responsibility to assess the impact of BBC's activities on its commercial competitors, preferably in association with Ofcom.

In this respect, we do recognise that the smaller commercial channels are transient by nature, having to react to market success or failure more quickly than the established PSBs, particularly the commercial PSBs. In other words, commercial non PSB channels have to adapt to changing viewer trends and changing market conditions, whereas a commercial PSB, particularly ITV, has a greater protection from the real consequences of poor programming decisions because of the current approach to PSB regulation.

FUNDING

We support also the principle of the licence fee providing a degree of income security for the BBC, bearing in mind its role in driving digital switchover. However, the extent to which the licence fee funds digital switchover activity should be explicit. In fact, we would like to see for funding of all public service broadcasters being explicit. The existing model of implicit funding of commercial PSBs affords the protection referred to above.

COMPETING WITH THE BBC

We are aware of the growing interest in access to/the exploitation of the BBC's archive for "broadband" purposes. Whilst we see value in the archive and we understand the market's needs for greater access, we would not wish to see an opening up of access to the archive to undermine the value of the UKTV joint venture.

Flextech Television values its joint venture with BBC, which provides channels such as UKTV Gold, Style, Documentaries, Drama, Food, History, People and Bright Ideas. Flextech would expect the BBC Trust to ensure that the BBC continues to honour the terms of the existing commercial agreement.

At the same time, Flextech Television's wholly owned portfolio (LivingTV, Bravo, Trouble, Challenge and fn) have been established to cater for niche audiences, and collectively they have wide appeal. In this case, Flextech would expect the BBC Trust to consider the impact on these existing commercial formats of any BBC plans for new services/channels.

COMMERCIAL CHANNELS PROVIDING PUBLIC SERVICES

In the multi-channel market, Flextech has established "community creation" television and developed channel content that could be defined as fulfilling a public service remit. For example, Trouble has concentrated upon brand development and its core targeted niche audience, 13 to 19 year olds, has created a community that trusts, relies upon and engages fully with the channel.

By building and concentrating the service towards this age group, Flextech has created an audience affinity with the channel and has extended the brand into on-line communities. Such initiatives have been congratulated by industry bodies for the educational remit satisfied by this service.

The audience is a difficult one to reach, and the messages that need to be conveyed are critically important—safety, self respect, safe sex, alcohol, smoking, drugs etc Furthermore, whilst targeting 13 to 19 year olds, we cannot ignore the fact that 10 to 12 year olds aspire to this age group and emulate what they regard to be their peer group. Therefore, it is important that the channel does not alienate these age groups, as they too need to be prepared for the challenges ahead.

Hence, our main concern, having developed such niche channels, is that, if the format is seen as successful by the terrestrial broadcasters, they will copy the concept and undermine the integrity and value of the original work that we have undertaken.

This reiterates the point above that we see appropriate oversight, in both governance and regulatory terms, as the most critical part of the Charter renewal debate. We see a role for Ofcom in assessing the potential impact of new publicly funded services. However, we do believe that, within Ofcom's Public Service Broadcasting Review, there has been a lack of effective consideration of the public service role of commercial channels and also an inadequate assessment of the impact on the commercial market of continuing with a model of implicit funding.

DIGITAL EXPANSION

We recognise that digital TV expansion will continue to increase diversity and quality within the market and that the BBC has played, and will continue to play, an active role in driving digital switchover and in innovating interactivity.

In the latter case, this has afforded consumers, who were perhaps web cautious, to undergo a shared experience that they perhaps would not have been brave enough to undertake without the kudos of the BBC brand guiding them.

However, in the case of digital television, the commercial, multi channel community is playing a major role with continually growing audience share. Therefore, whilst we agree that the BBC should play a major part in driving digital switchover, its actions should also be measured against their impact on the commercial market.

Similarly, the activities of ITV should not be overlooked as they have a position of market power and are able to leverage that market power to ensure a reasonable success of new digital channels from preferential cross promotion—a direct benefit of implicit funding.

SUMMARY

The focus of Telewest/Flextech concerns/interests within the BBC Charter Renewal process is as follows:

- Remit specifically in relation to the role of PSB's and the BBC.
- The future of Public Service Broadcasting.
- How can the plurality of Public Service Broadcasting be safeguarded in the digital age?
- Funding.
- Governance.

We acknowledge that the BBC will be a significant provider of services for the “converged” world. However, the area of most interest to Telewest/Flextech is how the BBC will be governed and regulated going forward such that its activities, in terms of both new broadcast channels, archive distribution and interactive services do not damage commercial partners or competitors either consciously or unconsciously.

Although, as stated above, we would not wish to see the BBC's remit amended such that its current valuable contributions to the market overall are undermined, we would not wish to see the BBC to be allowed to flood the market with its content, particularly via new technology gateways, to the detriment of the commercial world. In such areas, we believe that the BBC should be encouraged to develop joint ventures with commercial players.

We support the principle of the licence fee providing a degree of income security for the BBC, bearing in mind its role in driving digital switchover.

Telewest/Flextech believes that a key remit of the BBC Trust should be to (a) closely monitor the potential commercial/competitive impact of new service/channel proposals, (b) to ensure that the BBC continues to honour existing commercial agreements and (c) to investigate opportunities to encourage the market to invest in public services and the funding mechanisms that might be appropriate to this, such as contributions from licence fee income.

Because of the sensitive nature of its role, we support the proposal to replace the BBC Governors with a BBC Trust and Executive Board, such that the Trust can take an elevated, independent view of the BBC's proposals. Furthermore, as the BBC's impact on competition can be significant, we believe that the Trust should work closely with Ofcom and that Ofcom should be responsible for approving the BBC's internal rules governing their commercial businesses. We are aware that Ofcom is currently working on guidelines for impact assessments in relation to their policy and regulatory decisions and we welcome this since we have had some concerns over the impact assessments that Ofcom has carried out to date, notably that relating to the impact of their proposals for maintaining plurality of PSB.

Finally, the Committee has questioned how the plurality of public service broadcasting can be safeguarded in the digital age. Digital TV expansion will continue to increase diversity and quality within the market but the terrestrial broadcasters, particularly the commercial PSBs, will still be providing plurality and, additionally, they will enjoy privileges in terms of brand awareness as well as the benefits of “must carry” and EPG positioning rights. The incumbency of the existing PSB services, and the maintenance of their privileged positions, has enabled them to build strong brands that are interwoven into the very fabric of television culture and they have a fairly secure planning base from which they can launch new digital services, cross promote and cross brand.

As a result, they have a head start on newer channels that have to “punch above their weight” to attract audiences and advertisers as they do not enjoy programming budgets available to PSB services. Therefore, new channels need to establish points of difference, and brands, to attract investment and to grow programme budgets. Hence, proposals for new service/channel launches by either the BBC or the commercial PSBs need to be scrutinised for their competitive impact.

We would question whether the Ofcom review of PSB provisioning has been brave enough in considering the opportunities that multi channel can bring to bolster PSB output and increasing competition and investment into the genre.

In essence, it should be recognised that PSB will not only be delivered via traditional “channels” in future. This suggests that, going forward, PSB should be considered in terms of content genres rather than “channels” such that PSB and non-PSB content could be identified more readily.

The monitoring of this position is clearly within the remit of Ofcom as well as the BBC Trust.

11 May 2005

Memorandum by the Incorporated Society of British Advertisers (ISBA)

1. INTRODUCTION

1.1 *About ISBA and its members*

ISBA—the Incorporated Society of British Advertisers—represents the interests of major UK advertisers in both the private and public sectors across all areas of marketing communications, from media advertising and direct marketing to sponsorship and public relations.

Around 400 companies comprise its membership, including 22 of the 25 current largest TV advertisers. Their combined expenditure on advertising media amounted to over £4.2 billion in 2004, of which some £2.1 billion was spent on television.

Further details can be found at our web site (<http://www.isba.org.uk/isba>), and we would be pleased to provide further information on request.

1.2 *Preamble*

Companies which advertise are crucial to the nation's economy. Manufacturers, distributors, retailers and service industries are vital components of the economy of the country. Advertising and other forms of commercial communication are fundamental to many companies' success. Consumers demand ever more information about products and services in making their choices.

Competition thrives through advertising. Advertisers seek and require the freedom of commercial communication, and readily accept the responsibility that such freedom imposes on them. British advertisers are proud of their record of social responsibility achieved by the self-regulation of advertising in the non-broadcast media, and seek the extension of self-regulation to broadcast and new media channels.

Advertisers provide critical funding for the UK's commercial media—not least the broadcast media, television in particular—and for the advertising agency and other creative support sectors. They recognise that advertising represents a very important part of their activities—to many, it is one of their largest operational costs. Television advertising continues to hold a special place in their favour—a fact reflected by the price premium it commands against other media.

The BBC is principally funded by licence fees. Its main broadcast channels carry no advertising but enjoy very significant audiences. The corporation's very existence, shape and spread of activities therefore distort the market for all the UK's commercial broadcasters, not least in terms of the market for advertising airtime.

ISBA therefore welcomes the opportunity to present its perspectives on the issues raised in the BBC Charter Review to the newly-formed Lords Select Committee.

This submission commences with the key points of our arguments as they have developed during the review so far across 2004–05. The key points from our responses to the four main consultations that have taken place to date follow in chronological order.

The formats of each of these reflect the formats of the consultations to which they are responses, whilst we make no apology for the reiteration and development of key points as the consultation process itself has progressed.

2. SUMMARY OF ISBA'S KEY ARGUMENTS AS THEY HAVE DEVELOPED, 2004–05

- The BBC is principally funded by licence fees. Its main broadcast channels carry no advertising but enjoy very significant audiences. The corporation's very existence, shape and spread of activities therefore distort the market for all the UK's commercial broadcasters, not least in terms of the market for advertising airtime.
- The BBC has overrun its remit. Its editorial and content standards have sometimes lapsed and it has failed to meet its own targets and quotas. It clings to its historic role and funding despite the sea changes brought by multichannel, competition and digital. It requires a tighter remit and more effective governance.

- The current remit to inform, educate, entertain should be enhanced. The additional “defining characteristics” proposed by DCMS are welcome but need further work and should be *underpinned* by a strong additional requirement for any *publicly-funded* channels to:
 - ensure that their entertainment output also strives to inform and educate, and does not merely compete to entertain; and
 - commission and schedule the kind of output which the commercial broadcasters find difficult or uneconomic.
- The BBC has a key role to play in building “digital Britain”, but should not be allowed to parlay its support in this respect against concessions to its remit.
- Proposals to create a “BBC Trust” and an Executive Board could address the current shortcomings in governance, provided that the role of each is clear and discrete, and the “Trust” is recruited on competence and not tokenistic criteria.
- We agree that each BBC service should be subject to a detailed service licence, and each new service or change to an existing should face an independent public value test.
- It is now widely agreed that the BBC funding should be reviewed within the next Charter period. Such a review should precede and conclude by digital switchover, at which point other funding mechanisms become not only viable but desirable.
- An element of licence fee revenues should be contestable by any broadcaster in return for public service commitment and content.

3. KEY POINTS OF ISBA’S RESPONSE TO OFCOM’S REVIEW OF PUBLIC SERVICE TELEVISION BROADCASTING, PHASE ONE, JANUARY 2004

- The critical issue facing all broadcasters, whether mass or niche, is to appeal to and satisfy their customers, the viewers. In future, only publicly-funded channels can reasonably be expected to deliver to different, more onerous, expectations and strictures.
- British television can lay claim to being amongst the best in the world, in part because it is well-funded. This should continue, though we suggest that some redistribution of total funding is entertained.
- “Public service broadcasting” is fundamentally characterised by two key sets of Government, legislative and regulatory expectations: the requirement to inform, educate and entertain, and licence or charter requirements specifying the proportions of output by genre, and the proportion of programmes sourced from different sectors and regions. These parallel expectations have served the UK well over most of public service television broadcasting’s 66-year lifetime to date, but are outdated and in urgent need of review now that well over half the population can receive between thirty and five hundred channels.
- Publicly-funded public service (television) broadcasting (aka the BBC) and the free-to-view commercial terrestrial channels with differing public service obligations (ITV, Channel 4 and Five) merit separate consideration.
- The current requirements to inform, educate and entertain should be retained, but be *strengthened* by a strong additional requirement for any *publicly-funded* channels to:
 - ensure that their entertainment output also strives to inform and educate, and does not merely compete to entertain;
 - commission and schedule the kind of output which the commercial broadcasters find difficult or uneconomic; and
 - be much more transparent and accountable in the deployment of their mandated revenues.
- The relationship between “quality” and funding is neither clear nor linear.
- Regional requirements seem to be driven by the twin needs to protect regional skill centres and to meet regional viewers’ needs. Both should be met by market forces, not regulation.
- The BBC has overrun its remit by some considerable measure, both in TV and Radio broadcasting and beyond in publishing and online. It routinely competes for ratings; schedules cynically and promotes itself overly aggressively, creating to significant market distortion for the commercial sector.

- If the BBC is to remain as nakedly commercial and market-distorting as it is currently, the logical consequence is that it must “seek its fortune” and no longer be (wholly) funded by what already is and will progressively be seen by an increasing number of viewers as a tax. One corollary of such mixed funding would be the necessity for the BBC’s main terrestrial channels to carry advertising. This might lead to such levels of competition in the market for advertising airtime as to render some commercial broadcasters unviable.
- Arguably, a more viable and widely-acceptable alternative is to restore the BBC to a clearer (and less commercial) public service remit, prescribed not only by the current requirement to inform, educate and entertain, but by additional, tighter requirements. Delivery to such a remit would provide a much more robust basis for defence of a licence fee in viewers’ eyes—though in all likelihood not one that automatically rises with inflation henceforth.
- The BBC’s governance must be greatly improved to include much more effective, independent and external governance of its adherence to its remit. Ofcom has a role to play here.
- If the BBC were to be required to revert to a clearer, more closely-prescribed and less commercial public service remit, then we would argue that this should give a reciprocal opportunity to deregulate the commercial sector with no perceptible detriment to viewers.
- In contrast to the restricted channel choice of yesteryear, the multi-channel world allows the viewing public to seek whatever content it wishes. No longer can it be coerced into watching what it is thought it should. Within the increasingly fragmented viewing landscape which has already emerged, regulation can only restrict viewer choice—it cannot determine what people watch. Any consideration of public service broadcasting, and any imposition of standards, must recognise this lest it precipitates market failure.

4. KEY POINTS OF ISBA’S RESPONSE TO DCMS’ MARCH 2004 CONSULTATION

- Advertisers have a keen interest in the health and performance of the nation’s commercial media as important communication channels between brand owners and their customers, and a legitimate stake in this Charter Review, which will define the shape of the BBC, and thus the nation’s other media, into the future. The UK is the only country in the world that has a publicly funded, public service broadcaster with a dominant market position, the BBC.
- Remit
 - The BBC is now routinely operating well beyond acceptable limits given the lack of precision of its remit. It creates excessive and unacceptable distortions in the markets for commercial media in the UK, thereby constraining fair and effective competition.
 - We call for Government to describe and circumscribe the BBC’s role and remit in this review. We are keen to share our views and ideas in this area at an appropriate future point in the Charter Review process.
- Governance
 - The BBC’s Board of Governors has allowed the BBC’s activities to diversify—sometimes for good, sometimes arguably not. The BBC has shown itself most skilful in managing and navigating the mood of its Governors.
 - It has been allowed to move away from delivering the core expectations of an organisation with its privileged position and funding. It is competing for audience share pre-emptively to head off suggestions that it no longer provides “something for everyone” and subsequent calls for changes to its funding.
 - It has been allowed to fail to meet both its editorial standards and its self-imposed and voluntary independent production quotas without penalty.
 - In line with accepted corporate best practice, we believe the management of the BBC should be put in the hands of a Board of Directors with an appropriate balance of executive and non-executive members, and its output should be independently-regulated in a manner consistent with other broadcasters, probably by Ofcom.
- Funding
 - The BBC’s mandated funding through a universal licence fee is inequitable and unsustainable in the medium term within the emerging viewing environment. Other practical revenue collection methods are emerging.

- Just as the appropriateness of each of the BBC’s activities is not clear, nor are their costs. ISBA calls for total early and public visibility of the BBC’s finances in order to inform a necessary and proper public debate about what the BBC is, should and should not be, and should and should not be doing.
- ISBA supports significant continued public funding of broadcast media, and believes that the BBC could deliver better value for money under a clearer and tighter remit with more effective governance.
- The BBC’s sole receipt of public funds should be reviewed. We suggest that all broadcasters should be able to apply for contestable public funds in return for public service commitments. We call on Government to foster considerable further wide-ranging and public debate in this area.
- The market distortion and damage that the BBC and its various activities inflict on the commercial media—and on their advertiser customers—will continue to increase if not addressed. This contrasts starkly with modern political and business climates, which demand no less than free competition in every sphere of endeavour.
- The BBC faces a true crossroads. Government should either:
 - Free the BBC of its public service shackles, leaving it to behave competitively and commercially, redistribute the licence fee, and encourage the BBC to develop new channels of funding beyond it.
 - Or, perhaps more realistically, bring it back within a more clearly- and tightly-defined public service remit, managing its funding and adjusting its governance to ensure that this is kept within and delivered.

This is a choice that must be made. The BBC’s ever more vigorous competitiveness—achieved on the basis of its massive and generous licence-fee funding and unchecked by its current governance—creates enormous market distortions and causes wide-ranging damage to a significant UK industry.

For advertisers, the commercial media, and we suggest also most especially for the viewer-customers who fund the BBC, maintaining the status quo is not an option. Nor, henceforth, is such infrequent review—we would suggest that any future agreements governing the BBC should have no more than five years’ currency.

5. KEY POINTS OF ISBA’S RESPONSE TO OFCOM’S REVIEW OF PUBLIC SERVICE TELEVISION BROADCASTING, PHASE TWO, NOVEMBER 2004

- ISBA agrees with Ofcom’s suggestion that UK Public Service Broadcasting will not survive in the digital age unless it changes, and that PSB must be more accountable.
- ISBA believes the principal purpose of PSB in the digital age should be to deliver services which meet the needs of citizen-consumer-viewers which are not provided by the market. This raises serious issues for the BBC. We consider the BBC the core of public service delivery, around which other public service broadcasters’ activities and remits should fit.
- Complementarity and plurality are clearly important public policy goals. Ofcom’s suggestions are a welcome (if overdue) start to a national debate on what public service broadcasting should now be. Critically, of all UK broadcasters, the BBC should be most tightly bound and held to public account in the new digital era.
- ISBA urges caution against overreliance on exciting but unproven new technologies, and suggests that established digital broadcast channels will remain the most important delivery mechanisms for the foreseeable future.
- The BBC should remain well- (*but not overly-*) funded. Its level of funding should be contingent with its meeting a new definition and expectation of its public service role. It should be more effectively governed and regulated, and be restrained from creating deliberate distortion in commercial markets.
- A universal mandatory licence fee may remain the “least worst” funding option until switchover (~2012), but thereafter will not be so for the remainder of a further 10-year charter (2016). We have argued for an earlier review of funding and/or a shorter Charter period, but note Ofcom’s similarly-directed suggestion of a rigorous mid-term review.
- We welcome the generally deregulatory approach towards ITV, but feel that the proposals will be limited in their impact in this direction and warn against their being self-neutralising.

- We are concerned by an apparent over-reliance on Channel Four as a key instrument of future public service delivery, and note no mention of funding for this role. We support the suggestion that it should be able to forge partnerships, subject to competition considerations, but do not support the proscription that it may not be privatised at some point. C4 may also provide a platform for, or alternative to, the Public Service Publisher proposal.
- We see BBC as the key delivery mechanism of services for the regions and nations, and call for the BBC to be held much more tightly to account in terms of regional and independent production quotas.
- We support the notion of competition in PSB provision, but Ofcom’s proposal of a Public Service Publisher raises numerous serious questions as to its purpose, role, shape and implementation. We also question whether it will serve an identified citizen/consumer/viewer need.

6. KEY POINTS OF ISBA’S LIKELY RESPONSE TO DCMS’ MARCH 2005 GREEN PAPER

- Most who have so far provided comment to the BBC Charter Review agree that the corporation has been operating beyond its remit, and certainly beyond what its remit should be as the nation’s publicly-funded public service broadcaster of today and tomorrow.
- We therefore welcome the Green Paper’s clear recognition of the need for substantial change, and observe with healthy scepticism the BBC’s recent moves to pre-empt the next Charter by strengthening its governance and its financial controls in advance.
- We trust that Government will continue to take the BBC’s self-interested attempts to secure no change as it finds them, and welcome the direction of many of the proposals in the Green Paper.
- We acknowledge that certain elements of the Green Paper, such as proposals for a “BBC Trust” are still quite formative, and offer our suggestions and input accordingly.
- Other elements, particularly those concerning the BBC’s remit, are clearly much more developed but still in our view fundamentally insufficient. In these areas, we see a critical need for considerable further clarification and tightening, lest inexact drafting allows the BBC to continue to use its undoubted interpretative skills to work within its next Charter once again to suit its own interests. Again, we offer our comments and suggestions below.
- We have considered the Green Paper against the four key calls in our previous submissions to DCMS and Ofcom on the future of the BBC: a clearer, tighter remit; enhanced governance; a thorough review of funding; and a shorter Charter period (see section three for further detail).
- We welcome the proposals to tighten the BBC’s mission and add several defining characteristics, but believe that considerable further work is needed before these will be effective in constraining the BBC from operating within them to its own ends. We also argue that all five characteristics should apply simultaneously, not merely one at a time.
- We acknowledge the BBC’s role in delivering a digital Britain, but again argue that this should be executed within parameters which prevent the BBC turning the role to its own ends, particularly in return for relaxations to its remit. We argue that concessions for vulnerable consumers are primarily a matter for Government, not the BBC.
- We welcome the proposal for a further review of alternative funding methods, but call for it to be conducted well before, and not after, digital switchover. Since recent licence fee settlements have proved generous, we argue that any future settlements until then should be well within RPI.
- We predict that the licence fee will become less equitable over the next Charter period, and urge caution towards overzealous licence fee collection in the face of increasing viewer demurrals.
- We welcome the notions of a “BBC Trust” and an Executive Board, and call for very clear and separate roles for each:
 - We recommend that the “Trust” is constituted as the *champion of the BBC’s funders*—the viewers—and should be completely independent of the BBC itself, supported by an independent resource. It should embody more astute and commercially-aware elements, with “politically correct” recruitment criteria secondary. Critically, it should have “teeth”.
 - By contrast, we see the Executive Board, comprising the BBC’s operational heads, as the *champion of the BBC itself*. It should recommend to and seek agreement from the “Trust” on policy and strategy, and have operational and tactical responsibility. It should be answerable to the public through the senior “Trust”.

- We welcome the proposals that each and every BBC service, existing, changing or new, should be subject to a *detailed service licence*, which we expect *inter alia* to contain targets by genre, and a *public value test*. We call for tough internal controls over targets for independent and regional production.
- We argue that the BBC's activities should be restricted to public purposes and services, and question its role wherever the market can and does provide. We also renew our call for absolute consistency of regulation across *all* UK broadcasters.
- We support the two independent expert panels' findings that public funding should be made available to broadcasters other than the BBC in return for appropriate public service commitments.

May 2005

Memorandum by Mr Jean-Jacques Marmont

1. GENERAL COMMENT ON "PUBLIC CONSULTATION" OF BBC'S CHARTER.

1(1). My personal journey on campaigning for reform of the BBC started in 1992. In that year a Television License Enforcement Agent entered my home and proceeded to intimidate and threaten my three daughters (then all under 15) for viewing an "unlicensed" television. I was immediately thereafter fined for not possessing a valid licence. The most recent phase of my quest against the fee involved attending hearings at the Department of Culture, Media & Sport, and, the Commons Committee on Culture, Media and Sport in 2004.

1(2). I noticed that the average licence fee payer's views were mostly disregarded at these hearings. Nearly all evidence was presented by past and current members of the broadcasting media, or, by government officials. Academics with projects funded by broadcasters and the government were highly noticeable amongst witnesses. Only one public advocacy group was represented [and treated in a somewhat dismissive manner]. My published evidence in the Commons Special Committee Report, and that of two other individuals, were the only entries from people not associated in some way with the broadcasting media or government.

1(3). A vast majority of Britons want the BBC to be reformed in relation to its public funding, governing infra-structure, and regulation. Furthermore, all polls researched outside government and BBC sources consistently determine that nearly 65–70 per cent of the British public believe the licence fee should be abolished after 2006. Yet the Secretary of State says it is the "least worse option" and "fairest way to fund the BBC" until 2016. Hence, the public is expected to accept another 10 years of a regressive compulsory licence fee to finance only one of Britain's several public service broadcasters, in a market offering over 400 voluntarily subscribed channels.

1(4). There are an estimated 24 million licence fee payers. However, the so-called "public consultation" that led to production of this Green Paper heard from far fewer than one-fifth of 1 per cent of those people. No widespread government advertising of the public's right to express their views appeared on television, radio, or national newspapers. Most important of all, the government and BBC did not require the TV Licensing Authority to inform those 24 million households (through its direct mailing address database) of universal rights to express their views on BBC Charter Review.

1(5). The DCMS deserves credit for placing "Your BBC, Your Say" leaflets in public libraries. But 3,500 responses by the deadline of 31 May 2005 depicts even more pathetic results than those numbers presented during an initial consultation period in 2004. People have more important social issues to comment upon and question in society. Nonetheless, if a saturating public awareness campaign was initiated in the White Paper consultation period (ie autumn, 2005), response could reach as high as 5 per cent (about 1.2 million licence payers). Such a result would offer a much more credible picture of public attitude towards the BBC's future and reform of the corporation.

2. THE ROLE, FUTURE AND FUNDING OF PUBLIC SERVICE BROADCASTERS AND BBC

The five purposes and role of the BBC listed in the Green Paper are:

- Sustaining citizenship and civil society
Keeping the public informed and increasing their knowledge of the world through news and current affairs.
- Promoting education and learning through programmes and services
Encouraging public interest of a wide range of subjects and issues through general programming, and, providing specialist educational programming for all ages.

- Stimulating creativity and cultural excellence
The licence fee should be used to encourage UK creativity. The BBC should also enrich the country's culture through providing distinctive and original programming, fostering creativity and nurturing talent, and encouraging participation and interest in cultural activity among new audiences.
- Reflecting the UK, its Nations, regions and communities
Provide programmes that reflect the UK's different regions and communities and that make people aware of different cultures and alternative viewpoints seen in the UK.
- Bringing the world to the UK and the UK to the world
Making UK audiences aware of international issues and of the different cultures and viewpoints of people living outside the UK as well as bringing high quality international news coverage and showing the best of UK creativity, culture and talent to global audiences.

2(1). All of the objectives listed above are equally as important in the collective. What is crucial is that the BBC's "public service commitment" in delivering those objectives should be met in an unbiased fashion. All public views must be allowed to be expressed and permitted to be heard by the public, even unpopular or unpleasant ones. The public can then determine their worth by themselves, and not have stances on issues imposed upon them by the BBC executives' personal prejudices.

2(2). The BBC does indeed have an obligation to ensure that "socially acceptable subject matter" appears on its network that does not "offend, incite crime, etc. etc.". However, in the past, the BBC's executive have dismissed or refused to cover certain legitimate views or beliefs under such a "smokescreen" listed within Section 5.1 its current Charter Agreement. This practice cannot be allowed to continue, and these privileged caveats given to the BBC must be used in a reasonable, logical manner.

2(3). At the BBC Charter Review Lord Burns Independent Panel seminars on the BBC's funding [which I attended], the licence fee was criticised immensely. However, government allocation grants, advertising, subscription and sponsorship are no realistic options alone to replace the controversial compulsory charge. Nonetheless, the government has single-mindedly taken an option to continue the licence fee for another 10 years as a so-called "least worst" preference. This phrase is ludicrous terminology, with the government failing to accept reality of what a majority of the country actually desires in how public service broadcasting should be funded. It has chosen to leave radical funding reforms to be initiated by some future government minister, when Labour is possibly no longer in power.

2(4). The Green Paper has down-graded any notion of having the BBC funded by "direct payments" from Her Majesty's Treasury, as allocated by the Chancellor or Parliament. The broadcast industry, as well as government "spin doctors," maintain a shallow interpretation that such funding sources would "threaten the independence" of the BBC, leaving it to the political whims of any government of the day. In reality, the current compulsory licence funding system actually presents worse possibilities.

2(5). Most licence payers think that money collected by the TV Licensing Authority goes directly to the BBC. Licence fee money is really first placed into the Consolidated Fund of Her Majesty's Treasury before being transferred to the Department of Culture, Media and Sport. After that Department deducts its "administration charges," the rest is passed on to the BBC. Therefore, we have licence fee revenue channelling through two government departments before reaching the BBC. Thus, its independence is already jeopardised by the current process, and, direct payments via the Treasury [from general taxation sources] would be no more hazardous to the BBC's autonomy.

2(6). Under a system of direct Treasury payments, there could be a guaranteed formula similar to that now agreed between the DCMS and BBC for licence fee levels. The Treasury contribution could be based upon X number of pounds per British household geared to the last official census. There might be yearly increases pegged to official inflation rates. In this way, payments cannot be reduced by political whims and prejudices of governments.

2(7). There must be a funding review during very early stages of the new ten year charter. However, the licence fee must not be allowed to be a legitimate funding mechanism right until 2016. The Peacock Report of 1986 suggested early abolition of the television licence, it becoming increasingly difficult to legitimise. And now, almost 20 years later, the effects of digital switchover that allows audiences to be able to watch more TV channels and in a number of different ways, such as over the Internet on computers or through mobile phones (as the Green Paper states) is already happening in an accelerating process. More so than in 1986, the rational of demanding a mandatory universal "poll tax" for receiving a BBC television signal over various apparatus is becoming nearly impossible to justify and enforce.

2(8). A funding review should immediately start in 2007, based on a premise that the compulsory licence fee will end on 31 December 2009. The review should determine that after this date, the BBC will be funded by a so-called “mixed funding system” comprising (a) direct payments from the Treasury, (b) subscription, (c) sponsorship and (d) advertising, in which:

- (i) Direct payments from the Treasury will comprise the greatest amount, and, what those direct payments should pay for in BBC operations.
- (ii) Direct payments will be funded through general taxation sources (and justified as 98 per cent of UK households have access to a “television signal receiving apparatus”). Some direct payments from the Treasury will be used to finance public service broadcasting productions on channels other than those of the BBC (ie Channels 3, 4 & 5).
- (iii) The source of taxation revenue to cover these direct payments from the Treasury will be determined and calculated accordingly.
- (iv) It will be determined how much advertising the BBC is allowed to solicit, on which channels or radio stations it appears, and, what it will be expected to pay for in BBC operations.
- (v) It will be determined how much subscription and sponsorship the BBC will be expected to solicit (and on which channels or radio stations) and what it will be expected to pay for in BBC operations.
- (vi) Parliament will enact new, or repeal old, laws to facilitate (i)-(v) above.

2(9). Capita Business Services (ie TV Licensing Authority) and collection of the licence fee came under great criticism at both Independent Panel Seminars and the Commons Media Committee hearings. Lack of adequate egalitarian concessions, criminal liability for non-payment of the fee and heavy-handed collection methods were considered three unacceptable practices of the current system. Immediate reform in these areas was recommended by both Lord Burn’s Panel and the Commons Select Committee. The Secretary of State’s response to those recommendations chose to glide over their proposals. She merely provided an excuse of there going to be a “review” of those issues “at some time” during the life span of the next ten year BBC Charter tenure. The government had plenty of time to “review” those issues during previous consultations. Hence, the next White Paper of autumn, 2005, should maintain that right after December, 2006, and until the licence fee is disbanded, there are provisions to implement:

- (i) Sheltered Housing and other concessions expanded and clearly defined.
- (ii) Concessions of various percentage levels, or complete exemptions, for full-time students, the unemployed and those on low fixed incomes to be reimbursed to the BBC from the Treasury (comparable to those “free” licences for the over 75’s, or the 500 million per annum that is disbursed directly to the BBC World Service).
- (iii) Abolition of criminal liability for non-payment to be replaced with a “fixed penalty” (above the cost of licence fee) for those who have not renewed a licence on time or getting one in the first place (ie other than those people who prove that they are eligible for exemptions).
- (iv) Any enforcement thereafter for non payment to be followed through civil regulations and statutes, and, via the civil County Court process only as an absolute last resort.
- (v) Enacting new, as well as repealing old, Parliamentary legislation necessary to facilitate (i)-(iv) above.

2(10). During Independent Panel and Commons Committee hearings, I personally witnessed a very evident prejudice, bigotry, and even unabashed arrogance, against PSB funding ideas and reforms from the European Continent, Canada, USA, Australia, New Zealand, etc. For example, The Netherlands and New Zealand abolished licence fees in 2000, replacing their systems with general taxation funding. Their schemes became more cost effective. Those on the DCMS Independent Panel and Commons Committee chose to believe in the BBC’s own mythology and legends that it is still “the best in the world”, and thus any current funding regime is really the “least worse option.”

2(11). In the ultimate end, the argument is not whether there “should” be public funding through a form of taxation for the BBC, but “how” the public pays for the BBC, and other PSB channels, through a form of equitable taxation. The argument concerns what method is most cost effective, *vis-à-vis* an editorial independence of the BBC. Any UK government has a clear obligation to fund public service broadcasting, according to the European Union’s Treaty of Amsterdam, “Guarantee of the Independence of Public Service Broadcasting” Recommendation No R (1996) 10, of the Council of Europe, and, “Television Without Frontiers” Directive, [2003/C 13/01], of the European Union.

2(12). The greatest opposition to a compulsory licence fee as the BBC’s funding source comes from those who believe that it is a regressive poll tax discriminating against people on low incomes. Equal numbers believe that the BBC enjoys an unfair “monopolistic” advantage in being the only public service broadcasting channel

to receive public funding. Both Lord Burn's Independent Panel and Commons Select Culture and Media Committee suggested that other PSB channels should receive some public funding to supplement their advertising revenue. As mentioned in para 2(8) above Channels 3, 4 and 5 should be considered for public funding in a manner comparable to those disbursements made to Welsh Channel S4C, and the BBC World Service. During the early review as listed in para 2(8), it should be determined how much will be disbursed to the other PSB channels, in proportion to that which is allocated to BBC operations.

3. THE BBC'S CONSTITUTION AND ITS FINANCIAL REGULATION

3(1). The Government's Green Paper attempted to show that most people did not want a government or Parliament to "interfere" with the BBC's independence. That "independence" really applies to the BBC's editorial and production autonomy, not "independence" to do as it wishes with publicly-supplied funds without being accountable to democratically-elected bodies [as it is to the National Audit Office and Commons Public Accounts Committee]. No other publicly-funded authority in Britain has ever been able to previously evade comprehensive accountability of its usage of public funds as the BBC has enjoyed. This practice, in itself, needs to end with all public funds given to the BBC subject to auditing by the National Audit Office, not just what the BBC Audit Committee wants to let that office view.

3(2). In actual fact, most licence payers do not comprehend the practical and statutory framework that allows the BBC to function. A superficial argument that the current funding regime is "necessary" to maintain the BBC's independence of interference from the government or Parliament is blatant propaganda, feeding off the general public's naivety. Equally so is the argument that a renewable Royal Charter guarantees that independence far greater than having the BBC constituted under an Act of Parliament.

3(3). A BBC operating as it does now (under Royal Charter) could not function, or even exist, if it were not for specific statutory Acts of Parliament like the Broadcasting Act (1990), Wireless Telegraphy (Television Licence Fees) Regulations, The Regulation of Investigatory Powers (British Broadcasting Corporation) Order, 2001, Regulation of Investigatory Powers Act (2000) Part 2, "Surveillance and Covert Human Intelligence Sources", and, the Communications Act (2003) Part 4. There is not a sound argument proving that the BBC's operating under Royal Charter guarantee's its "independence" over a statutory corporation legitimised by an enactment of Parliament. The BBC already completely depends upon many different Acts of Parliament for its comprehensive existence and continued viability.

4. GOVERNANCE AND RELATED REGULATION OF THE BBC

4(1). There should be a very clear distinction between the "Executive Board" of the BBC and the so-called "BBC Trust." The Board should essentially function in a combined capacity of what now actually operates under two capacities (ie the BBC Executive Committee, and, the BBC Board of Governors).

4(2). The new "BBC Trust" should function more in the position as an official independent regulator of the BBC's actions and functions (that are not the responsibility of OFCOM). It should be a quasi "BBC Ombudsman."

4(3). The BBC Executive Board should be allowed to determine how to distribute public funding resources (whether from a licence fee or otherwise) to pay for its different services. The BBC Trust should constantly scrutinise how the BBC is performing in terms of efficiency and spending its public funds [either through its own volition, or, as a result of complaints and concerns from the general public].

4(4). In the new regulation model, the overall complaints procedure should be as in any other public authority (and, the BBC is indeed a "public authority"). That is to say the authority itself will handle all complaints and concerns (with final say being with the Executive Board). If the person(s) complaining are still not satisfied thereafter, they then have an option and right to approach the BBC Trust (or, OFCOM, whichever is appropriate).

4(5). In any complaint ultimately made to the BBC Trust [in its official capacity as a public authority regulator and "quasi-ombudsman"], that complainant would, and should, have the statutory right to question [on a "point of law" issue or "natural justice"] the BBC Trust's decision(s) via a process of Judicial Review in Administrative Court of the High Court.

4(6). The qualities and experiences listed in the Green Paper are adequate for membership on the "BBC Trust." However, they should include people from large public advocacy organisations, non-governmental organisations, and, individuals with extensive international experiences.

4(7). The “BBC Trust” should comprise as many as 25–30 members, each serving a three-year term. Their term of office could be renewed, however, no member should be allowed to serve on the BBC Trust for any more than six years, as to discourage authoritarian and special interest power bases being formed within the Trust.

4(8). Members should be chosen by a separate “independent panel” comprising representatives of the BBC Trust itself, as well as the DCMS, a member of the Commons Committee on Culture, Media and Sport, another from the independent broadcasting industry, and several non-partisan people from the general public.

5. COMMISSIONING OF PROGRAMMING ON THE BBC

5(1). The BBC has always been a target of “unfair competition” in its lack of sufficient use of independent programme and film makers. Current guidelines maintain that 25 per cent of the BBC’s programmes should be commissioned to independent producers. The BBC has never met this target. However, for its failure to do so, the DCMS merely “criticises” the BBC and never makes the corporation accountable for this failure. The Secretary of State infers that any such accountability would compromise the “editorial independence” of the BBC. Nonetheless, in a future Charter the BBC should be required to have about 35 per cent of its programmes made by independent producers. If this target is not met, the BBC should be penalised (ie “fined”) by having a proportionate amount of its public funding reduced until it meets the required targets.

6. THE BBC AND HUMAN RIGHTS

6(1). Essentially based around the criticism of tactics used by Capita Business Services, the proportionality of the regressive television licence tax has been raised. This entire issue is extremely complex to analyse. The licence fee is not demanded for a service like that which is required of car and road usage where the citizen is expected to meet his responsibility for his behaviour amongst other members of the public. The television licence tax clearly involves the state’s ultimate authoritarian right (through third party agents like Capita Business Services) to impose itself in the privacy of one’s own home for the innocuous “criminal” usage of viewing unlicensed television-receiving apparatus.

6(2). Herein the person viewing that apparatus is not actually “harming” the public outside his home. This, in itself, is a major issue amongst opponents of the mandatory licence fee, from an overall human rights perspective. The argument presents itself at this time especially in view of a fact that the concept of mandatory broadcasting licence fees for viewing television were initiated when only one television channel existed. Now, the British public has voluntary access to over 400 channels.

6(3). The government and BBC have always maintained that the BBC licence fee is compliant with the European Convention on Human Rights. They base their position on several related “failed” domestic court cases that received newspaper media and television news attention in 2002–04. This author’s individual High Court case was one of them. That action has elevated to the European Court of Human Rights on those same and greatly expanded arguments (Articles 8, 10, 14, 17, 18, and Protocol 1, Article 1), as well as the claim of failing to receive a fair hearing in English Civil Courts (Article 6[1]).

6(4). Some issues in my individual action [like regressive poll tax, equitable concessions, being forced to pay for BBC while other public services broadcasters received no public support, harassing collection methods against an individual’s privacy in his home and use of his private property, etc.] have now been raised in the Green Paper as perhaps being under review over the next 10 years. Other personal complaints in my ECHR action involve the BBC’s interference with my freedom to impart information across frontiers. This situation concerns the BBC’s preventing an article I wrote about the UK television licence fee from being published in August, 2003 on the website of the Geneva-based European Broadcasting Union.

[That meddling was substantiated recently from my securing copies of email transmissions between the BBC and EBU in August, 2003. I obtained them under provisions of the Freedom of Information Act.]

6(5). Albeit, should any specific part of my ECHR claim at Strasbourg, France manage to succeed, the British government would have to quickly review pertinent elements of the licence fee [despite this entire current Charter Review process]. The government would ultimately have to conform with ECHR rulings within three months of that Court’s judgment on the case [ie *Marmont v United Kingdom* , Application Number 27259/04].

June 2005

Memorandum by the Music Business Forum

INTRODUCTION

The Music Business Forum²⁸ (MBF) welcomes the opportunity to respond to the House of Lords Select Committee on the Green Paper on the BBC Royal Charter. We have followed this Charter Review process very closely and made submissions at each stage of the process through both individual members and through collective MBF responses. We have made written submissions to the Department for Culture, Media and Sport; presented written and oral evidence to the House of Commons Culture, Media and Sport Select Committee; participated in the seminars held by Lord Burns and his Independent Panel; and made representations on each of the individual aspects of the BBC's own internal review.

Given the importance of music to the BBC we would welcome the opportunity to present oral evidence to the Committee.

In order to contextualise and demonstrate the enormous impact and relationship that music has on the BBC and vice versa we have included a short annex for the Committee's attention.

EXECUTIVE SUMMARY

We broadly support the proposals in the Green Paper, designed to ensure a strong, independent BBC whose watchwords are quality and excellence. In particular, we welcome the proposals to:

- Make stimulating creativity and cultural excellence one of the five key roles for the BBC;
- Give the BBC a clear role to export British cultural excellence;
- Give the BBC a further 10 year Royal Charter;
- Continue funding the BBC through the licence fee;
- Replace the BBC Board of Governors with the BBC Trust accountable to licence fee payers;
- Develop the BBC's proposition with respect to "public value" tests.

The Green Paper is however light on detail as to what the high level public purposes mean in practice and fails to tackle the tensions of a public service broadcaster operating in a converged commercial environment.

Our proposals for the White Paper therefore focus on delivering the very broad objectives in a digital world and creating a distinctive role for the BBC. We propose that the White Paper provides for the following:

- Puts music at the heart of the BBC programmes and services by including a specific commitment to music in the Charter throughout the network, not just at the periphery. The BBC's music strategy, as part of the Creative Futures project, should maintain music's unique role in BBC radio and expand the coverage for music across the mainstream and niche TV channels. The BBC Trust should include at least one Trustee with both knowledge and experience of the music business.
- Gives the BBC an obligation to act as a beacon of good practice in terms of promoting the respect for the rights of creators and contributors. Respect for rights means clearing the rights of creators, paying market rates and accounting properly and these principles should apply both to in-house productions and to those commissioned from independent producers. The BBC should also be required to implement appropriate DRM systems to maintain creative value and to promote actively respect for, and the understanding of, copyright awareness through media literacy programmes, where appropriate, in partnership with the music industry and other areas of the creative industries.
- Gives the BBC a clear role to expand its creative export agenda and commercial activities in partnership with others in the creative industries. This will necessitate BBC Worldwide having clear separation from the BBC and working closely with the music industry, other creative sectors as well as Government export agencies.
- Gives the BBC a role to support digital Britain, with an obligation to produce a coherent digital strategy. Within the BBC, the public purposes of catch-up TV need to be squared with the commercial potential of on demand content. Furthermore, the BBC role in promoting broadband should aim to encourage the development of commercial services, rather than foreclosing the market.

Whilst we remain supporters of the BBC we would also like to draw attention to the following concerns:

- Although we broadly welcome the Creative Archive project which allows the public to access BBC archived material whilst respecting rights, we have reservations about the way the BBC is currently

²⁸ The MBF is an informal group of music business organisations that, since its inception in the spring of 2002, has gained a reputation as an effective representation of the interests of the music business in its widest sense to Government.

embarking on this project. The proposed licensing arrangements for the Creative Archive would devalue the creative content both of creators and of the BBC. The music industry has extensive experience of online services and has offered to work with the BBC to ensure that the Creative Archive can add value to all parties and sit alongside the other mainstream online activities of the BBC

- The BBC must take a pragmatic and sensible approach to how it sources its productions but the principle that content should be based on the best ideas and quality of programming must apply. Whichever remedial model—behavioural or structural—is ultimately applied, the recognition of excellence in creative input and content must continue to be recognised as vital in the value supply chain and a key part of the BBC’s public service broadcasting obligations.
- Whilst we welcome the BBC’s commitment to more original programming and the recent announcement with respect to programming budget for next year being increased, this growth needs to be sustained for the future. We remain concerned given the apparent contradiction between this increased investment and the cost cutting measures, including 15 per cent efficiency savings in output areas as well as 15 per cent savings in cost-per-hour prices for commissions from all supply sources.

1. *Music and the BBC*

Music is a cultural language of Britain. It has the ability to transcend social barriers and can be used as a key vehicle for greatly enhancing civil society. British music is pre-eminent on the world stage and there is a great range in the supply choice available which can further be reflected in BBC programming.

We strongly welcome the specific commitments of the BBC to stimulate creativity and cultural excellence. The BBC has a key role in promoting distinctive and original programming and should encourage engagement and participation in cultural activities amongst new audiences. We trust that the BBC’s commitment to fostering creativity and nurturing talent will ensure the UK retains its place as a major centre of cultural excellence reflecting the diversity of its people.

We would like to see a much stronger presentation of music on mainstream television, as reflected by examples such as “Later with Jools Holland”, music videos, and until recently, Top of the Pops, so we expect the BBC to be creative in order to address this challenge. To reflect this, music (television and radio) programming needs to be properly accounted for in the forthcoming licence fee funding settlement.

However, despite the recent announcement with respect to a £61 million increase in programming spend across its TV, radio, online and interactive services for the year ahead we reserve caution about the BBC’s ability to be able to sustain quality programming in light of the cost cutting measures implemented across the board.

2. *Promoting Respect for Rights*

We also believe that the BBC must act as a beacon of best practice in terms of respecting the rights of creators and contributors. Rights owners and contributors to the BBC programmes and ancillary works commissioned by the BBC must be able to negotiate fair terms for the use of their work on a free market commercial basis. This commitment to respect rights should be enshrined in the Charter to cement the relationship between the BBC and the rest of the creative industries. Respect for rights entails clearing rights before launching a service, paying fair market rates and accounting properly to creators and contributors.

We welcome the public purpose role of the BBC in promoting learning and believe that the BBC has an important role to play helping to present and use the rich diversity of work that is available. It can also perform the valuable purpose of educating the creators and the creative entrepreneurs of the future about the importance of creative people being able to earn a living from the use of their work.

The educational role of the BBC should also embrace the ways in which young people can learn to appreciate how creators of, and investors in, music and other copyright works are able to build and maintain careers and businesses in the creative industries.

We believe that the BBC should promote an understanding of copyright awareness through media literacy programmes, where appropriate, in partnership with the music industry and other areas of the creative industries.

Furthermore, the BBC has a central role to play as a copyright education facilitator because of its unparalleled access to audiences on a variety of levels and in a multiplicity of ways.

3. Exports and Commercial Services

The global public purpose role is greeted enthusiastically by the MBF. The reputation of the BBC as a respected broadcaster also allows it to act as a showcase demonstrating the diversity and the creativity of musicians and music to wider audiences around the world.

We note that the Green Paper recognises that the BBC's commercial services have an important supporting role to play in both promoting UK culture, talent and intellectual property overseas whilst generating additional value for the BBC licence fee payer and applaud these principles for future activity.

Overseas broadcast of BBC material featuring music is often an excellent way of showcasing UK talent, under the recognised name of the BBC. However, the choice of granting rights should remain on commercial terms under fair trading commitments. These fair trade commitments should be scrutinised by an independent, external body to give the necessary confidence to the BBC's competitors as to their probity.

We would like to see further partnerships with the music industry and other key export stakeholders, such as the British Council in order to gain further leverage in important markets, such as USA and China, amongst others.

4. Digital Britain

We welcome the new public purpose for the BBC in building digital Britain. We look to the BBC to develop new technology and encourage the take up of new services such as digital radio and broadband while allowing commercial services to develop. Music is a key driver in the take-up of new services and the BBC has a responsibility to ensure the value of creative content is maintained.

We welcome the statement in the Green Paper that, in developing and promoting digital technologies, the BBC should aim to encourage audience groups to take full advantage of the technology and learning opportunities open to them, and drive media literacy amongst all social and age groups.

Whilst the BBC is actively communicating the advantages and opportunities to listeners afforded by new technologies it must be conscious of the perils that sometimes accompany new technologies with respect to the potential infringement of intellectual property rights.

One of our concerns relates to Digital Audio Broadcast ripping whereby digital radio receivers can record the digital stream as it is received and retain a copy of the broadcast sufficient to allow pausing and rewinding. A copy may also be retained. The next generation receiver will contain a more "intelligent" recording facility which will allow recording, retention and labelling of individual tracks. The software for this functionality is already available on PC. In effect, this automatically creates a catalogue of recordings for no payment. We believe that the BBC must play a key role in working with all partners, such as the radio, music, and advertising industries to collectively formulate a solution to ensure creative content is not devalued and the knowledge economy subsequently threatened.

Further to the aforementioned comments concerning the Creative Archive project, we recognise that this is a great opportunity for the BBC (and other organisations) to attain real public value whilst fulfilling broader policy objectives. However, the Creative Archive project, as currently constructed does not support a BBC digital strategy which values creative content and the proposed licensing arrangements for Creative Archive would de-value the creative content both of creators and of the BBC. We look forward to working with the BBC with respect to both its licence and accompanying supporting campaign to help create a better understanding of, and appreciation for, copyright.

5. Empowering Local and Regional Creativity

At a local and regional level, music-based programming plays a vital role in enabling new talent to be heard, local creative economies to be sustained and regional culture to be supported. Diversity and access are key and the BBC has a pivotal role to play.

We want to see both radio and television community level programming being given an opportunity to be picked up and introduced to the mainstream, so that the mainstream itself can evolve to embrace more diverse influences. It is culturally, socially, and politically vital that the wealth of talent and diversity that exists at all levels of the UK music community be made available to as wide an audience as possible and it is clearly the role of a properly publicly funded broadcast service to make sure it is. We believe that the BBC needs a clear strategy in terms of its effectiveness in other regional centres beyond Manchester.

Whilst we recognise the transfer of staff to the nations and regions is a necessary ingredient here, this achievement in itself should constitute not the totality of the commitment needed. The BBC should ensure structural remedies are in place and organically grow the local talent base. This becomes even more pertinent given the varied and in some cases diminishing contribution and commitment of the commercial sector in this area.

We welcome the BBC's contribution to date to empowering local people to actively release their creativity and facilitate the showcasing of regional talent but also recognise that more resource and investment are needed in this area. We look forward to the BBC's forthcoming music strategy to build upon this foundation, again in partnership with industry.

MUSIC BUSINESS FORUM (MBF) RESPONSE TO THE COMMITTEE'S QUESTIONS

The role of Public Service Broadcasters and the BBC—

We broadly welcome the core public purposes outlined in the Green Paper and subsequently agree with the scale and scope of obligations outlined. The BBC creates public value within the five areas outlined and should perform at all levels (regional, national, global) within the broadcasting ecology. Accordingly, the BBC must be funded appropriately to be able to fulfil all the public purpose requirements outlined.

We also welcome the statement in the Green Paper referring to the potential benefits offered by partnerships and, where appropriate, the BBC should be both accessible and transparent in its relationships.

The BBC's constitution—

We concur that the BBC is the cornerstone of public service broadcasting.

We agree with the Government's recommendation that the best way to give the BBC the independence, certainty, and flexibility it needs is through a Royal Charter, lasting for another ten years, for the reasons set out in the Green Paper.

We are not convinced by the arguments outlined by the House of Commons Culture, Media and Sport Select Committee recommending that the BBC should be established on a statutory footing.

Governance and Regulation of the BBC—

In our previous responses in this area we stated that a Board of Governors should be equally free of influence from government and management in order for it to be successful and so encouraged the Government to re-examine their simultaneous role as both governors and regulators. We therefore welcome the proposal to replace the BBC Board of Governors with a BBC Trust with day to day operational management being devolved to an Executive Board.

We believe that the membership of the Trust should be reflective of the public purposes of the BBC. Accordingly, we believe that there should be a representative on the Trust with specific musical expertise and creative industries experience in order to reflect the commitment to creativity and cultural excellence.

The BBC's impact on competition—

Although we recognise the stringent procedure undertaken by the BBC we acknowledge that in terms of Fair Trading Commitment there is a perception issue with respect to the BBC activities which brings into question the credibility of the current arrangements. The BBC needs to consider ways of effectively addressing this.

The BBC has Fair Trading commitments purely for its commercial services. They are designed to ensure there is no hidden competitive advantage to the BBC. However, all decisions are taken internally by the BBC. Whether or not those decisions are fair, they are perceived to be biased or irrelevant. Scrutiny by an independent third party would ensure fairness and get round problems of confidentiality (complainants reluctant to pass sensitive information to the BBC itself).

The Future of Public Service Broadcasting—

We acknowledge that technology is changing the way that audiences consume broadcasting and media services and understand the need for further reviews of alternative funding models as we look to the digital switchover. However, we are concerned that the Government does not appear to have rejected the possibility of “top-slicing” or “sharing” the licence fee. Moreover, we are somewhat apprehensive that the Government has indicated the future prospect of introducing a subscription model as a possible solution.

Commissioning of Programming—

The BBC’s role as a commissioner of music is extremely important to the UK’s communal, economic and cultural life given the key responsibility in the public service broadcasting ecology to foster and promote new talent. The role of the BBC as a commissioner of music is vital, particularly with respect to Radio 3—the world’s biggest commissioner of new classical music.

Making programmes is a key element of the BBC’s role and a strong in-house production base must be retained for the sake of creative risk and experimentation, particularly given that the licence fee has been correctly perceived as “the venture capital for creativity”.

We agree with the BBC’s initial response to the DCMS consultation on BBC Charter Review, that the success of the BBC in terms of range of programming is very much based on the achievement of “critical mass” in terms of the BBC’s infrastructure. We therefore believe it to be vital that this “critical mass” should not be overly challenged by allowing any in-house facility to dwindle to cover only those programmes that no independent company would be willing to attempt to produce.

Essentially, the BBC must take a pragmatic and sensible approach to how it sources its productions but the principle that content should be based on the best ideas and quality of programming must apply. Whichever remedial model—behavioural or structural—is ultimately applied, the recognition of excellence in creative input and content must continue to be recognised as vital in the value supply chain and a key part of the BBC’s public service broadcasting obligations.

We recognise the value of the BBC’s commitment to training, diversity and the broad development of opportunities in comparison to some of the independent producers. We would like the BBC to encourage independent producers to share the same fair dealing contractual obligations when dealing with freelance creators’ and incorporate a commitment to training and the development of new creative talent.

Annex 1**Music and the BBC****MEMBERSHIP DETAILS FOR THE MUSIC BUSINESS FORUM**

- AIM (Association of Independent Music).
- APRS (Association of Professional Recording Services).
- AURA (Association of United Recording Artists).
- British Academy of Composers and Songwriters.
- BARD (British Association of Record Dealers).
- British Music Rights.
- BPI (British Phonographic Industry).
- CM (Community Media).
- Sound Connections.
- Equity.
- The MCPS-PRS Alliance.
- Music Education Council.
- (MIA) Music Industries Association.
- Music Managers Forum (MMF).
- MPA—(Music Publishers Association).
- Musicians’ Union.

- Music Producers' Guild.
- National Music Council.
- P@MRA.
- PPL (Phonographic Performance Ltd).
- VPL (Video Performance Ltd).

Annex 2

BBC TELEVISION AND RADIO²⁹

Music is undeniably a central part of the BBC's core activity and an integral part of the BBC's scheduling across all its broadcasting platforms.

- This is emphasised by the fact that the BBC itself is the biggest commissioner of music in the world. BBC Radio 3 alone is the world's largest commissioner of new classical music, responsible for up to 65 new pieces each year.
- Music broadcasting over 8,147 hours of music and adding 310 concerts to the BBC archive in its first year of operation is another testament to the important role played by music in programme output.

Across the BBC television channels, radios 1, 2, 3 as well as 1 Xtra, 6 Music and on-line presence such as Collective and OneMusic, music is a consistent thread running through the whole of the BBC's programming. When one adds in the music content of regional and local radio stations the true importance of music to the BBC as a whole becomes even clearer.

For instance it is estimated that of a total of 76,752 network radio broadcast hours in 2003–04, there were 43,051 hours of music output on network radio. This means that almost 60 per cent of BBC radio network content is made up of music.

The importance of music supports the transmission of a significant number of hours of music and arts programmes broadcast on all the BBC television channels. In the BBC's Annual Report and Accounts for 2003–04 the hours of music and arts programmes broadcast were reported as:

BBC One	66 hours
BBC Two	289 hours
BBC Three/BBC Choice	168 hours
BBC Four/BBC Knowledge	1,213 hours

However, as stated in our response, the importance of music output continuing as a featured part of programming on both BBC One and BBC Two will remain key if the diversity of music included in the public television services offered by the BBC is to be appreciated by an effective audience reach.

The BBC is also clearly a major employer of musicians.

- The BBC runs five symphony orchestras in England, Scotland and Wales, and the BBC Singers, and their associated administrative teams—producers, concerts managers, marketing, education managers, librarians etc.
- This involvement alone provides 428 musicians directly employed by the BBC, plus associated administrative teams. The importance of the BBC in supporting these six performing groups across the country at a total cost of £28 million, is something which benefits the cultural health of the UK as a whole and should continue to be recognised as valuable for the BBC, whilst sending out important and positive signals about the value of music-making and the current state of cultural health.

Further information is available upon request.

Memorandum by the Newspaper Society

The Newspaper Society represents the regional newspaper industry. The industry's 1,300 regional and local titles have a readership currently measuring around 40 million adults. Regional newspaper companies are also developing and offering print, online and interactive media services so that they can anticipate and meet the needs of their readers and commercial customers. In doing so, they are in fierce competition at local and regional level for readers, advertisers and other users.

²⁹ Extracts from 2003–04 Annual Report and Accounts relating to music services and activities.

The BBC's licence fee funded and commercial operations affect the regional press. The BBC enjoys unique freedom of operation under the present Charter. It has used this regulatory liberalism to develop regional and local activities, including BBC online services. It is in direct competition with the regional press. Now it makes the case for a future broad public service remit supported by public funding and freedom of commercial activity. The BBC plans regional expansion and entrenchment, testing new services, exploring local markets, widening and deepening its local contacts and activities.

The BBC may in future justify further expansion of its licence fee funded operations by reference to the Government's enthusiasm for driving digital Britain, the opportunities afforded by the re-distribution of the spectrum after switch-over, and a nations and regions remit. Indeed, the Government's Green Paper, the Government's response to the House of Commons Select Committee on Culture, Media and Sport and OFCOM's review of public broadcasting services and local content services all suggest that the BBC will actually be encouraged to develop its local services, from ultra-local television to new interactive and web-based media, maintaining its network of local radio services and locally focused internet sites, while such services' content related print publishing is to be allowed to continue.

Under the Green Paper, the BBC will continue to benefit from regulatory freedoms denied to its competitors. It will still enjoy the freedom to pursue a breadth of licence fee funded and commercial multi-media activity at local and regional level in combinations denied by law to the commercial media.

However the Government has yet to recognise the potential extent of the danger to the commercial sector. The freedoms that it allows the BBC might be enjoyed at the local expense and to the detriment of local and regional media companies and their future development.

Whilst the Government acknowledges that the BBC does have a market impact, the Green Paper lacks definitive information about whether and how the Government will prevent adverse effects upon the BBC's commercial competitors.

Although OFCOM might have a role in testing the market impact, the BBC Trust will decide whether new services should be permitted, even if found to have adverse effect upon competition. Ministerial approval and oversight are seemingly downgraded to "process" observation. Public consultation prior to the decision to approve is apparently abandoned. The BBC Trust will police and enforce services, without any systematic review of services development or market impact, short of change of service. The Government says that it might consider whether there should be tighter regulation of the BBC's commercial services, but apparently rules out anticipatory intervention to ensure that the BBC acts fairly.

The Newspaper Society believes that the Charter Review has still to address the issues of fundamental importance to the regional newspaper companies. The Government has yet to demonstrate how unfair competition from the BBC will be prevented in the areas identified by the industry as being of particular concern.

These include:

- The expansion of the BBC's regional, local and ultra-local cross-media activities and the future content developments in the regions, targeted at the local consumer.
- The role of the BBC as publisher of print and electronic regional and local newspapers and magazines, including BBC online.
- The role of the BBC in the advertising, sponsorship and related markets at local and regional level, including any role as disseminator of third party information, paid for or free, through all and any medium and between individuals, businesses or the public sector.
- BBC cross-promotion of its own activities.
- Controls and enforcement powers to prevent unfair competition: market assessment and consultation of competitors; independent approval and enforcement; appeals; monitoring, review and powers to revoke approval.

The Society will be submitting a response to the Green Paper.

28 April 2005

Memorandum by ntl

This submission has been prepared by ntl in response to the House of Lords Select Committee's call for evidence on the proposals set out in the Department of Culture, Media and Sport's (DCMS) Green Paper on the review of the BBC's Royal Charter. Its purpose is to provide a brief summary of ntl's views in advance of the appearance of Mr Simon Duffy, our Chief Executive Officer, before the Committee on 8 June 2005.

The submission comprises:

- A summary of the company's views on the proposals laid out in the Green Paper and the key challenges in taking them forward.
- In the context of this overview, a brief response to those specific questions outlined in the Select Committee's call for evidence on which ntl has an opinion (see appendix two).
- A brief description of ntl's operations (see appendix one).

INTRODUCTION

ntl welcomes the House of Lords' Select Committee on the Review of the BBC's Charter as an important opportunity to discuss the future of the corporation and the role of public service broadcasting generally in the rapidly evolving digital world.

ntl believes the BBC has an important role in a vibrant and inclusive society. A world class public service broadcaster not only brings cultural and educational benefits to every household in the country but also sets a benchmark for other broadcasters.

At the same time, the transition from the restrictive analogue format to digital broadcasting is rapidly and permanently changing the context within which the BBC operates. As the UK's only fully publicly funded broadcaster in a world where people can access whatever material they want, across a range of platforms, dictated by their own schedule rather than the broadcaster's, we urgently need to define the corporation's role both as a provider and a distributor of content.

PUBLIC SERVICE BROADCASTING AND COMPETITION IN THE DIGITAL AGE

In recent years, digital technology has driven a dramatic proliferation in the number of television channels that are available in the UK. Despite this choice, ntl believes the BBC retains an important role in:

- Providing the public with a minimum level of high quality programming; and
- The kind of programming that the market, left to its own devices, would probably not provide.

Its public service mandate and the obligation to ensure universal and affordable access to its programming has meant that the BBC has, throughout its history, also been involved in the analogue broadcasting technologies by which its content has traditionally been distributed to the nation. As the digital revolution gathers pace, however, these technologies are gradually being supplemented by a number of competing digital platforms, including:

- Digital terrestrial broadcasting.
- Cable.
- Satellite.
- Digital subscriber lines.

Following the transition to digital broadcasting in 2012, consumers will be entirely dependent on such platforms for TV access.

Developing and maintaining these platforms requires sustained capital investment and enterprise. It also involves significant financial risk. For companies that are willing to take this risk, however, they also represent an exciting commercial opportunity. This is helping to attract investment, stimulate innovation, drive down costs and blur the lines between a number of previously distinct industrial sectors. In short, the distribution of digital content has become a highly competitive business.

ntl does not suggest that this should automatically preclude the BBC from investing in these digital distribution platforms: we recognise that, in the digital age, such an exclusion would make it difficult for the BBC to meet its public service obligations. At the same time, however, we need to acknowledge that any investment by the BBC in such technologies inevitably has a potentially damaging impact on this dynamic market.

A DECISION-MAKING FRAMEWORK

ntl operates a state of the art network that provides a uniquely versatile and interactive distribution platform for the digital age. We are keen to ensure that the BBC implements its remit in a way that does not compromise our ability to invest in the maintenance and enhancement of this unique asset.

For us, therefore, the future success of the BBC will depend on its ability to strike a delicate balance between its public service mandate and the legitimate interests of its commercial competitors. We, by and large, believe that the proposals set out in the Green Paper represent a sensible framework for striking this balance. More specifically:

- The five “purposes” that DCMS has identified to guide the BBC³⁰ are a reasonable interpretation of the BBC’s traditional mission and a useful starting point for deciding the kind of services it should provide in the future.
- The proposed division of responsibilities between the BBC management and the BBC Trust provides an opportunity to significantly increase accountability and scrutiny of the corporation’s activities.
- A “public value test” bringing together the BBC’s objectives with a methodical market impact analysis is the correct framework for the Trust to use in deciding whether or not a particular service falls within the BBC’s public service remit.
- Given its skills, competencies and market knowledge, Ofcom is the appropriate body to analyse the market impact of any given service.

ntl also welcomes DCMS’s proposal for further development of the public value test during the next phase of Charter Review.

Given the breadth of the BBC’s public service mandate, however, we need to recognise that a degree of judgement is inevitable—necessary even—in interpreting a concept as broad as “public value”. With this in mind, we believe that balanced membership, clear terms of reference, transparent decision-making and a robust mechanism for third party consultation will ultimately do more than formal definitions and guidelines to ensure the decisions of the Trust remain in step with changes in social expectations and market conditions.

GOVERNANCE RECOMMENDATIONS

With this in mind, we believe there are a number of opportunities to significantly enhance the effectiveness of the proposals laid out in the Green Paper.

Definition of Services

DCMS should define the term “BBC service” more precisely. This is important because, as the digital revolution gathers pace, we anticipate that many of the corporation’s activities will be focused not on the linear broadcast of a particular genre of material but instead on the delivery of undefined types of content (often on-demand) over a specific digital platform. We do not believe such ventures are necessarily beyond the BBC’s public service remit. We do, however, suggest that their potential to undermine competition is just as great as any traditional content-oriented TV channel and that they should, therefore, be subject to the same public value and market impact tests as any other service.

In this context, we are concerned that some of the corporation’s recent forays into digital technology have received less rigorous scrutiny than traditional content-oriented services. Going forward, we therefore believe that the BBC Trust should have an explicit obligation to apply the same oversight and criteria to all the corporation’s activities.

Third Party Request for Review

The Green Paper proposes that all new services are reviewed by both the BBC Trust and Ofcom. We believe, in addition, that there should be a formalised process for third parties to request:

- A re-evaluation of existing services whose licenses were granted under the corporation’s existing governance regime, particularly in situations where the market impact of the service was not clearly understood during the original market impact assessment.

³⁰ Sustaining citizenship and civil society; promoting education and learning; stimulating creativity and cultural excellence; representing the UK, its nations, regions and communities; and bringing the UK to the world and the world to the UK, *DCMS, Review of the Royal Charter*, page 5.

- An *ad hoc* re-evaluation of any service, whether existing or new, in light of significant changes in market conditions or public expectations.

Third Party Consultation

ntl believes that both the BBC Trust and Ofcom should be under an explicit obligation to:

- Announce in advance any review of a BBC service.
- Publish details of the proposed service in terms of content, target audience and distribution mechanism.
- Ensure a formal consultation process is in place that enables interested third parties to submit their views on either the public value or market impact of the service.

Reporting of Decisions

ntl welcomes the importance DCMS attaches to ensuring the work of the BBC Trust is transparent and accessible. As part of this, ntl submits that both the Trust and Ofcom should be required to publish a clear rationale for their licensing decisions in relation to both new and existing services, including an explanation of how any third party views have been taken into account.

Appeal Mechanism

We believe a speedy and transparent appeal mechanism is required enabling third parties to challenge the factual basis on which a licence has been granted or renewed.

DIGITAL BRITAIN

In addition to the key public purposes identified on page five of the Green Paper, DCMS also proposes a sixth purpose: building digital Britain. Concealed in this, we believe are two quite distinct objectives: ensuring an orderly transition to digital broadcasting; and building a digitally rich and dynamic nation. ntl supports both of these objectives but believes the BBC has a fundamentally different role to play in each one.

Digital Switchover

The principal objective of digital switchover must be to ensure the universal availability of public service television channels in the wake of the transition from analogue to digital broadcasting in 2012. With this in mind, we believe it is appropriate that, given its reach and public service mandate, the BBC has a leading role in:

- Establishing and managing “Switchco”.
- Establishing and funding schemes to help the most vulnerable consumers make the switch.
- Educating consumers about switchover and its implications for them.

We need to recognise, however, that digital switchover will involve many consumers making a choice between alternative and competing platforms, including digital terrestrial television, cable and satellite.

Digital terrestrial television and, in particular, the BBC’s Freeview joint venture provides a convenient, low cost way of delivering a suite of broadcast television channels to consumers in a digital format. ntl recognises that such a technology has a potentially useful role in ensuring universal access to public service channels in the age of digital broadcasting, notably for consumers who have no access to alternative digital platforms, such as cable or satellite, or do not wish to pay a monthly subscription fee.

ntl however believes that digital switchover also represents an important opportunity to raise awareness of (and access to) digital technologies with the capacity and versatility to deliver a range of more sophisticated interactive services that could genuinely transform the way we live, work and learn. Against these objectives, digital terrestrial television—while clearly the right solution for some people—should be viewed as a technology whose application is limited to entertainment.

The development of more sophisticated distribution platforms, moreover, is a highly competitive and capital intensive business. It is, therefore, critical that the arrangements for switchover balance the benefits and convenience of digital terrestrial television with the possible long-term implications, for consumers and the industry alike, of an over-reliance on Freeview. More specifically:

- All communications around switchover should be scrupulously “technology-neutral” and explain clearly and objectively the benefits and shortcomings of different platforms.
- Any further investments by the BBC in new digital distribution platforms should be subject to the same public value and market impact tests as any of its other services.
- Digital switchover should not be used to justify the corporation’s involvement in such ventures unless they are strictly necessary to provide a more affordable means of universal access to public service TV channels after 2012.

With this in mind, we stress that both the BBC and Switchco must work closely with other parts of the industry throughout the planning and implementation of switchover.

Building a Digitally Rich Britain

Over and above its contribution to digital switchover, ntl submits that the role of the BBC in building digital Britain should be limited to the delivery of its public service mandate as determined by the governance framework outlined in the Green Paper.

We respectfully challenge the Green Paper’s implication that the BBC should, as part of its public service mandate, automatically have a role in “developing and promoting new technologies” or “pay TV, broadband and hard disk video recorders”³¹. The development of such advanced technologies is a highly competitive business: it does not, we believe, require public subsidy.

We furthermore suggest that the BBC’s current promotion of Freeview on its public service TV channels constitutes a form of such subsidy, albeit an indirect one. It is, we believe, a commercially driven initiative targeted at the competitive market and goes far beyond the requirements of digital switchover.

INTERIM REVIEW OF CHARTER

Given the speed of change within the industry and the market, ntl supports calls for an interim review of the BBC’s Charter. This should be focused not on assessing the licence fee but rather the direction and oversight of its investment in digital technology to that point. The timing of this review could fall at a number of key points. We feel that the most sensible point would be immediately after digital switchover, assessing the BBC’s position after the analogue spectrum has been turned off and allowing for the terms of a review to be based on the evidence gathered from Ofcom’s periodic assessment of public service broadcasting.

APPENDIX ONE

A summary response to those questions outlined in the Committee’s call for evidence on which ntl has a view

1. *What should be the main duties of public service broadcasters? Are the core public purposes of BBC services, as defined in the Green Paper, appropriate?*

In general, we believe the public purposes outlined in the Green Paper represent a reasonable articulation of the role of a public service broadcaster. We believe, however, there is a need for greater clarity regarding to the BBC’s proposed sixth purpose of “building a digital Britain.”

2. *How do you see the BBC’s role as a world, national and regional broadcaster?*

ntl supports the BBC’s role as a global, national and regional public service broadcaster. We do not however believe that this should be used to justify the corporation’s involvement in digital distribution technologies that are commercially viable in their own right.

3. *Should one of the conditions of the new licence fee settlement be that the BBC play a leading role in the process of switching Britain over from analogue to digital television?*

ntl supports the BBC’s role as a leading player in the process of digital switchover. It must, however, work closely with its competitors throughout the process to ensure consumers understand the benefits and limitations of different platforms.

³¹ DCMS, *Review of the Royal Charter*, page 9.

4. *Is a Royal Charter the best way to establish the BBC? Is 10 years the most appropriate period for the next Royal Charter to run? Is there a case for establishing the BBC on a statutory footing?*

ntl supports a 10-year charter but, given the pace of change in the industry and the market, believes an interim review of the BBC's activities would be helpful in order to assess the market impact of its investments in digital technology.

5. *Is the proposal in the Green Paper to replace the BBC Governors with a BBC Trust and Executive Board the best way to address the issues of governance and regulation of the BBC?*

The proposed governance structure seems to be a sensible way forward and should provide for greater accountability and scrutiny of the BBC's activities.

6. *Is the role of the proposed BBC Trust sufficiently clear? How should the Trust be constituted? How can it be made accountable to licence fee payers?*

The role of the Trust as the guardian of the license fee payer is clearly articulated. The Trust's membership should reflect the diversity of modern society and include representatives from the commercial sector to help ensure it strikes the right balance between public value and market impact. The best way to instil accountability is to ensure all the Trust's decision making is accompanied by formal consultation with interested parties, transparent reporting of its decisions and a speedy mechanism for challenging the factual basis for its decisions.

7. *How should the rights of licence fee payers be defined and protected? How should the BBC handle complaints?*

ntl has no views on the precise mechanism by which complaints should be handled. We do, however, believe it is fundamental to the division of responsibilities proposed in the Green Paper that the resolution of complaints should be the responsibility of the BBC Trust and its supporting bureaucracy, not the BBC management.

8. *Are the measures proposed in the Green Paper sufficient to protect the independence of the BBC from outside pressure and to ensure that BBC broadcasts are accurate and impartial?*

ntl does not wish to express an opinion on this question.

9. *Are the current arrangements for the scrutiny of the BBC's spending by the National Audit Office adequate?*

ntl does not wish to express an opinion on this question.

10. *Are the Green Paper's proposals to regulate the BBC's impact on competition adequate? Should Ofcom be responsible for approving the BBC's internal rules governing their commercial businesses?*

ntl supports the proposition that a key function of the BBC is to deliver "high quality programmes that set a benchmark for its commercial rivals". There is, however, a fine balance to be struck in making sure that this aspiration is not permitted to compromise—inadvertently or otherwise—the interests of the commercial sector or to restrict opportunities for enterprise.

While the Green Paper makes clear the obligations and powers of the BBC Trust in respect of new BBC services or changes to its existing services, it is silent on situations where a new service is launched by the commercial sector in competition to an existing BBC service. More specifically, it is not clear whether the Trust will have the authority to explore whether changes in the market mean a pre-existing BBC service that has, in the past, been deemed to qualify for license fee funding is now interfering with the emergence of new services. With this in mind, we suggest that licenses for all BBC services should be subject to review and renewal by the Trust on a regular basis.

In order to ensure the BBC does not unfairly undermine competition, it is clearly important that

- The internal rules, policies and procedures that govern the BBC's commercial activities are closely aligned with the terms of its Royal Charter.
- These rules are reviewed regularly to ensure they keep step with any changes in the market that could have implications for the BBC's activities.
- There are effective mechanisms in place to ensure these rules are reflected in the organisation's behaviour and culture.

To give Ofcom a form of ex ante regulatory authority over these rules, however, seems heavy-handed, potentially bureaucratic and (assuming a robust and speedy complaints procedure is in place) unnecessary. Having said that, we believe it would be prudent for the BBC to consult regularly with Ofcom (as well as a number of other stakeholders, such as industry groups) when developing and reviewing its rules.

11. *Should there be a further review of alternatives to the license fee and if so when?*

ntl does not wish to express an opinion on this question.

12. *How can the plurality of Public Service Broadcasting be safeguarded in the digital age?*

ntl does not wish to express an opinion on this question.

APPENDIX TWO

A brief overview of ntl's operations

ntl is the UK's largest cable operator and a leading provider of broadband, digital television and telephony services. From the consolidation of the cable industry to the roll-out of broadband, the company has led the way in the UK communications industry for over a decade and currently has over 3 million domestic and business customers.

ntl's success is based on a £9 billion investment in a state-of-the-art, fibre-rich network whose speed, versatility and interactivity make it a uniquely versatile platform for the digital age. The company's network today passes some 7.9 million homes across the UK and offers customers competitively priced access to a choice of communication services and personalised entertainment services.

ntl is committed to creating a digitally rich and inclusive nation. As a result, it is continuously working to develop "next generation" residential, business and public services that have the potential to transform the way we live and work. It is also working to make the UK a safer and more secure place to use the internet.

DOMESTIC SERVICES

ntl broadband

ntl spearheaded the development of the broadband market and was the first company to gain more than 1 million broadband customers. Today, it provides a wide choice of broadband services and has recently upgraded its residential services so customers can choose between a 1, 2 or 3Mbps internet access connection.

As well as its own broadband customers, ntl provides a network platform for some of the UK's other leading internet service providers, including Tesco.net, Which?Online and Virgin.Net.

ntl digital television

ntl has been providing digital TV services since 2000. Today, it offers over 200 channels, as well as pay-per-view films and events, an electronic programme guide and "red button" functionality. The company pioneered interactive TV in the UK and its customers currently have access to approximately 60 leading brands ranging from news, games, shopping and entertainment.

ntl continues to shape the future of digital TV. During 2005, it will be rolling out a new video-on-demand service to selected cities across the UK. This means that its customers will have instant access to a wide choice of movies, as well as music, children's TV, general entertainment and adult programming, all available to watch at a time that suits them.

ntl telephony

ntl provides local, national and international telephone services for residential customers in its network areas. These include a flexible range of packages or plans to suit the lifestyle and needs of different households. These can be provided either in combination with a digital TV or internet service or on a standalone basis.

BUSINESSES AND PUBLIC SECTOR SERVICES

ntl provides services to more than 70,000 large businesses, public sector organisations and small and medium sized enterprises located within our existing broadband network in the UK. These services include a range of telephony, data and broadband internet services. ntl is also a pioneer of IP networks, enabling companies to run voice and data traffic across the same network.

Not only is ntl driving innovation in its own business, but it is also helping the public sector innovate in service delivery. With 50 years' experience working in the public sector ntl works with over 25 per cent of local authorities, 5,000 schools and 150 further and higher education institutions. ntl's deep understanding of public sector requirements has helped customers including Cambridgeshire County Council and Hertfordshire Grid for Learning maximise the benefits of communications technology, delivering the foundations necessary to help them meet Government targets of full e-government.

3 June 2005

Letter from the House of Commons Committee of Public Accounts**REVIEW OF THE BBC'S ROYAL CHARTER**

I was interested to see that the House of Lords has established a select committee to examine the Government's proposals on the BBC's future, and welcome the opportunity to contribute on behalf of the Committee of Public Accounts to your inquiry.

An important element of the proposals set out in the Government's Green Paper on the Review of the BBC's Royal Charter: A strong BBC, independent of government is the accountability of the BBC. The Green Paper refers to the current arrangement, initially put forward by Lord Sharman during the passage of the Communications Act, under which the National Audit Office is carrying out a programme of six value for money reviews at the BBC in the period up to the expiry of the current Royal Charter in 2006. However, in contrast to the arrangements that usually apply, the Comptroller and Auditor General as head of the National Audit Office cannot operate independently in choosing topics to examine and reporting to Parliament.

I understand that this arrangement is currently working well and the first of the reviews, on the BBC's investment in Freeview, was published in July 2004. But the Committee of Public Accounts considers that the arrangement can only be seen as an interim measure which must lead to the Comptroller and Auditor General being given full rights of access to the BBC to carry out value for money work and report the results independently to Parliament. The Committee is concerned therefore that the Green Paper appears to head off enhanced Parliamentary accountability, stating that the Government does not propose to add to the current arrangements on the grounds that the public do not want any increased Parliamentary involvement in the BBC (paras 5.61–5.62 of the Green Paper refer).

The various research reports that the Department for Culture, Media and Sport has published as part of the Charter Review process reveal, perhaps not surprisingly, significant uncertainties among the general public about what the current accountability arrangements are and the respective roles of the BBC Governors, Parliament and government in overseeing value for money. But this lack of understanding does not alter the case for the proper accountability to Parliament for public money that full rights of access for the Comptroller and Auditor General would provide.

Previous debates in the House of Lords on the BBC Charter have surfaced concerns that providing the Comptroller and Auditor General with access to the BBC might in some way stifle risk taking and innovation. And I am conscious that some commentators also perceive a threat to the BBC's artistic and editorial freedoms. However, I can confirm that the approach of the Committee of Public Accounts and the National Audit Office is very much one of supporting well-managed risk taking and innovation. The National Audit Office has a long track record of examining cultural organisations, and indeed the BBC World Service, without any question of interference arising. This shows that its approach to value for money work fits as well with creative bodies as with any other.

The work of the National Audit Office across the public sector does show, however, that there are a wide range of matters relating to sound financial management and the achievement of value for money that are just as relevant to the BBC as to any other organisation. These include, for example, arrangements for procurement, risk management and performance measurement. These are all areas where the National Audit Office's expertise could be brought to bear to give independent assurance to Parliament and the public that the BBC is using wisely the £2 billion of public money it receives each year from licence fee payers.

Providing the Comptroller and Auditor General with full access to the BBC to examine value for money would not interfere with the BBC's existing audit arrangements or undermine the independence of the BBC or the proposed BBC Trust.

I hope you will find this a helpful contribution to your work. I am, of course, happy to discuss in more detail if that would be helpful.

6 April 2005

Memorandum by the Lord Puttnam

1. THE ROLE OF PUBLIC SERVICE BROADCASTERS AND THE BBC

What should be the main duties of public service broadcasters? Are the core public purposes of BBC services, as defined in the Green Paper, appropriate?

The principal duty of a public service broadcaster is to deliver a range of services that fulfil the needs and interests of all the people of the UK and that would not otherwise be provided by the market. The core public purposes of the BBC as defined in the White Paper are all intrinsic to the ability to deliver this duty effectively.

I would identify one significant omission. In addition to “fostering creativity and talent”, one of the BBC's core duties should be to develop and invest in those skills which provide the underpinning of a strong and vibrant creative economy. The licence fee should be “venture capital” not just for the development of creativity but the entire range of skills which are deployed across the audio-visual sector. The BBC should work closely with Skillset, the Sector Skills Council for the audiovisual industries, and other relevant organisations and key employers, in ensuring that it meets these wider objectives.³²

How do you see the BBC's role as a world, national and regional broadcaster?

The Green Paper defines one of the BBC's core public purposes as “bringing the world to the UK and the UK to the world.” This is an attractive formulation but it must be given real substance if the BBC is to fulfil all of its obligations.

As the UK's national broadcaster, the BBC needs to have a central role within the communities across the country, while also acting as the connective tissue between them. A sustainable society rests on its ability to reconcile respect for diversity with an acknowledgement of our interdependence. The BBC is uniquely placed to enable us to recognise and respect the importance of both sides of that equation.

I believe that the BBC's role at a local level extends beyond the provision of services. The BBC should be embedded in the roots of communities through its presence in education and learning, in its promotion of the constructive activities of civil society, and by its ability to represent those communities to the world.

Embedding the BBC at a local level means reaching far beyond the artificial divides which have traditionally defined the BBC Regions and ensuring that the Corporation is genuinely active at an “ultra-local” level—whether that be villages, small urban communities or small groups of people divided by geography but united by a common set of needs and interests. Its role must not be defined solely in terms of delivery from the top down or from the centre to the periphery.

The BBC needs to have its roots embedded in community and then to feed up and out to the national and global stages. On the national stage, the BBC must remain the “gold-standard” for the provision of impartial news and information, thereby helping to encourage the engagement of citizens across the democratic polity. The BBC's role here is particularly pivotal at a time when many people profess disillusionment, or alienation from, the institutions which represent the foundations of democracy—including Parliament itself.³³

On the global stage, the BBC can play an invaluable role in helping to ensure that the UK retains cultural influence around the world. Part of the BBC's role is the continuation of public diplomacy by other means—that does not mean that it should become an instrument of the government of the day but rather that it can

³² I declare an interest as Chair of the Board of Patrons of Skillset.

³³ For the past year, I have been Chair of the Hansard Society Commission on “Parliament in the Public Eye”, set up to examine the way in which Parliament is communicated in the UK. Our report, to be published on May 24, will set out challenges both for Parliament and the media.

For background see: http://www.hansardsociety.org.uk/programmes/puttnam_commission

help to underwrite the values upon which our concept of genuine democracy and civil society depend. Through its array of activities (television, radio, online and so forth) it can ensure the values of impartiality, tolerance and respect for diversity are disseminated across the world, especially in places where such values are threatened or suppressed. Its power in this sphere exceeds that of any other media organisation on the planet—and in a globalised era, the BBC's international activities should be resourced and enabled to become more important, not less.

Should one of the conditions of the new licence fee settlement be that the BBC play a leading role in the process of switching Britain over from analogue to digital television?

Yes. I believe the outstanding diversity of content offered by BBC online has been a very powerful catalyst which has encouraged the take-up of internet access in general, and broadband services in particular. The Corporation is ideally positioned to play a similar role in driving switch-over from analogue to digital.

The consequences of digital switch-over reach far beyond television.

Digital technology provides the means for us to create a society in which the ability of all to participate in the democratic process is enhanced, in which access to learning, knowledge and skills are greatly increased and in which the competitiveness and productivity of our economy is transformed. For all these reasons, the BBC role as a public service institution has a crucial role to play driving forward the development of Digital Britain.

Delivering upon these objectives will not be cheap. Or to put it another way, building for the future is expensive. That is why the BBC must be properly resourced, on a sustainable long-term basis, to ensure that it can continue to discharge its duties to licence payers in a digital era.

2. THE BBC'S CONSTITUTION

Is a Royal Charter the best way to establish the BBC? Is 10 years the most appropriate period for the next Royal Charter to run? Is there a case for establishing the BBC on a statutory footing?

A 10 year Royal Charter remains the best means by which to secure the BBC at the present time. The proposed changes in governance need time to bed down before it would be appropriate to consider whether the BBC should be established on a different footing. I favour a mid-term review of the proposed new arrangements for governance. This would be an appropriate time to consider other issues, such as that of the Royal Charter—if such scrutiny appears necessary at the time. It remains arguable however that placing the BBC on a statutory footing would be likely to make its regulation, governance and strategies more rather than less susceptible to interference by government.

3. GOVERNANCE AND REGULATION OF THE BBC

Is the proposal in the Green Paper to replace the BBC Governors with a BBC Trust and Executive Board the best way to address the issues of governance and regulation of the BBC?

I support the proposal to create a BBC Trust and Executive Board. I believe that the key issue going forward is for the governance arrangements to evolve as the world in which the BBC operates evolves. This will require periodic scrutiny of these new governance arrangements to ensure that they are truly fit for purpose. I would therefore like to see a mid-term review of these arrangements, together with any other relevant issues (as set out in my response to Question 2 above).

The issue of compliance will be at the heart of the way in which the new Trust will be judged. If in future, the Trust truly holds the BBC to account on matters such as its relationship to independent producers and its investment in skills then it will be clear that we have entered a new, more robust era in which compliance is taken seriously. If on the other hand, as has happened with independent production in the past, compliance is treated as a matter of avoidance and evasion then the new system of governance will have failed, and it will be necessary to put in place alternative arrangements.

Is the role of the proposed BBC Trust sufficiently clear? How should the Trust be constituted? How can it be made accountable to licence fee payers?

The role of the BBC Trust is sufficiently clear. It should, as the Green Paper states, be directly accountable to the licence fee payer. Its membership must have the ability to reflect the diversity of the UK but its members should be elected on the basis of their expertise and their ability to reflect that diversity in its broadest sense and not their ability to represent a set of pre-determined groups or interests.

One mechanism for ensuring that the Trust is held accountable to licence fee payers is to ensure that a full and rigorous debate on the BBC's Annual Report is held in the Chamber of both Houses of Parliament every year.

How should the rights of licence fee payers be defined and protected? How should the BBC handle complaints?

The rights of licence fee payers should continue to be defined and protected through the process of Charter Review, including the concept of a mid-term Review as set out above. In the interregnum between such Reviews, the Trust should be held accountable for protecting these rights as defined by Parliament. The Trust must develop a procedure for dealing with complaints, building on, and where necessary strengthening, the mechanisms that are already in place under the present system of governance.

Are the measures proposed in the Green Paper sufficient to protect the independence of the BBC from outside pressure and to ensure that BBC broadcasts are accurate and impartial?

Yes, I believe so.

Are the current arrangements for the scrutiny of the BBC's spending by the National Audit Office adequate?

Yes. I do not believe that extending the powers of the NAO would be in the interests of the licence fee payer. As I argued above in respect of compliance, if the Trust is working effectively it should be providing the necessary scrutiny. If it is unable to provide such effective scrutiny then the governance arrangements must be deemed to have failed and alternative arrangements will need to be developed which may well involve a role for the NAO.

4. THE BBC'S IMPACT ON COMPETITION

Are the Green Paper's proposals to regulate the BBC's impact on competition adequate? Should Ofcom be responsible for approving the BBC's internal rules governing their commercial businesses?

Yes, the proposals are adequate. I believe it is appropriate that Ofcom, as the regulator of the commercial sector, should have responsibility for approving, and from time to time commenting on, the BBC's own rules governing its commercial activities.

5. THE FUTURE OF PUBLIC SERVICE BROADCASTING

Should there be a further review of alternatives to the licence fee and if so when?

When, and if, the aggregated audience share of the BBC's television channels falls, for three consecutive years, below 25 per cent of the total number of UK licence fee payers.

How can the plurality of Public Service Broadcasting be safeguarded in the digital age?

Through Charter Review (including a mid-term review of the next Charter as proposed above) and through the statutory requirement on Ofcom, as laid out in the Communications Act, to conduct a Review of Public Service Broadcasting at least every five years.

6. COMMISSIONING OF PROGRAMMING

What is the best way to ensure the BBC gives independent and external television and radio producers a fair chance to get their ideas commissioned? Should there be mandatory quotas for external commissioning?

I support the Government's view that the licence fee is a form of "venture capital" for the nation's "creativity". In order for the creative return on that capital to be maximised it is crucial that the BBC remains as accessible as possible to innovative and exciting ideas—whatever their source.

I believe that the Programme Supply Review commissioned by the Government set out a robust mechanism for ensuring that, in the future, the BBC's arrangements with the independent sector deliver optimal benefits to the licence fee payer. Mandatory quotas should be regarded as a floor and not a ceiling.

The BBC must be held accountable for meeting its statutory obligations in respect of independent production—as noted above in my response to Question 3, too often in the past, non-compliance has been treated by the Corporation as if it were a matter of marginal consequence. This is completely unacceptable. In future, the arrangements for ensuring compliance must be far more rigorous.

What is needed is a genuinely collaborative partnership with the independent sector in the best interests of the licence payer. I understand that PACT has significant issues with the Windows of Creative Competition concept as currently formulated. These concerns need to be addressed by the BBC in order to ensure that independent producers develop genuine confidence in the Corporation's willingness to deal with them on fair and equitable terms which at the same time deliver best value to the licence fee payer.

I support the Green Paper's contention (shared by Ofcom in its Review of Public Service Broadcasting) that the BBC:

"should stay out of bidding wars for expensive foreign imports except where it is clear that no other terrestrial broadcaster would show all the programmes or films in question or that the acquisition would clearly contribute to a public purpose."

Resources currently deployed on such acquisitions should be used to provide a significant boost to the UK independent sector for programming.

May 2005

Supplementary memorandum by the Lord Puttnam

I would very much like to add three points to my original evidence.

1. THE BBC AND LOCAL TELEVISION

I believe it is important to achieve a "copper-bottomed" assurance from the BBC that it has both the will and the resources to engage in what OFCOM describes as "ultra local TV". It seems to me that this is a sphere of activity in which the BBC can deliver real "added value" but only if it develops a strategy which can be actively pursued and properly resourced.

"Local digital television" represents the best means by which the Corporation could finally escape the yoke of ratings-driven programming; to drive its roots far deeper and more securely into the under-nourished soul of urban and rural "localities."

It would enable the BBC to focus on providing that sense of shared experience, of shared values, which together help promote "functioning" communities.

And this at a time when, as a result of devolution and the first stirrings of an entirely new constitutional settlement, a sense of "local identity" is once again becoming a potent social and political force—with consequences that are likely to affect the daily lives of every single one of us.

The BBC must identify and nourish experiences and values which, for a whole host of reasons, will never be the central concern of any broadcaster driven principally by the imperatives of the marketplace.

Take the example of news. In my experience, many, if not most, people living in rural areas tend to get their news from television and radio rather than from "national" newspapers. With ITV becoming ever more focussed on a national agenda, the BBC's role in supplying genuinely local and regional news on a more regular basis will become ever more important.

For me the worst case scenario is that the BBC will move half-heartedly into the local television space, and in doing so deter other, possibly more adventurous entrants.

I sincerely believe “local” to be an important part of television’s future, and I’m looking for the most concrete commitment possible or, in the alternative, an acknowledgement that the licence fee settlement is insufficient, leaving the space clear for new entrants to the television marketplace.

I’ll vigorously defend whichever clear-cut decision the BBC comes to, but what worries me is that the Corporation may attempt to opt for “the one in the middle”.

Too far engaged to allow the “local” market to open up, but not far enough to satisfy the full potential of local demand.

2. TRAINING

My second issue is the BBC’s commitment to training. I addressed aspects of this issue in my original submission, but further evidence has since come to light which gives me genuine cause for concern.

I do not believe I’m alone in believing that there is an increasing dissonance between what the BBC is saying about its commitment to training, and the manner in which it is pursuing that commitment.

There is now a great deal of evidence that the BBC is seeking to outsource much of its training. Whilst this may well make short term financial sense for the Corporation, few in the industry believe that it will not result in an overall drop in quality and commitment. It also fits extremely badly with the belief that, at least in part, the scale of the present licence fee relates to the assumption that the BBC is, to all intents and purposes, the industry’s default, high quality, trainer.

Like so many other elements of the rapidly developing “knowledge economy”, the industry’s medium to long-term training needs require a fully thought through and thoroughly integrated strategy, led by the BBC, and not outsourced to third party organisations. If the BBC feels it can no longer take the lead in such a strategy, then perhaps aspects of the industry’s expectation should be passed to Skillset, the Sector Skills Council for broadcast, film, video and multimedia, together with the resources to carry them out. This would of course have ramifications on any eventual licence fee settlement.³⁴

3. THE CREATIVE ARCHIVE

As a former film producer, I (rather unsurprisingly!) believe passionately in the concept, indeed the sanctity, of the creators’ rights. But I’ve long wanted to see similar commitment and imagination go into exploring a generous regime for sharing the treasure trove of knowledge that’s locked up in vaults throughout the UK. And for achieving that in a way that’s not just about passive consumption, but can instead become a serious catalyst for creative collaboration and learning.

That is why I would like to place on record my strong support for the Creative Archive, which has been developed by the BBC in collaboration with the bfi, Channel 4 and the Open University.

In a digital era we have to achieve a defensible and sustainable balance between rights and access, and I don’t for one moment pretend that’s going to be easy—one reason being that much of the debate on the subject has become so fractious and shrill that it’s currently all but impossible to pursue a balanced and constructive discussion.

I sense that those involved with the Creative Archive know how important it is to get that balance right. They are not jumping on anyone’s bandwagon and demanding that content is just given away. But they appear to understand that when public resources have been used to create content, then the overwhelming objective should be to maximise the benefit of that content to the people who helped pay for its creation in the first place.

The Corporation must therefore ensure that the Creative Archive is encouraged, and properly resourced, to become a “national treasure-house” for the digital age.

I sincerely hope you’ll find these additional thoughts to have been of value.

8 July 2005

³⁴ I declare an interest as a member of the board of patrons of Skillset.

Memorandum by the Radio Independents Group

1. In this submission we address particularly the Select Committee's request for evidence on the "Commissioning of Programming", "the BBC's impact on Competition" and "the BBC's Constitution".

EXECUTIVE SUMMARY

2. On the subject of the "Commissioning of Programming" we believe that a steady increase in the quota of BBC Radio production sourced from the independent sector will:

- benefit the listener;
- invigorate the independent production sector;
- assist the BBC in meeting its public service remit in an increasingly diverse market;
- go some way to meet those critics who want to see more small and medium enterprise involvement in BBC output; and
- provide a refreshing change to those BBC staff willing to embrace life in the indie sector.

3. Action should start immediately with:

- a more positive attitude from BBC Radio within the Charter Review process to increasing independent production
- a commitment to move to a True Quota of 25 per cent across each individual network (including digital stations and the nations and regions)
- a further 25 per cent of all radio output open to competition (a WOCC or "Window of Creative Competition" as it has become known) as a statutory target early in the life of the next Charter
- and a commitment to more transparency in the way the quota figures are calculated.

4. On the subject of "the BBC's impact on competition" we feel there should be:

- more explicit and detailed commitments to fair trading within the Charter
- an Independents Executive or similar "champion" within the BBC as a first recourse, and
- powers for an external regulator to intervene and adjudicate as final appeal.

5. On the subject of "the BBC's Constitution" we favour a Charter period shorter than 10 years.

INTRODUCTION

6. The "Radio Independents Group" was formed during 2004 to provide a voice for independent production companies supplying the BBC and commercial radio. Currently 64 companies are in membership, including the major suppliers for Radios 1, 2 and 3, a majority of those on the Radio 4 Registered Suppliers list, and contributors to Five Live, World Service, digital channels etc. We understand this represents over 50 per cent of the independents actively producing at this level; indeed we know from the interim results of a survey of our members that they were responsible for at least 89 per cent of independent production on Radio 3 last year and 77 per cent of indie programmes on Radio 4 (we expect those figures to approach 100 per cent when all results are in). The group's rapid growth is due primarily to the widespread disenchantment among BBC suppliers over the Corporation's Terms of Trade and independent production quota in recent years.

7. RIG members are also involved in programme production for the commercial sector, audio books, corporate audio, radio advertisements etc. Indeed several were making programmes for the commercial sector long before the BBC started accepting independent radio productions (a fact that is often overlooked in the Corporation's public statements on our sector). However, in this submission we concentrate on our members' dealings with the BBC.

SUPPORT FOR THE BBC

8. It is inevitable that in this submission we will concentrate on what we would like to see improved in the BBC's relationship with independent radio production companies, and how such improvements could be enshrined in the next Charter. That in turn requires criticism of the BBC's recent conduct in a couple of areas.

9. So let us first state that there is a very good reason why our members are enthusiastic supporters of the BBC as a publicly funded public service broadcaster. We think that BBC Radio provides high quality speech and music programming to a far greater extent than any other broadcaster in the world, commercial or public. Many of our members have come from a non-BBC background and want to make programmes through

independent production as the peak of their broadcasting career; others had long careers within the BBC before moving into the independent sector for the greater creative freedom and reduced bureaucracy it offers. All are united by their high esteem for BBC Radio programmes.

THE MAIN ISSUES

10. However that is not to say that the process of dealing commercially with the BBC during the life of the present Charter has been as satisfying as the programme-making. Since the “rights grab” that spread across all the media in the early Nineties, and the BBC’s enthusiastic adoption of “all rights” contracts, we believe that the BBC has unfairly used its power in the marketplace to impose Terms of Trade that disadvantage the Independent sector and in effect the licence payer. This has been compounded by the exclusion of independent suppliers from large parts of the BBC’s output and the allocation of only 10 per cent of what is left to independent production—a process that ensures only 6 per cent of BBC Radio output hours is sourced from indies.

INDEPENDENT PRODUCTION QUOTA

11. We believe that the combination of creativity and lean production provided by independent radio companies is essential to maintaining and enhancing BBC Radio’s reputation in an increasingly competitive radio market. It is also in tune with a long-term shift in the political and economic climate that increasingly recognises and values the contribution of Small and Medium Enterprises. The era when it was generally accepted that high quality national radio could only be provided by a single monolithic corporation is over and the BBC needs to move towards the acceptance of a larger and more diverse range of suppliers. Since the BBC has shown little progress in this direction in recent years we believe targets and timetables should be enshrined in the Charter and enforced by external regulation. We note with approval the recent announcement (7 December 2004) that the existing quota of 10 per cent of “eligible” output is to be extended to the “national” networks (eg Radio Scotland) and the digital channels (such as “6 Music”); however we note that this move was made by the BBC under pressure from the Charter Review process and we have not been given any assurance that further improvements are envisaged.

12. We feel that the arrangements for an independent contribution to BBC Radio should be comparable to those in Television and New Media (each a minimum of 25 per cent). We are aware of the line of reasoning that is summarised by the claim that “there is no market in independent radio production”. However although RIG members do supply Radios 1, 2, 3, 4, Five Live, and World Service, many are also involved in programme-making for the commercial sector, audio books, corporate audio, radio advertisements, web audio etc. Indeed several were making programmes for the commercial sector long before the BBC started accepting independent radio productions.

13. We do recognise that there is not precisely the same relationship between the BBC and its main commercial rivals as exists in TV. One reason for this is that commercial radio generally relies on much lower cost formats that have not been attractive to many indies. Another is that the BBC by its imposition of “all rights” Terms of Trade has left the indies with no secondary rights to re-sell its programmes either within the UK or overseas. This is particularly important with the growth of new national digital (non-BBC) radio stations and indeed the growing marketplace opening up through other forms of digital technology (mobile phones, PDAs, etc). This loss of secondary rights is not merely a theoretical restriction—even in the pre-digital era, many indie producers used to re-sell programmes (or sell shorter features as freelancers) before the imposition of all-rights contracts in the mid-90s.

14. The Code of Practice agreed between the BBC and Ofcom in respect of TV Independents has as one of its three basic tenets “the BBC has a role as the nation’s principal public service broadcaster to help stimulate and support the development of the independent production sector”. We believe that this statement should apply to the independent radio production sector too.

15. We also recognise the concerns about loss of jobs within the BBC in-house production departments. Many of our members began their working lives in the BBC and we are clearly not in the business of encouraging anything other than a strategically planned introduction of increased quotas, where natural wastage and migration into independent companies would have a major part to play during the life of the next Charter. We believe that the independent sector offers efficient as well as highly creative ways of generating content and as such will have an increasingly important role to play in the future.

16. We are also strongly of the opinion that the debate about the size of the indie quota should not continue to be based on the misleading proportion of “eligible hours”. While we fully understand the reasoning behind the BBC’s designation of certain genres as “ineligible” for independent production (though we do not

necessarily agree with it), there is no justification for making the leap to calculating the quota as a proportion of eligible hours instead of total output hours. The only purpose seems to be to inflate a rather meagre figure (6 per cent) into a slightly less unimpressive figure of 10 per cent. We prefer to use “True Quota” where the proportion of independent production is expressed as a proportion of BBC Radio’s total programme output (and the proportion reserved to the BBC is still ample to protect the genres such as news that they wish to keep entirely in-house). We note that our colleagues in PACT have the same concern where the indie TV quota is concerned.

17. We noted in a Charter Review Seminar last autumn a comment to the effect that the BBC should not be obliged to make programmes using people “other than those best qualified to do so”. Let us emphasise here that increasing the indie quota is not a way of forcing the BBC to commission programmes from any other than the best qualified. The point is that many of the best qualified people with the best ideas are in independent production companies, but under the current protection for in-house departments they do not have equal access to commissions. The formula suggested in para A3 of Appendix 1 would pave the way for a more meritocratic commissioning system and demonstrate the relative qualities of the two sectors.

18. Some examples of how the current quota could be improved to the benefit of BBC radio, the listeners and independent radio producers are given in Appendix 1.

19. Action should start immediately with a more positive attitude from the BBC to this subject within the Charter Review process, and a commitment to move to a True Quota of 25 per cent across each individual network (including digital stations and the nations and regions) with a further 25 per cent of all radio output open to competition (a WOCC or “Window of Creative Competition” as it has become known) as a statutory target early in the life of the next Charter. This should be backed up by a commitment to more transparency in the way the quota figures are calculated.

Conclusions on Indie Quota

20. On the subject of the “Commissioning of Programming” we believe that a steady increase in the quota of BBC Radio production sourced from the independent sector will:

- benefit the listener;
- invigorate the independent production sector;
- assist the BBC in meeting its public service remit in an increasingly diverse market;
- go some way to meet those critics who want to see more small and medium enterprise involvement in BBC output; and
- provide a refreshing change to those BBC staff willing to embrace life in the indie sector.

21. Action should start immediately with:

- a more positive attitude from BBC Radio within the Charter Review process to increasing independent production;
- a commitment to move to a True Quota of 25 per cent across each individual network (including digital stations and the nations and regions);
- a further 25 per cent of all radio output open to competition (a WOCC or “Window of Creative Competition” as it has become known) as a statutory target early in the life of the next Charter;
- and a commitment to more transparency in the way the quota figures are calculated.

FAIR TRADE

22. There is already a commitment to fair trading with suppliers in the existing BBC Charter but the Terms of Trade we have had for some years do not seem to us to be fair, and there has been no effective mechanism for changing them. The BBC is in effect a monopoly purchaser of high-quality radio programmes, particularly built features and documentaries, and has not hesitated to use that monopoly to dictate terms. We note with interest that a similar situation in the television sector was only resolved through political pressure and the imposition of fair terms of trade by Ofcom, and we have learnt the obvious lesson.

23. At the time of writing we have been in prolonged but fruitful discussions with the BBC on this matter and we anticipate agreement soon on much improved Terms of Trade for independent radio production. However, we are aware that this has been achieved during the period running up to Charter Renewal when the BBC is much more amenable to discussion. For this reason we are strongly of the opinion that there need to be safeguards to prevent the BBC rowing back on these improvements during the life of the Charter. We also

question the wisdom of a 10-year Charter period, as we had welcomed earlier suggestions that it might be reduced to five years.

24. At the very least we feel there should be more explicit and detailed commitments to fair trading within the Charter, with an Independents Executive or similar “champion” within the BBC (recruited from the independent radio sector or similar credible background) as a first recourse, and powers for an external regulator to intervene and adjudicate as final appeal. We note with approval the work of the BBC’s TV Independents Executive in the television sector.

Conclusions on Fair Trade

25. On the subject of “the BBC’s impact on competition” we feel there should be:

- more explicit and detailed commitments to fair trading within the Charter;
- an Independents Executive or similar “champion” within the BBC as a first recourse, and
- powers for an external regulator to intervene and adjudicate as final appeal.

26. On the subject of “the BBC’s Constitution” we favour a Charter period shorter than 10 years.

APPENDIX 1

PRACTICAL STEPS TO RAISE THE INDEPENDENT PRODUCTION QUOTA

A1. We do not regard raising the independent production quota by a significant amount as an insuperable problem, provided the BBC takes a positive attitude and looks for ways of raising the quota instead of reasons for not doing so.

A2. We are aware of the feeling in some quarters (inside and outside the Corporation) that having a fixed quota is a form of “positive discrimination” that would require the BBC to source a precise percentage of programming from the indie sector regardless of quality. Our record in winning Sony Awards out of proportion to our 6 per cent of output belies that fear, but we recognise it nonetheless.

A3. So we would accept and indeed welcome a formula that for example said that BBC Radio had to commission a minimum of 25 per cent of its total output from the independent sector, with a further 25 per cent open to competition from indie or in-house suppliers. There is an important proviso of course that the commissioning process needs to be sufficiently open and auditable to be sure that the 25 per cent is genuinely “open to competition”. If that is the case then it will be an excellent means of comparison between the indie and in-house suppliers, creating a true meritocracy that may in time render quotas unnecessary.

A4. We would also accept that the increase towards such figures should be phased over the early years of the Charter to minimise the impact on in-house staff and facilitate the transfer of those who want to work in the indie sector to do so.

2 May 2005

Memorandum by the Royal National Institute of the Blind (RNIB)

SUMMARY

RNIB, as the leading organisation representing the two million people with a sight problem in the UK, has over the years taken an active interest in the broadcast media because of the importance radio and TV play in the lives of blind and partially sighted people.

In this submission, RNIB is asking the select committee to consider that the BBC should be given explicit duties in its new Royal Charter to provide audio description, to contribute to solving technical access issues for disabled people, to build a digital Britain that meets the six key tests to make it affordable and accessible for blind and partially sighted people, to strengthen communities and citizenship participation of blind and partially sighted people and to stimulate and develop blind and partially sighted people’s talent.

In relation to the BBCs constitution and governance structure, RNIB agrees with the proposal for a 10 year Royal Charter but wishes to emphasise that the Trust should have a disability access expert amongst its members, that an advisory body to look at issues affecting disabled and elderly people should be set up and that all BBC advisory councils should contain representatives with disabilities or representatives from organisations representing disabled people.

In relation to the licence fee, RNIB suggests that the 50 per cent licence fee reduction should be extended to people who are registered as partially sighted.

Finally, RNIB is concerned that the BBC rules governing competition should not prevent the BBC from engaging in partnerships to produce and sell equipment that gives disabled people increased access to digital TV and radio services, especially where this equipment is not available in the mainstream market yet.

INTRODUCTION

1.1 The Royal National Institute of the Blind (RNIB) is the leading organisation representing the needs and interests of the two million people in the UK with a sight problem. We work directly and indirectly with blind and partially sighted people, representative organisations, visual impairment professionals, national and local government, the broadcasting and entertainment sector, and a range of public and private organisations.

1.2. The majority of blind and partially sighted people are over the age of 65. Sight loss (along with hearing loss and certain other disabilities) is for many people related to ageing. As forecasting indicates that older people will be in the majority by the year 2025, inevitably the number of blind and partially sighted people will increase. It is therefore crucial to ensure that current broadcasting regulation provides a solid basis for future access and services for blind and partially sighted people.

1.3 Radio is used widely by blind and partially sighted people. Since its Needs Survey³⁵ in 1991 showed that 94 per cent of blind and partially sighted people also watch television, RNIB has also taken an active role in highlighting TV access issues. It has worked to try to ensure access to programmes, services and equipment, both by direct work with broadcasters and manufacturers and by influencing legislation. RNIB's role has become particularly important since the introduction of digital television, which provides considerable opportunities with the availability of more channels and services, and better picture and sound quality. However, for the majority of blind and partially sighted people these advantages are offset by the problems in accessing services and equipment.

1.4 RNIB has found that the broadcast media play an important role in the lives of blind and partially sighted people by providing access to news, information and entertainment. Independent television viewing is facilitated by the provision of audio description, an additional narration that uses the gaps in the dialogue to provide essential information about scenery, action, costumes and other visual information to allow blind and partially sighted people to follow what is happening on screen. It takes away the dependence of relying on someone else to fill in the key gaps (or missing the end of a story because there is no-one to ask). As the service is only available on digital television, an increase in the provision of audio description would be an important incentive to make blind and partially sighted move from analogue to digital television.

1.5 Although RNIB concentrates on the needs of blind and partially sighted people in this response, it is important to understand how audio description can benefit much larger numbers of people:

- The cognitive benefits to older people were covered in the European AUDETEL Research from the early 1990s. Comparison tests were done that showed that people remembered more about storylines and characters after watching programmes that were described.³⁶
- It is felt that description helps people with learning difficulties and people for whom English is not their first language.
- In addition audio description is beneficial to sighted people whilst their attention is not fully on the television (eg when ironing, cooking, or when watching television in a car—a new development currently being promoted). Audio description can, therefore, enhance the viewing experience for most people, at different times under different circumstances.

1.6 RNIB is concerned that in the digital age accessing the broadcast media, because of the reliance on Electronic Programme Guides and other forms of screen navigation, is more difficult for blind and partially sighted people than in the analogue world. There is a real risk that at the time of digital switchover they could be left without access to digital television and digital radio services unless suitable access solutions are developed and implemented. RNIB has worked with a number of organisations over the past few years to identify and address the problems presented by digital television, in particular. The BBC has been a key organisation in access work to date. However, it is essential to have relevant legislative and regulatory frameworks to ensure that all issues are addressed, particularly to ensure that access issues are automatically included in any future technology developments. The BBC Charter is therefore a key part of this future framework.

1.7 RNIB was pleased that its campaigning on the 2003 Communications Act resulted in Ofcom having the responsibility for ensuring that many access measures would be covered by codes of practice or an appropriate regulatory framework. It is essential for the broadcasting industry to recognise and address the problems

³⁵ Blind and Partially Sighted Adults in Britain: the RNIB Survey, Volume One (1991).

³⁶ The European AUDETEL Project: Final Report (TIDE 1994).

caused by digital technology. Many of the issues covered by the Communications Act are relevant to the BBC through its Royal Charter.

1.8 RNIB has worked with many BBC departments to raise awareness of the needs and interests of blind and partially sighted people, and to try to develop good practice guidelines. RNIB, therefore, welcomes the opportunity to have input into the Committee's inquiry in order to contribute to the debate about the future of the BBC, and has responded where issues specifically impact on the lives of people with a sight problem. The new BBC Charter presents is a key opportunity to ensure that the BBC contributes to making broadcast services and technologies in the immediate and longer-term future accessible to blind and partially sighted people.

2. THE ROLE OF PUBLIC SERVICE BROADCASTERS AND THE BBC

2.1 *What should be the main duties of public service broadcasters?*

2.1.1 RNIB agrees with the public service broadcasting duties as outlined by Ofcom and the BBC, but wants to emphasise that the public service broadcasters also have the additional duty to provide access services for blind and partially sighted and deaf and hard of hearing people as outlined in the Communications Act. Audio description is an access service that makes a real difference for blind and partially sighted people and public service broadcasters should be required to provide audio description on 20 per cent of their programming by the 10th year of their digital licences.

2.1.2 Disabled citizens should be given the chance to access public service broadcasting just like their sighted peers, also when new technologies and distribution systems are being used. Public Service Broadcasters have already played a major role in developing and providing access services for people with a sight problem, but a range of digital access issues such as enabling voice output of electronic programme guides, enabling talking digital teletext and giving people full access to digital interactive and on-demand services have not been delivered on yet. It is essential that the contribution of public service broadcasters to resolving these does not only continue, but that public service broadcasting is better equipped and strengthened in order to deal with outstanding access problems and new access issues as they emerge at pilot project stage.

2.2 *Are the core public purposes of BBC services, as defined in the Green Paper, appropriate?*

2.2.1 RNIB agrees with the key purposes as outlined in the Green Paper (Review of the BBC's Royal Charter, DCMS, March 2005), but would like to add that these purposes need to more explicitly cover of the needs of blind and partially sighted people.

2.2.2 The requirement to provide audio description should be made explicit in the new Charter.

- The BBC has been at the forefront of developing access services for blind and partially sighted people. The work it has done on technical solutions for the delivery of terrestrial audio description has been invaluable. In addition the BBC started providing audio description at the same time as other digital terrestrial broadcasters, although it was not covered by the relevant legislation. Although the BBC has given the commitment to match such services, it is essential for the provision of audio description, including targets, to be included in the new Charter. The Green Paper recognises in its section on "Access for people with sensory impairments" where it states that the role of the BBC in leading the rest of the industry by setting its own targets . . . for audio description, and how it uses research to help the industry deliver better access services. (Green Paper, paragraph 8.6, page 90). RNIB very much welcomes this paragraph and agrees with DCMS that the BBC should be given a specific duty in this area. According to RNIB, in relation to audio description, the BBC should be an exemplar provider by ensuring that at least 20 per cent of its programmes carry high quality audio description for a wide range of programming on all its channels by the 10th anniversary of its digital transmission start date and this requirement should be incorporated in its Charter.
- When BBC materials and broadcasts are made available on new platforms such as the "creative archive" that will be downloadable over the internet, they should be required to carry audio description to the same extent that the BBC's traditional broadcasts do.
- The BBC should also ensure that when its programmes are released onto DVD, the audio description is included as an extra soundtrack that the viewers can opt to switch on or off when watching. This is technically feasible and cost-effective, but it is not happening. For example the new "Doctor Who" series is being audio described for TV broadcasting, but the audio description is not being incorporated in the DVD release. Because of this failing, the requirement to put existing audio description onto DVD releases should be incorporate in the new BBC Charter.

- The BBC should be required to include existing audio description tracks of programmes and audio description scripts in any sales of programmes to other broadcasters or other platforms.

2.2.3 The requirement for the BBC to continue to contribute to solving technical access issues for disabled people needs to be enshrined in the new Charter.

RNIB welcomes the Green Paper recognition that the BBC should make sure there is adequate access provided, across all media platforms, for viewers and listeners with sensory impairments (Green Paper, paragraph 2.14, page 50).

RNIB would like to see this accessibility requirement made more explicit to include the duty to develop technical solutions for broadcasting access services for sensory impaired viewers on all television platforms, including new alternative platforms and on-demand platforms.

The BBC therefore should be required in its new Charter to:

- Identify access problems at an early stage.
- Carry out technical research and user testing in these problem areas to achieve affordable open standard solutions that can be implemented across the industry.
- Use the BBC's technical experience to encourage the implementation of these standards in the UK and abroad. The potential of the BBC in international standardisation is already highlighted in the Green Paper (Green Paper, paragraph 7.4, page 83).
- Use the BBC's leverage to encourage more manufacturers to produce audio description capable Freeview receivers. Develop partnerships to ensure that in addition to the one Freeview receiver now in the market, more accessible digital receivers become available in the very near future.
- Ensure that not only digital TV, but also Digital Audio Broadcasting receivers, where listeners are currently expected to be able to cope with displays of text, are made accessible to blind and partially sighted people. These displays and navigation systems will be inaccessible to people with a sight problem unless leading broadcasters and manufacturers ensure that they can be accessed in alternative ways. The BBC has been in the forefront of DAB development and should use its influence to ensure that these services, including the channel information and navigation systems are made accessible to blind and partially sighted people.

2.2.4 The Charter should ensure the BBC is a key partner in building a digital Britain that is affordable and accessible for blind and partially sighted people.

As the BBC will play a key role in driving digital take-up and raising public awareness and providing information to the public at large about digital switchover, the BBC should according to RNIB be required by its Charter to play a key role in ensuring that the six key provisions to help solve the problems for blind and partially sighted people in relation to switchover are put in place:

- Financial assistance to meet the higher costs of the digital receiver with audio description capacity for blind and partially sighted people. Blind and partially sighted people on low incomes should be provided with a free receiver. This demand is in line with the recommendation of financial assistance made in the Green Paper (Green Paper, page 53).
- A free helpline service useable for blind and partially sighted people before, throughout and after switchover with staff trained to be aware of the issues affecting blind and partially sighted people and the services available to them. In this respect, RNIB welcomes the fact that the requirement to provide information about facilities of digital TV for disabled people is recognised in the Green Paper (Green Paper, page 52).
- A trusted domestic installation service with staff trained to install the box and able to advise blind and partially sighted people on how to use the box, how to navigate and how to access audio description. This installation service needs to be free for blind and partially sighted people on low incomes. RNIB welcomes the fact that this requirement is recognised in the Green Paper (Green Paper, page 53).
- A choice of freeview set-top boxes and IDTVs that can receive audio description and audio description needs to be available on digital cable and freesat.
- Solutions developed and implemented to make electronic programme guides, teletext and interactive services accessible for blind and partially sighted people through voice output. This ties in with the requirement for the BBC to solve technical access issues described in paragraph 2.2.3 of this submission.

- Blind and partially sighted people need to be given a serious incentive to go digital with audio description on 20 per cent of programmes by the 10th anniversary of the digital broadcasting start date of channels. The BBC needs to play a key role in promoting both digital television and audio description to blind and partially sighted people. This involves ensuring that all communications about these services are available in accessible formats and that on-air promotional material contains sufficient verbal information to make it fully comprehensible for viewers with sight problems.

2.2.5 The BBC should continue to strengthen communities and citizenship participation of blind and partially sighted people.

RNIB welcomes the recognition in the Green Paper of how important it is that the BBC should reflect modern Britain's diversity through the on-air portrayal of those with disabilities. (Green Paper, page 40)

Blind and partially sighted people clearly form a distinct "community of interest". Many blind and partially sighted people would welcome a more local radio and television news service and the opportunity to get more involved in their community, but would need encouragement and the facilities to enable them to do so. The success of the Glasgow-based internet radio station for Blind and Partially sighted people VIP on air proves that once the facilities are provided, the take-up by the community of blind and partially sighted people follows shortly. The BBC should be encouraged by its new Charter to further develop partnerships working to provide similar radio services to disabled people, including blind and partially sighted people, in all regions. This is a logical extension of its purpose to represent communities.

In addition, the BBC should continue to provide special radio programming for blind and partially sighted people like Radio 4 "In Touch", because this is of the type of programming will not be delivered by commercial broadcasters. We welcome the reference to the special role of the BBC in terms of programming not delivered by commercial providers in the Green Paper (Green Paper, paragraph 2.9, page 49)

2.2.6 The BBC should stimulate and develop blind and partially sighted people's talent, career opportunities, reflecting society.

The BBC should continue to play a lead role in ensuring that disabled programme makers and performers including blind and partially sighted people can become more part of the mainstream. There is the opportunity also for developing talent and for raising the profile of disability in society as a whole. As a global media player the BBC should set a high standard.

The BBC Charter should recognise that disabled people, including people with a sight problem can work in the broadcast media in a range of media areas, with the right support and should require the BBC to continue to offer work placement and career opportunities for disabled people.

3. THE BBC'S CONSTITUTION

3.1 *Is a Royal charter the best way to establish the BBC? Is 10 Years the most appropriate period for the next Royal Charter to run?*

The BBC constitution should guarantee that the interests of disabled people are best served by the BBC in the changing broadcasting environment. A 10 year Royal Charter seems the most appropriate means of achieving this aim.

4. GOVERNANCE AND REGULATION OF THE BBC

4.1 *Is the role of the proposed BBC Trust sufficiently clear? How should the Trust be constituted?*

4.1.1 As the governing structure is to be representative of the audience and within "public interest", the interests of disabled people, including of those who are blind and partially sighted should be strongly represented in the BBC governing structure. This could be secured by ensuring that one of the members of the BBC Trust is a disability access expert with thorough knowledge of audio description, of other access services for sensory impaired people and of equipment access issues mentioned above that affect blind and partially sighted people.

4.1.2 Too often the needs and interests of some groups in society are overlooked in the desire to achieve the largest audience or drive the take-up of new technology. To help the governing bodies have a greater understanding when dealing with specific issues RNIB recommends the setting up of an advisory body to look at issues affecting disabled and elderly people.

4.1.3 All BBC advisory councils should contain representatives with disabilities, or representatives from organisations representing disabled people.

4.2 *How should the rights of licence fee payers be defined and protected? How should the BBC handle complaints?*

BBC's needs to continue to ensure that the interests and needs of its audience are at its centre. It is essential that BBC staff dealing with the public receive thorough disability awareness training including training on sight problems, to help them understand the issues and frustrations of being blind or partially sighted, so that they can understand and deal effectively with queries and complaints.

Currently registered blind people have a 50 per cent reduction of their licence fee. As most people with serious sight problems will have difficulty navigating digital TV and will not be able to fully benefit from TV broadcasts without audio description, it should be considered to extend the half price licence fee exception granted to registered blind people to registered partially sighted people.

5. THE BBC'S IMPACT ON COMPETITION

5.1 *Are the Green Paper's proposals to regulate the BBC's impact on competition adequate?*

The arrangements to regulate the BBC's impact on competition should not prevent the BBC from taking initiatives in to stimulate the development of a market where private providers are hesitant to invest. For example the BBC should be in a position to engage in partnerships to produce and sell equipment that gives disabled people increased access to digital TV and radio services but that has not broken into the mainstream market yet, such as freeview boxes with voice output for the electronic programme guide.

6. CONCLUSION

6.1 RNIB recognises that the BBC has introduced a number of initiatives over the years to reflect the needs of people with disabilities, such as the transmission of specialist television and radio programmes, the promotion and provision of audio description, investment in technical research to provide access solutions for disabled people.

6.2 RNIB also recognises that the broadcasting world that will be covered by the new BBC Charter will be very different from that of the past and that the BBC needs to adapt to ensure its future. However, RNIB feels that it is essential for the BBC to remain in the forefront of broadcasting in the UK and as such it has a real role to play in ensuring that older people and those with disabilities are not disadvantaged in the future. This should be explicitly recognised in its new Charter.

6.3 RNIB would welcome the opportunity to discuss the issues further with the Select Committee to ensure that the new BBC Charter provides the right framework to ensure that people with a sight problem are not disadvantaged in the broadcasting world of the future.

29 April 2005

Memorandum by the UK Film Council

OVERVIEW

1. The House of Lords has invited evidence on the Government proposals for the BBC's future set out in the Green Paper, "Review of the BBC's Royal Charter: A strong BBC, Independent of Government." As the strategic agency for film in the UK, the UK Film Council is making a submission the keynote of which is the integration of the Government's policy for film and its policy for public service broadcasting. This submission reiterates the propositions elaborated in the UK Film Council's previous contributions to the Charter Renewal debate.³⁷

³⁷ See UK Film Council submission to the Select Committee enquiry, *Is There a British Film Industry?* available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmcmds/667/3062410.htm> and its submission to the Commons Culture Media and Sport Select Committee available at; <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmcmds/82/82ii.pdf>, pp 67–69.

2. As part of its on-going discussions with the BBC, the UK Film Council has urged a level of investment in the production and acquisition of UK films more consistent with the BBC's role, and that the BBC use its unrivalled media presence to actively promote film culture.
3. The UK Film Council endorses the Green Paper's recommendation (para 1.24) that "The BBC should stay out of bidding wars for expensive foreign imports except where it is clear that no other terrestrial broadcaster would show all the programmes or films in question, or that the acquisition would clearly contribute to a public purpose." We consider that the resources that the BBC currently devotes to expensive foreign imports would be better spent on UK film.
4. The BBC should be at the core of initiatives relating to at least four sets of public policy initiatives: creative industries, life-long learning, diversity and social inclusion. The BBC's contribution to these initiatives should be specific, transparent and measurable. The BBC should be subject to no lesser standards of accountability than any other public service institution.
5. To this end, the UK Film Council would look to Government, Parliament and the BBC itself to make explicit the BBC's objectives and how these objectives are to be fulfilled in relation to seven areas:
 - The enhancement of creative and technical capabilities in the audiovisual sector.
 - The development of the cultural industries in the Nations and Regions.
 - Media literacy.
 - Diversity in the representation of British society.
 - Inclusion of under-represented and currently marginalised communities and sectors of society.
 - Access to culture.
 - Access to heritage.
6. The achievement of the objectives of public policy in these areas depends to a very large extent on the performance of the BBC, the UK's foremost cultural organisation and by far the largest player in the production of content and its delivery.

FILM AND THE BBC'S CORE PUBLIC PURPOSES

7. The strategic objectives established by the Government for the UK Film Council are to:
 - (a) Encourage the making of distinctive UK films.
 - (b) Ensure audiences throughout the UK have access to the full range of British and international cinema.
 - (c) Support skills training.
 - (d) Support the development of opportunities for all UK citizens to understand and appreciate film.
 - (e) Support the development of opportunities for access to cinema history and heritage.
 - (f) Promote social inclusion and celebrate diversity.
 - (g) Encourage excellence and innovation particularly through the use of new digital technologies.
8. The relationship between the Government's strategic objectives for film and the core public purposes of the BBC is a symbiotic one. Therefore in advancing the strategic objectives for film, the BBC would be directly fulfilling its main duties. The corollary is that, if the BBC were to fail to develop and implement a strategy for film consistent with the strategic objectives set out above, it would be neglecting an important part of its main duties.
9. In its report *Is There a British film Industry* published in September 2003, the Commons Select Committee urged "the BBC to review its approach and level of commitment to feature film production, in consultation with the UK Film Council, given the significant comity of interests in this area."³⁸
10. The BBC needs to build with the UK Film Council and the UK film industry an enduring partnership for film based on shared objectives. These objectives extend beyond film production. That said, the UK Film Council remains convinced that the current level of BBC investment in new British films is inadequate for a public service broadcaster of the scale of the BBC. A nationally representative survey from TNS commissioned by the UK Film Council showed that 81 per cent of people believed that the UK terrestrial television companies should support the British film industry by showing more new UK films. 77 per cent agreed that British films are an important part of British heritage.

³⁸ See Paragraph H 6 at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/croselect/cmcmds/667/66709.htm#a22>

How the BBC can help the UK film industry to compete successfully

11. The BBC could and should intervene in three ways: by investing in talent and ideas; by showcasing the full range of UK and international cinema and by using its unrivalled media presence to promote and encourage film-going in the UK. Parliament has repeatedly noted the insufficient level of investment by the BBC in feature films. The range of films shown on the main BBC channels is far narrower than that seen in UK cinemas.

How the BBC can encourage the making of distinctive UK films

12. The BBC should increase both the number of films it supports and the level of its investment in those films. The BBC should also review the acquisition prices it pays for UK films. The BBC deserves real credit for investing consistently in distinctive UK films. But it could and should be doing much more given its power and centrality as a leading UK public service institution. In particular, the UK Film Council believes that there is an opportunity for the BBC to develop popular yet distinctive UK films which could play on BBC1 at peak times to replace US Studio blockbusters.

How the BBC can ensure audiences throughout the UK have access to the full range of British and international cinema

13. The creation of BBC4 has created a model which schedules a wider range of films and supports the distribution of those films in cinemas. But the level of this activity could be dramatically increased. It also has little echo in the BBC's other radio and television services. In addition, the very effective on-line content in support of film releases is almost completely confined to major Hollywood films. The BBC also needs to participate more fully and directly in the promotion of cinema-going and of specialised films.³⁹ The BBC could and should, in particular, engage with the development of the UK Film Council's Digital Screen Network.

How the BBC can support appropriate skills training

14. The BBC prides itself on being the largest provider of training in the UK audiovisual sector. It plays a leading role in Skillset and supports the National Film and Television School. The UK Film Council, in launching its training strategy, *A Bigger Future*, threw down a challenge to the UK audiovisual sector to boost its commitment to training, for example, by contributing to the £10 million-a-year skills training fund established by the UK Film Council and Skillset. The BBC is expected to play a central role in the achievement of the objectives of this training strategy.⁴⁰ The BBC could also play a crucial role through such training in contributing to the promotion of diversity across the UK film industry workforce.

How the BBC can support the development of opportunities for all UK citizens to understand and appreciate film

15. The UK Film Council itself is keen to work in partnership with the BBC and to assist the Corporation develop ways of working with other key film stakeholders such as; the British Film Institute, Film Education, the Regional Screen Agencies, the National screen agencies and educational institutions. Crucially, the UK Film Council together with the BBC, the British Film Institute and Channel 4 has created a Media Literacy Task Force to build on the outcomes of a major seminar on Media Literacy organised by the above partners in January 2004.

³⁹ The UK Film Council uses the following the term "specialised film" within a particular context as set out below:

The UK market, in common with most others around the world, is generally driven by mainstream, US studio-originated material. In such a context, specialised films offer audiences a different experience of cinema. Such films are often characterised by an innovative cinematic style and by an engagement with challenging subject matter. As such, specialised films will challenge and educate audiences of all ages and backgrounds.

Specialised films, therefore, are likely to be less obviously commercial and more difficult to market since they are economically more risky. Their theatrical release is usually characterised by the limited use of prints and a relatively low level of investment in advertising and publicity. Consequently, the opportunity to reach a wider audience is restricted.

Examples may include, but are not necessarily limited to:

- Foreign language films.
- Indigenous British films which are not aimed at the mainstream.
- Films which directly address cultural, social and political issues.
- Re-issues of classic and/or restored archive films.

⁴⁰ The UK Film Council endorses the points made on this subject by Skillset in its submission on Charter Review to the DCMS.

How the BBC can support the development of opportunities for access to cinema history and heritage

16. Access to educational opportunities around history and heritage should be a function of the Creative Archive. The BBC should also lead on a progressive approach to rights management for legitimate educational use. There is real scope here for a major collaboration with the British Film Institute which is a partner in the Creative Archive and which is responsible for the National Film and Television Archive.

The encouragement of excellence and innovation particularly through the use of new digital technologies

17. The BBC has demonstrated in recent years how extraordinarily effective it can be in driving the take-up of new technologies, notably in relation to digital radio, internet and digital terrestrial television. The BBC is also contributing to the education of a generation of people confident in their use of the digital technologies. But this function could also be further improved by connecting with separate but similar initiatives taking place across the UK. Such initiatives should include, for example, the work of both the British Film Institute and First Light, the scheme funded by the UK Film Council to support the making of digital short films by young people each year.

CONCLUSIONS

18. It is important to recognise the distinction between:

- (a) The BBC's industrial roles as the UK's major audiovisual producer, broadcaster and employer.
- (b) Its role as the principal public service provider of delivering information and entertainment in the UK.
- (c) Its educational role.

19. The BBC needs to develop, publish and implement a clear strategy for film articulated in relation to each of these roles, one that also demonstrates how it will deliver against Government policy objectives for:

- The enhancement of creative and technical capabilities in the audiovisual sector.
- The development of the cultural industries in the Nations and Regions.
- Media literacy.
- Diversity in the representation of British society.
- Inclusion of under-represented and currently marginalised communities and sectors of society.
- Access to culture.
- Access to heritage.

20. The BBC needs to be held accountable for the delivery of this strategy and be transparent about the total amount of money which it commits to all its film-related activities.

3 May 2005

Memorandum by Video Networks Limited

ABOUT VIDEO NETWORKS

Video Networks Limited ("VNL") is a broadband platform operator, which supplies the new home communications and entertainment service, HomeChoice. HomeChoice offers subscribers video-on-demand television, broadband internet connectivity and telephony services. It also provides a large suite of broadcast television and radio channels, including over 50 free and pay, live and timeshift channels, including all of the recognised and popular BBC television and radio services. In addition, on demand channels provide access to feature films, television programmes, music videos and public information services.

HomeChoice is supplied to customers via Digital Subscriber Line ("DSL") technology, using unbundled local loops on BT's Public Switched Telephony Network. To date, VNL has received inward investment of over £200 million to support the development of its technology, service and network to produce a truly innovative product offering.

After an initial soft-launch VNL launched its services commercially in late-summer 2004 in the Greater London area. At commercial launch, VNL had a presence in 73 BT exchanges and so was able to offer HomeChoice to 1.25 million households. VNL is in the process of expanding its network. By June of this year,

HomeChoice will be available to approximately 2.4 million homes across Greater London. VNL intends to expand its footprint to other regions in the United Kingdom in the future.

VNL welcomes the opportunity to comment on the Government's proposals to renew the BBC Royal Charter before the Select Committee.

THE ROLE OF PUBLIC SERVICE BROADCASTERS AND THE BBC

Should One of the Conditions of the New Licence Fee Settlement be that the BBC Play a Leading Role in the Process of Switching Britain Over from Analogue to Digital Television?

Content as a Driver of Switchover

Yes, but such a role needs to be closely defined. Specific obligations should be identified within the licence condition. The BBC's key contribution should be by its development of suitable content in digital formats, for delivery by all available platforms to the British public. By way of example, all BBC generated content (and, where possible, all content generated elsewhere and broadcast by the BBC) should be made available on an on demand basis, whether as part of a *time-shift* (or *catch-up*) service and as a library item. The BBC should, therefore, be mandated to clear such rights actively for all new items of content and for existing content.

Platform Neutrality

The BBC has been praised for its contribution to switchover thus far. That contribution can be measured by the take-up of Freeview. However, Freeview is but one of a number of digital television platforms available to the UK public. Its benefits are clear, but it is not without deficiencies. Freeview is a good solution for many UK analogue homes, but not all. The Green Paper refers to the need to ensure that the licence fee is used "to bring the benefits of digital TV to all". But current technological limitations mean that digital terrestrial services will not provide the ubiquity of digital services rightly sought. In some cases, it is unavailable either at all or in sufficient strength to deliver a watchable picture. In other cases, it fails to meet the home entertainment and communications needs of the modern family, particularly at a time when the Government is committed to developing Broadband Britain and lessening the digital divide.

At the very least, other platforms will be required to provide digital distribution in locations or to developments unable to receive adequate digital terrestrial signals. It is essential that the BBC's efforts to drive switchover are platform neutral, and that all digital television platforms are able to benefit from the Government-sponsored, BBC-led, switchover initiative. In an age where digital television services are available from many service providers, it is not acceptable for the BBC to continue to cross-promote Freeview exclusively (rather than digital television *per se*) on air, thereby distorting the market for the take-up digital services. The social objective is universal receipt of digital television, not universal receipt of Freeview.

The switchover to digital is but the first of a number of technological advances in television that the British public will enjoy over the next several years. New encoding standards (MPEG-4) promise to deliver improved picture quality while utilizing less bandwidth, enabling new services such as High Definition Television. In fact, the UK has the lead in this area, having achieved the world's first live transmission of a broadcast channel encoded in MPEG-4. That channel (*Toonami*) was launched in MPEG-4 by VNL on its HomeChoice platform in April of this year; the entire HomeChoice broadcast channel line-up will be broadcast in MPEG-4 within the next few weeks—another world first. Pay TV operators, such as VNL, cable and Sky, are incentivised to make sure their subscribers have access to the latest technologies, such as MPEG-4. Unfortunately, for the millions of people who have bought Freeview boxes, none of these boxes will support this new digital broadcast standard.

Should the BBC be mandated to take the lead in the public information campaign planned to support switchover, it must ensure that its message is clear and platform neutral. It must not display a bias (based on its vested interest in Freeview or otherwise) to the Freeview DTT platform and must ensure that the campaign's communications do not undermine the demand for those alternative platforms nor destabilise their existing customer bases. DSL, cable, satellite and terrestrial means of delivery should be identified as mechanisms whereby people would be able to access digital television.

THE BBC'S IMPACT ON COMPETITION

Are the Green Paper's Proposals to Regulate the BBC's Impact on Competition Adequate? Should Ofcom be Responsible for Approving the BBC's Internal Rules Governing their Commercial Businesses?

Ofcom and Competition Review

The Green Paper's proposals are not sufficient in VNL's view. We agree that Ofcom should be responsible for the internal rules via a licence per channel/business. We would favour, however, strict circumscribed rules on the BBC's commercial activities. The following is a starting point. The BBC's commercial services should:

- (a) be primarily directed at extending the BBC's brand abroad;
- (b) not directly compete with any existing UK commercial service dependent on private or public capital for its survival;
- (c) not damage the possibility of inward investment by damaging the growth of services requiring such investment;
- (d) wherever possible, be carried out in partnership with new or existing commercial entities;
- (e) encourage the proliferation of commercial partnerships in general.

Technological Innovation and Competition More Broadly

In a broader sense, it is important to recognise that many private enterprises are currently exploring new means of producing and delivering content to the public. The BBC should be required to support those enterprises. In some cases, investment of public capital will be warranted, perhaps where a formal joint venture is appropriate. In other cases, the BBC should be obliged to provide its content to others merely on fair, reasonable and non-discriminatory terms to stimulate growth in platform or delivery technologies where private enterprises are able to demonstrate an ability to increase the reach of the BBC.

The nature of the BBC's participation in service evolution, research and development is both sensitive and key. The Green Paper proposes "that the BBC [must] remain at the forefront of digital development". More often than not, the BBC is close to but not in the vanguard of research and development. Historically, other enterprises have innovated in the digital world, creating opportunities subsequently seized and markets subsequently dominated by the BBC. The BBC must not develop a behavioural pattern of adopting new platforms or technologies to the detriment of private enterprises and private investment. If that pattern is allowed to exist, the capital markets' confidence in research-led private media and communications enterprises will diminish; public capital will be seen to crowd out private capital and technological innovation will be stifled. Rather, the BBC should seek to partner with private enterprises. Its remit should extend to include a requirement to stimulate rather than suffocate research and development activity. Such stimulation should be by supporting the deployment of new delivery or communication technologies, as it has done successfully in the past.

THE FUTURE OF PUBLIC SERVICE BROADCASTING

Should there be a Further Review of Alternatives to the Licence Fee and if so When?

VNL believes that there should be a review as suggested by the Green Paper. In a period of such rapid and fundamental change, it is appropriate for the BBC's role to be questioned during the life of the Charter and for the continued relevance of the proposed funding model to be analysed. It is also absolutely critical that the well functioning and entrepreneurial market be allowed, and indeed encouraged, to develop new services and technologies to deliver content in innovative ways. The BBC should be central to this—but primarily as the largest producer of content in the UK.

VNL proposes that such a review takes place after implementation of digital switchover, or by 2012, if sooner.

How Can the Plurality of Public Service Broadcasting be Safeguarded in the Digital Age?

The plurality of Public Service Broadcasting can possibly be safeguarded by:

- providing for a robust BBC;
- adopting the proposed Public Service Publisher model; and

- introducing suitable safeguards that encourage responsible investing in content, platforms and broadcast technologies.

In addition it would be feasible for public service broadcasting to be supported via use of BBC funding.

THE FUTURE OF THE LICENCE FEE

To What Extent do you Think the Strength and Innovation of the UK Digital Technology and Broadcast Market is Dependent upon a BBC Funded for a 10-year Period from the Licence Fee?

It depends on what elements of technology and broadcasting you believe need further investment. As we have said above, private enterprises are incentivised to innovate and deliver technological advances to the British public. Leadership by the BBC is not needed in this area. In contrast, commercial organisations need to have clarity about the scope of the BBC's Charter to ensure they can generate a return on their investments over an extended period of time.

The UK is fortunate to have the BBC as a well-funded, quasi-independent broadcaster able to invest in research and development. The main concern is that the ability of the BBC to fund projects without capital risks experienced in the private sector means that it will be able to remove incentives for private investment in digital technology and broadcasting in the UK.

THE PLURALITY OF PUBLIC SERVICE BROADCASTING

Will the Green Paper Proposals Ensure the Plurality of Public Service Broadcasting on all Platforms While Preventing the BBC "Crowding Out" the Market for New Digital Services?

The nature of the BBC's participation in service evolution, research and development is both sensitive and key. As we have said above, the BBC must not develop a behavioural pattern of adopting new platforms or technologies to the detriment of private enterprises and private investment, for fear of diminishing the capital markets' confidence in research-led private media and communications enterprises.

Where possible, the BBC should seek to partner with private enterprises. Its remit should extend to include a requirement to stimulate rather than suffocate research and development activity.

UKTV is an example of collaboration and partnership between the commercial sector and the BBC. To what extent will such partnerships with the BBC be necessary to support the plurality of Public Service Broadcasting in the future?

The role of the BBC as a partner for new commercial development of content and services is important, particularly given the technological advances being made by third party organisations able to help the BBC increase the reach of its content in the digital age.

Collaboration with the commercial sector should be the Corporation's natural pre-disposition. However, exclusivity in virtually all forms is damaging to the commercial market in the UK.

COMPETITION

In their Written Evidence to us ITN Suggested that Some of the BBC's Activities in the New Media Sector (eg Mobile Phone News Texts and the Proposed Creative Archive) are Stifling any Chance of Pluralism in these Markets. Do you Share ITN's Concerns and if so What Solutions do You Propose?

One view is that the BBC is a publicly funded organisation moving seamlessly into the commercial world in the absence of capital and commercial risks. This means that it is able to launch services and support them for indefinite periods without appropriate or adequate supervision or response by commercial operators. The scale of the BBC, in combination with its brand strength and its ability to cross-promote its content and services, provides the Corporation with a marketing ability far greater than that of any commercial competitor, let alone new entrant.

By way of example, the BBC has undertaken extensive work on its Interactive Media Player (IMP). It is possible that the proposed service will both replicate a range of existing Internet products and services, and introduce a product which could distort the market for interactive television services.

THE BBC'S LEAD ROLE IN DIGITAL SWITCHOVER

BSkyB have Raised Concerns about the Proposed Sixth Public Purpose for the BBC—"Building Digital Britain"... They have Suggested it Could be Interpreted as Sanctioning an Extension of the BBC's Activities into Almost any Area using Digital Technology. Do you Share their Concerns?

Yes. Please see our comments above.

With the BBC Taking a Lead Role in Digital Switchover, How can Other Organisations in the Media and Broadcast Sectors Ensure their interests and concerns are taken into account?

A lead role should be regarded as distinct from leadership. The collaboration between the BBC and other broadcasters should be seen as a project for a common purpose not a process for the BBC to shape expectations and support its existing services.

If the UK is to achieve digital switchover, a clear, common message has to be delivered to consumers. As we have said above, such a message has to be platform neutral and based on a common consensus between the relevant stakeholders.

Informing the Public About Digital Switchover? Are you Satisfied that the BBC's Plans to Educate and Inform the Public About the Digital Switchover Will Meet the Needs of Consumers?

No. The plans appear at the moment to make a series of assumptions about consumer awareness and that consumers will wish to migrate to Freeview. Our experience is that consumers are aware of digital television but do not regard the switch to digital as adding any value to them. Packages offered by DSL, cable and satellite offer new functionality to digital TV in the form of broadband, time shift and PVRs which cannot currently be replicated by Freeview currently.

Should All the Costs for Educating and Informing Consumers about the Digital Switchover Fall on the Licence Fee Payer? Do Companies that Stand to Profit from a Better Informed Public Not Have a Role to Play?

The allocation of costs depends on how you define the benefit. The BBC is an essential service for any TV platform to support. Whilst consumers expect to be able to receive it as part of a digital package, there is no additional revenue gained by a platform operator in supplying such services.

Companies such as VNL are actively promoting digital television in all its advertising and not expecting contributions from its channel providers for the costs of such promotion.

FREEVIEW

Should Freeview Have the Capacity for Pay Services?

Historically, the part ownership of Freeview by the BBC was acceptable to commercial broadcast platforms as it was a continuation of the status quo, ensuring that the BBC continued to be available on a free to air basis. The existence of pay tv services on Freeview runs counter to that compact. Top-up TV uses rescued resources for terrestrial broadcasting and benefits from the large public investment into the Freeview platform. The introduction of additional pay TV services will produce further distortions in the UK's pay TV market.

Whilst in the course of the 10 year licence we agree that new payment models for BBC services needs to be examined, changing Freeview to a pay TV platform is not a suitable solution.

PUBLIC SERVICE PUBLISHER

Ofcom has Recommended Establishing a Public Service Publisher. What is Your View of This Proposal?

Digital Britain will be a completely different place from analogue Britain. The transfer of power from broadcasters to consumers will create the most significant change in the way we watch and use all form of media since the invention of television. PSB should be used to support this great change, enabling the new consumers to derive the maximum benefits from new technology, new formats and presentation of services.

VNL supports in principle the idea that public service funding should be calculated and subsequently awarded expressly for public service broadcasting activities. VNL believes that there should in fact be several funds, one of which would be dedicated to supporting public service programming on new platforms such as on demand, Internet and 3G platforms.

Analogue switch off provides an opportunity to build something new of great public value. The digital network that will eventually serve the whole of the UK will be capable of providing something that Britain needs, but has never had—community based television. The process of digitisation can encourage sharing, community building and the transfer of power from the scheduler to the end user. Furthermore, the ability to store vast quantities of content at low cost and to provide point to point services to small and varied interest groups means that communities can be easily reached and engaged. PSP generated content should be free to air and free to for any platform capable of supporting the content for onward transmission.

MEASURING PUBLIC VALUE

What Criteria Should be Used in Implementing the Proposed Public Value Test?

VNL is concerned that the concept of public value as applied to television broadcasting is subjective. At a top level, we would support the continued creation and distribution of high quality news, current affairs, educational and factual based programming.

In implementing a test to determine public value, the criteria could be as follows:

1. Is the proposed activity maintaining or extending the reach of BBC services to its UK audience?
2. Is there already one or more commercial operators supplying such a service in the United Kingdom? Will they have identical access to the inputs that the proposed BBC service/activity will have?
3. If such access is required, will it be made available in a timely fashion so that the commercial service can compete with the proposed BBC offering and/or offer additional services?

Who Should Have Responsibility for Implementing the Public Value Test—The Proposed BBC Trust, a Body Such as the Public Service Broadcasting Commission (as Proposed by Lord Burns) or Ofcom?

The application of the public value test must determine whether a new service would have a detrimental effect on any existing commercial operator. Ofcom is the organisation most aware of the requirements of the commercial broadcasting and media world. VNL therefore supports the suggestion that Ofcom should be integrally involved in carrying out the analysis behind the public value test.

6 June 2005