



Scottish Screen Comments for the Scottish Government on the European Commission's Consultation on Revised rules for state funding of public service broadcasting

Background

1. Scottish Screen is the national government-backed agency responsible for developing all aspects of screen industry and culture across Scotland, focusing on the following five priority objectives:
 1. **Education** – to ensure that people of all ages and backgrounds are inspired and equipped to analyse, appreciate, explore, create and share screen media;
 2. **Enterprise and Skills** - to ensure that there are appropriate levels of skilled individuals and viable companies to sustain all aspects of the screen industries across Scotland;
 3. **Inward Investment** - to promote Scotland as a dynamic, competitive and successful screen production hub;
 4. **Market Development** - to ensure that the widest range of screen product reaches and is appreciated by a diversity of audiences;
 5. **Talent and Creativity** - to identify nurture, develop, support and progress Scotland's screen talent and screen production companies.
2. Given our broad range of responsibilities, addressing both industry and consumer issues, we believe that public interventions need to be particularly careful to strike the correct balance between ensuring the creative endeavours of producers are adequately rewarded and at the same time recognising the public's entitlement to benefit from access to content.
3. However, we are not assured that the European Commission's current draft Communication on its proposed revision to the state aid rules governing funding of public service broadcasting (PSB) strikes the appropriate balance. Our main concerns remain those which we explained in February 2008, in relation to the Commission's earlier consultation on this matter, namely:
 - the serious threat which would be posed by **potential restrictions on the key role of PSB in maintaining and growing Scottish broadcasting and production**, particularly in view of its current precarious state and the widely supported recommendations of the Scottish Broadcasting Commission (SBC);

- the risk that the new rules will focus on **too narrow a definition of the PSB remit**;
- the risk that proposals regarding transparency requirements and proportionality could end up **undermining the broadly based and essentially holistic nature of PSB**;
- the need to ensure that the proposed revisions pose no **threat to the new BBC ALBA Gaelic language service**, including the key step of expanding its distribution to include Freeview; and
- the need to ensure that the proposed revisions do not **threaten the mutual interdependence of film and television** productions and broadcast.

Potential restrictions on the key role of PSB in maintaining and growing Scottish broadcasting and production

4. These are crucial times for the future of television broadcasting and production in Scotland. Even before the devastating impact of the current economic turmoil, particularly on the projected revenue streams of those PSBs largely reliant on commercial revenues, the difficulties facing the industry in Scotland were well documented, notably through the work of the SBC and Ofcom's current UK-wide PSB review. Despite these problems – or, more accurately, partly because these problems and inequities have been highlighted so clearly - there are reasons for genuine optimism. The BBC has made a clear commitment to increasing Scotland's share of network production to a minimum of 9 per cent by 2016, the SBC's proposals, which include the establishment of a new Scottish digital network, have received all-party support at Holyrood and stv's new strategy of choice is based on its future role as a distinctively Scottish PSB. The creative industries are clearly identified as one of the six key sectors for the Scottish economy, while the First Minister has emphasised the importance of broadcasting as a 'locomotive industry' for the economy, in addition to its cultural and civic roles.
5. It would be extremely unfortunate, to put it mildly, if Scotland were to be disadvantaged by the introduction of new restrictions on state funding of PSB at precisely the moment when there is a long-awaited opportunity to move the industry to a new level. We would wish to see reassurance that Scotland is not particularly exposed to this threat because of the fact that the revised rules will apply to new, rather than existing services. Would the proposed new Scottish digital service, the introduction of Scotland-specific production targets/quotas by the BBC and Ofcom and possible additional funding for stv's news and current affairs programming be regarded as 'new' services?

6. We welcome the statement in the current draft Communication¹ that, according to the Court of First Instance, “it is only where the alteration affects the actual substance of the original scheme that the latter is transformed into a new aid scheme. There can be no question of such a substantive alteration where the new element is clearly severable from the initial scheme.” However, we believe that greater clarity is needed on the Commission’s interpretation of how this principle should be applied in practice.²

Scope of definition of the PSB remit

7. We welcome the statement in the current draft Communication³ that “...a definition entrusting a given broadcaster with the obligation to provide a wide range of programming and a balanced and varied broadcasting offer is generally considered, in view of the interpretative provisions of the Amsterdam Protocol, legitimate under Article 86(2).⁴ Such a definition is generally considered consistent with the objective of fulfilling the democratic, social and cultural needs of a particular society and guaranteeing pluralism, including cultural and linguistic diversity. ...the definition of the public service remit may also reflect the development and diversification of activities in the digital age and include services which are not programmes in the traditional sense.”
8. Nevertheless, we continue to be concerned that the Commission's search for greater clarity on the definition of PSB may well result in the counter-productive emergence of an over-prescriptive ex ante approach which fails to recognise the essentially holistic nature of PSB.

Undermining the broadly based and essentially holistic nature of PSB

9. Although the draft Directive acknowledges some of the practical difficulty of separating the costs of activities falling outside the scope of the public service remit of traditional broadcasters from those activities regarded as being within the scope of the public service remit⁵ its approach continues to be based on the consumer-related concept of addressing market failure. It therefore fails to address the holistic character of PSB and, in particular, PSB’s broader cultural and civic objectives.

¹ European Commission, *Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (Text with EEA Relevance)*, November 2008, p.10, par.35, at http://ec.europa.eu/competition/state_aid/reform/broadcasting_communication_en.pdf .

² As set out at: European Commission, *Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (Text with EEA Relevance)*, November 2008, p.10, par.36, at http://ec.europa.eu/competition/state_aid/reform/broadcasting_communication_en.pdf .

³ European Commission, *Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (Text with EEA Relevance)*, November 2008, p.13, par.50, at http://ec.europa.eu/competition/state_aid/reform/broadcasting_communication_en.pdf .

⁴ Judgement in the case T-442/03, SIC/Commission, [2008], paragraph 201.

⁵ At European Commission, *Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (Text with EEA Relevance)*, November 2008, p.19, par.82, at http://ec.europa.eu/competition/state_aid/reform/broadcasting_communication_en.pdf .

10. We do welcome the Commission's statement, in relation to its approach to proportionality, that "In its assessment, the Commission will take into account the fact that, to the extent that public funding is necessary to carry out the public service obligation, the system as a whole has the positive effect to ensure universal, reliable and balanced offer in a context of increasing fragmentation of audiences and diversification of media services."⁶
11. However, the draft Directive then proceeds to note in the next sentence: "...this effect has to be balanced against possible negative effects of the public funding, such as preventing other operators from entering media markets, leading to increased market concentration or to possible anti-competitive behaviour of public service operators in the relevant markets."⁷ It would be interesting to see how these various effects are to be weighed up against each other.

Possible threat to expansion of the new BBC ALBA Gaelic language service

12. We would be concerned over any potential threat from the new rules to the new BBC ALBA Gaelic language service, particularly to the essential step of expanding its distribution to include Freeview. We would wish to see clear assurance that broadcasting for linguistic minority groups is outside the scope of the new rules.

Threat to the mutual interdependence of film and television

13. The BBC and Channel 4 (and to a lesser extent, the ITV network) are critically important to the funding and screening of independent film in the UK, including Scottish films. We fully support the views expressed by the UK Film Council in its February 2008 submission to the Commission, which stressed that it is vital that PSBs remain committed to the goals and implementation of film policy.

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⁶ European Commission, *Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (Text with EEA Relevance)*, November 2008, p.21, par.89, at http://ec.europa.eu/competition/state_aid/reform/broadcasting_communication_en.pdf .

⁷ European Commission, *Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (Text with EEA Relevance)*, November 2008, p.21, par.89, at http://ec.europa.eu/competition/state_aid/reform/broadcasting_communication_en.pdf .