



**MEMORANDUM
to the House of Lords Select Committee on the BBC Review**

From The Satellite and Cable Broadcasters Group (SCBG)

The SCBG has been invited to give oral evidence on Wednesday 15 June

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% to 2% 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 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 in a typical month.

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% 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 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% of news and current affairs, more than 90% of documentaries, more than 80% 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 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*
- *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 overarching 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.*

3. 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.*

4. 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.*
- *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%. 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% of UK households.

Extend digital audio broadcasting coverage to 90% 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% rather than 1.5% 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.*

5. 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 ten-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.