

## Encouraging a successful UK media sector: the role of a new Communications Act

By Robin Foster

Jeremy Hunt's opening shot in the communications review sets out a welcome and important focus on growth and innovation – a breath of fresh air in a debate often dominated by the minutiae of public service broadcasting. In these tough economic times, a “path to sustainable long-term economic growth” must be the right overarching objective to set for the review. But it is a big leap from establishing a goal to actually achieving it, and some would argue that, in any event, government's scope for action in this area is limited. For the review to stand a chance of meaning something, we need to understand how relevant the media sector is to achieving the UK's overall growth agenda, and – if it matters – then examine what the government can or should do to help make it happen.

Although the industry itself has not been slow to inflate its claims to economic importance, there are good reasons for thinking that the UK media sector can play a useful part in our future economic revival. In my recent report, *Creative UK*<sup>22</sup>, I described the success of the UK audiovisual sector in terms of the economic value it generates (around £13bn of funding flows directly into the TV sector each year), and its support for a fast growing community of innovative and entrepreneurial UK businesses. The UK is often described as the world's leading creative R&D lab for television content, and has been especially successful in exporting TV formats around the world. And TV is just one part of a wider creative sector, which is characterised by strong and interlocking relationships between UK-based producers, talent, artists, designers and technicians across TV, films, games, animation, and other creative audiovisual and arts activities.

Looking to the future, continued growth in global content markets – especially in India and China – will present exciting new export opportunities which the UK industry could be well placed to exploit. UK TV producers are already second only to the US in terms of international content sales, and can draw on advantages such as the English language, our wider cultural heritage, a world-beating talent base, and the increasing overseas presence of our entrepreneurial production companies to build future growth.

But if the sector's future potential is clear, the role for government and regulation in realising this potential is less obvious. We are presumably not about to return to a world of central planning and extensive government subsidy. It is hard to promote economic success through regulation. Nevertheless, there are important issues for government to consider in at least three areas: reducing regulatory barriers to commercial growth, addressing any market failures, and – perhaps the biggest challenge – making best use of existing and ongoing public interventions in the sector such as the TV licence fee.

### Reducing regulatory barriers

The first priority for the review should be to identify any significant barriers to commercial success, and subject them to a rigorous cost/benefit analysis, properly factoring in the importance of the growth agenda. Such barriers might include the residual public service obligations applied to

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<sup>22</sup> Foster & Broughton, *Creative UK: the audiovisual sector and economic success*, April 2011

commercial broadcasters such as ITV, ownership and local content rules for commercial radio, and more generally, the way in which content regulation is applied to traditional broadcasters in a rapidly converging market. In a world already very different to that envisaged in the last Communications Act, there is a good chance that progress can be made in all these areas to reduce regulatory costs at little risk to the general public interest. A more streamlined regulatory approach would have a modest but worthwhile positive effect on the economic prospects for the sector. As important is the challenge of creating a new regulatory framework which is flexible enough to cope with a converging market for some years to come. As they think about investing in the UK media sector, commercial players will need to understand how the ground rules of the future will be applied to their businesses. Keeping things simple and as far as possible consistent across old and new media alike will be vital. Proposals to introduce new regulatory processes – for example plurality reviews – should be rigorously tested.

### **Dealing with market failures**

The best guarantee for economic growth is a competitive commercial market. However, markets sometimes need a helping hand. It is generally accepted that across the economy as whole, there risks being an under-supply in two key areas: training and R&D. Key workers leave for another company after receiving expensive training, innovative new products and ideas are easily copied by others. As a result, individual firms cannot realise the benefits of their investment in these areas and so under-invest. Governments can have a role to play in securing the right level of investment in both areas, and the UK media sector is no exception. Ensuring that the sector can draw on people with the right skills could be one priority for the review, especially in technology-based areas such as games and computer graphics where there are often large numbers of small firms. Using existing public funding to encourage higher levels of investment in innovative content and production techniques may be another area of focus. The BBC, for example, already plays a valuable role here – could it do more?

Related to this, the intellectual property regime has a key role to play, especially in this sector which relies so much on the exploitation of “intangibles”. Value only exists if IP is properly protected. As the Creative UK report points out, content producers increasingly have to recoup their investments across a whole range of different media, platforms and devices. Without an effective IP framework, the risk is that the media sector suffers a vicious spiral of declining income and investment. IP concerns extend to global markets, where a more robust regime will be critical for the long term export success of UK content producers.

Markets also fail where there is insufficient competition. In the UK media sector, significant competition issues might arise in a number of areas, including limited platform competition, control over scarce and valuable IP, market power in advertising, and extensive use of public funding. At the same time, markets are changing so quickly that standard competition tools and approaches may be found wanting. The communications review could make a valuable contribution here by reviewing options for improving the competition framework and its application, perhaps including more ex-ante powers for Ofcom, to bring its competition remit for media more closely into line with the current telecoms framework.

### Ongoing public interventions

The UK media sector is not short of major public interventions. The BBC is the most obvious, but the legacy PSB framework for the commercial sector, Channel 4, and key spectrum planning decisions are other good examples. Their value has been well-rehearsed but they can occasionally also hinder growth by constraining commercial strategies and distorting investment decisions. Perhaps the biggest challenge for the review, therefore, is how best to manage these interventions in a way which, while still delivering wider public benefits, helps secure the overall growth objective more effectively.

Longer term and sustainable economic growth will only come from commercial companies who have the capital and incentive to build their businesses and employ more people at home and abroad. But those companies can benefit immensely from the judicious expenditure by the BBC and others of public funding. (They can also be at risk if the BBC competes unfairly and aggressively against them). Asking the BBC to think even harder about the economic impact of its spending might be a productive approach here – making sure that a significant proportion of the licence fee is spent with external suppliers and in ways which help support innovative and growing businesses. The role of Channel 4 and its ownership status should also be considered anew from this more economic perspective.

Finally, a note of caution. The Secretary of State's open letter, while highlighting growth, appears to backtrack a little on page two, saying that "Though the focus of this letter is on the growth aspect of the review, the wider public interest will always underpin our approach to how any issues are addressed". This sets up a false dichotomy and suggests that non-economic goals will always trump economic objectives. In fact the real challenge for the future is about getting the right balance between these two goals and where possible finding policies which can achieve both. For too long, media policy in the UK has focused overwhelmingly on "PSB" rather than on economic value. If instead the review achieves a better balance there is a real chance that it will help secure a more dynamic media economy.