



## Response from Endemol UK plc to the DCMS Communications Review Discussion Paper

30<sup>th</sup> June 2011

***Question 10: Are there disproportionate regulatory barriers to investment in content? If so, what are they and how can increased investment in UK content production be encouraged?***

Endemol believes that the current regulatory framework relating to investment in UK content effectively incentivises investment from broadcasters and independent producers alike.

Prior to the Communications Act 2003, the Independent Production Quota had opened the door for independent producers to pitch their ideas but the Public Service Broadcasters (“PSBs”) at the point of commission were acquiring ownership and control of all rights in those ideas and in many cases were warehousing those rights, rather than exploiting them actively and effectively.

Since the Communications Act 2003, producers have been able to retain ownership and control of a far wider range of rights in their intellectual property, which in turn has incentivised them to invest in the development and exploitation of that IP.

As a result, the UK independent production sector has thrived over the past eight years, with producers able to diversify their commercial activities into new areas such as distribution and digital media and expand their production activities into major new territories such as the USA. The sector now has a healthy and diverse ecosystem of large, medium and smaller suppliers, with newer ventures such as Ruby, Left Bank and Firecracker flourishing alongside larger companies such as TalkbackTHAMES, All3Media and Endemol.

The most recent objective, systematic review of the current regulatory framework, a programme of external research and industry workshops commissioned by the Digital Britain review, concluded that “there is broad agreement that the Independent Production Quota and the 2003 Communications Act Framework for the Terms of Trade (governing the release of programming into the secondary market and new media rights) are working well.”<sup>1</sup>

But this has not prevented suggestions from some quarters that this regulatory framework has served its purpose and should be substantially revised in favour of the PSBs to the detriment of the production sector. Endemol opposes these suggestions on the grounds that, with regard to the commissioning of original UK television content, the key market conditions that informed the Terms of Trade in 2003 and the Digital Britain review of 2009 are more or less unchanged:

---

<sup>1</sup> *Digital Britain: Final Report*, June 2009 p.158

- BBC, ITV, C4 and Channel 5 still account for c.90% of spend on originated UK content<sup>2</sup>
- BBC and ITV retain significant in-house production divisions (and, since its recent change of ownership, Channel 5 is now actively exploring options to acquire in-house production capabilities)
- The balance of power financially still sits in the PSBs' favour. The resurgence of the UK television advertising market has restored ITV and Channel 4 to rude financial health, with ITV recording EBITDA of £408m<sup>3</sup> and Channel 4 recording Operating Profits of £49m<sup>4</sup> in their respective 2010 financial years.
- Producers still do not have the whip hand in discussions with broadcasters. The 'market' for many types of shows remains highly concentrated on the buy side (e.g. only BBC1 and ITV1 have the budget for peak-time 'shiny-floor' entertainment shows; only BBC and C4 commission significant volumes of high-end factual shows) and highly fragmented on the supply side.
- Although larger producers like Endemol in aggregate have significant volumes of business with the main PSBs, this turnover is not a homogeneous entity that can be switched from one broadcaster to another if sensible commercial terms cannot be agreed. Each show is commissioned separately, by separate commissioning editors, and each new show is commissioned on its own merits. PSBs typically secure first rights to recommission shows, making it very difficult in practice for independent producers to leverage a successful show to secure better terms for subsequent shows. That the leverage rests with the broadcasters on a commission by commission basis is demonstrated by the following:
  - ITV often requests independent producers to consider 'co-producing' their attractive programme ideas with ITV Studios; i.e. ITV's commissioning division is using its leverage to give its own production division a stake in 3<sup>rd</sup> party IP that ITV Studios has played no role in creating or developing. If a producer wants to win a commission whilst resisting this 'co-production' route, it may be required to 'buy' this by offering an enhanced net revenue participation to the broadcaster as 'compensation' for refusing the 'co-production' deal.
  - Tariffs offered by PSBs for all but a handful of hit shows are falling steadily. Even for successful shows, producers are often being offered tariffs for second and third series that are lower than the tariff for the first series; the producer has to choose between abandoning a successful franchise and accepting the recommission on worse terms.

The PSBs are also likely to argue that the current regulatory framework is not fit for purpose as the UK moves through digital switchover and significant growth in IP-based on-demand services. But analysis by Ofcom<sup>5</sup>, reproduced below, illustrates how the rights afforded to the PSBs under the current regulatory framework appear to have been sufficient for them to increase significantly their total audience share since 2003 via their development of multichannel portfolios:

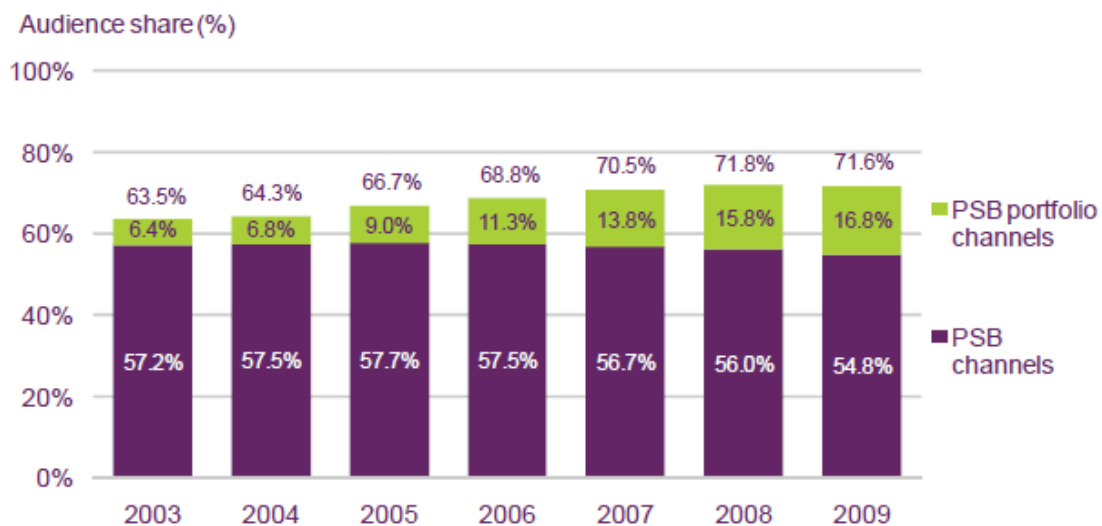
---

<sup>2</sup> *Ofcom's Second PSB Review, Phase 1: The Digital Opportunity*, April 2008, page 66

<sup>3</sup> ITV plc preliminary results for year ended 31 December 2010

<sup>4</sup> Channel 4 Annual Report 2010, p.104

<sup>5</sup> *Ofcom Communications Market Report 2010*, p.115



Source: BARB, all individuals

Likewise, the growth of the PSBs' Video on Demand services (e.g. iPlayer, ITV Player and 4oD) has been extremely strong, driven by the PSBs' control of valuable catch-up rights. For example, BBC iPlayer delivered 159m programme requests in May 2011 (up 22% vs May 2010)<sup>6</sup> and Channel 4 delivered 372m programmes via 4oD in 2010, a 71% increase on 2009<sup>7</sup>. Overall we see no evidence that the basket of rights afforded to the PSBs under the current regulatory framework is not broadly fit for purpose in the digital era. In fact, the recent demise of the independent SeeSaw VoD service and absence of any other major independent VoD services for television programmes in the UK may even suggest that the current regulatory framework is inadvertently acting as a barrier to entry to new entrants to the television VoD market.

In summary, Endemol is not arguing for the current regulatory framework to be preserved in aspic but nor do we see there is a convincing argument for wholesale changes to the current model, which in our view is balanced, proportionate and capable of evolving in step with the marketplace:

- The key drivers of the UK original content market are largely unchanged since 2003. Commercial PSBs are enjoying significantly improved financial returns as the ad market recovers from its 2009 nadir, and c.90% of all expenditure on originated UK content programmes remains concentrated under the purview of the PSBs.
- The independent production sector continues to mature, with a more sustainable ecosystem of businesses across the full spectrum from start-up to 'super-indie', investing heavily in creating new content and exploiting that content strongly in international markets.
- PSBs are using the rights they obtain at the point of commission to build strong digital businesses across multichannel TV and Video on Demand.

**Question 11: Should the core focus of public service broadcasting be on original UK content?**

<sup>6</sup> BBC iPlayer Monthly Performance Pack May 2011 p.4

<sup>7</sup> Channel 4 Annual Report 2010, p.72

Endemol strongly believes that the core focus on public service broadcasting should be on original UK content, for the following reasons:

- The UK's vibrant digital multichannel sector now provides consumers with an enormous range and volume of programme genres, including premium US content, news, sport, film and UK archive. There is no credible evidence of market failure in the supply of these programme genres to UK consumers and hence no strong argument for PSBs investing heavily in these areas.
- Conversely, for all the growth in multichannel viewing, UK digital channels (excluding PSB portfolio channels) have not become meaningful investors in original UK content; as discussed above, c.90% of all spend on original UK content remains with the PSBs.
- Ofcom's most recent review of Public Service Broadcasting found that "audiences want a wide range of high quality content which meets the public purposes, providing news, promoting learning, reflecting our culture, and exposing a wide range of views. High quality UK-originated programming plays an essential part in meeting these purposes, and in many areas this is currently only provided by public service broadcasters."<sup>8</sup>
- And this research is borne out by continuing strong audience ratings for UK originated content commissioned by PSBs, ratings that are significantly higher than for almost any acquired content

Endemol therefore believes that UK consumers are best served by a regulatory framework that encourages the PSBs to continue to focus heavily on UK original content for the foreseeable future.

---

<sup>8</sup> *Ofcom's Second Public Broadcasting Review: Putting Viewers First*, January 2009, p.3

## **About Endemol UK**

Endemol UK is the UK's largest independent production company and annually produces over 2,000 hours of output.

The UK Group incorporates a number of production brands including Remarkable Television, Initial and Zeppotron. These three specialise in a broad range of genres including gameshows, entertainment, specialist factual, comedy and scripted series.

In November 2009, the Endemol UK group further expanded with the acquisition of three of the UK's leading independent production companies Tiger Aspect, Darlow Smithson and Tigress. This significantly increased the company's output in areas such as drama, comedy, and factual programming.

Endemol UK is also a market leader in digital media and has established a Digital Board at the heart of the business incorporating the creative heads of the company.

Endemol UK's output includes:

- Prime time entertainment such as Total Wipeout (Initial for BBC One) and The Million Pound Drop (Remarkable Television for Channel 4)
- Drama series such as Secret Diary of a Call Girl (Tiger Aspect for ITV2) and Blood and Oil (Tiger Aspect for BBC Two)
- Comedy series such as 8 Out Of 10 Cats (Zeppotron for Channel 4), Benidorm (Tiger Aspect for ITV1), Charlie Brooker's News Wipe (Zeppotron for BBC Four and BBC Two) and Would I Lie to You? (Zeppotron for BBC ONE)
- Game shows such as Deal or No Deal (Remarkable Television for Channel 4) and Pointless (Remarkable Television for BBC Two)
- Reality blockbuster Big Brother (Initial for Channel 5)
- Factual entertainment such as Joanna Lumley on The Nile (Tiger Aspect for ITV1); Supersize vs. Superskinny (Remarkable Television for Channel 4) and Gok's Fashion Fix (Remarkable Television for Channel 4)
- Factual series such as the 'Ross Kemp' strands (Tiger Aspect for Sky One) and Stephen Hawking's Universe (Darlow Smithson for Discovery)
- Children's programming such as Tinga Tinga Tales (Tiger Aspect for CBeebies); Roar (Remarkable Television for CBBC) and I Can Cook (Initial for CBeebies)

Endemol UK has offices in London and Bristol and employs up to 1000 people at any one time.

The UK group is part of Endemol - a global leader in entertainment that comprises a worldwide network of companies spanning 31 countries on five continents.