

# **Non-domestic TV channels: proposals to modify access service obligations**

**Response from the Commercial Broadcasters  
Association to Ofcom**

**December 2015**



**A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK**

## Executive summary

1. As Ofcom's most recent Television Access Services report<sup>1</sup> shows, the majority of COBA members' domestic channels continue to exceed their minimum statutory requirements by a substantial level. We believe this highlights COBA members' readiness to provide access services wherever practicable.
2. Extending access services to non-domestic services presents a number of significant challenges, as Ofcom is aware.
3. We also strongly welcome Ofcom's commitment to varying requirements according to audience preferences in different markets. This is important for both audiences and industry, to ensure that requirements are both relevant for viewers and proportionate for broadcasters.
4. We are concerned, however, that more needs to be done to understand these audience preferences. As far as we are aware, there is no evidence of a large demand for sign-presented programmes in other EU markets, and our understanding is that audiences in some countries would prefer to watch subtitled local programmes over sign-presented ones. This is based on our discussions with audience groups in the UK and overseas. Sign-language is only a first language for pre-lingual deaf people. For post-lingual deaf people, sign-language is an acquired language and they may therefore find it easier to follow subtitled programmes.
5. A key factor in the UK's domestic success in establishing access services has been basing regulation on a detailed understanding of audience needs. This reflects Ofcom's statutory duty under the Communications Act 2003 to ensure that its Code on Access Services takes into account "the extent of the benefit which would be conferred by the provision of assistance", including the number of persons who would benefit and the extent to which they would benefit.<sup>2</sup> We do not believe it is reasonable to introduce a rise in requirements without analysis of audience demand in each market.
6. For similar reasons, we ask Ofcom to examine the costs for industry in more detail and, in particular, to understand how these will vary across different markets. While Ofcom's market impact assessment acknowledges that the cost of providing access services differs from one country to another in line with labour cost differences, this is not the only factor that will vary between markets. A range of technical issues will influence costs in different ways. For example, it is less common for non-domestic channels to have ownership of a platform or control

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<sup>1</sup> [Television Access Services: Report for the first six months of 2015](#), Ofcom, 22<sup>nd</sup> October 2015

<sup>2</sup> Communications Act 2003, Section 303 (8)

the bandwidth that operators use, as is the case in the UK. This means that channels may not be able to obtain the additional bandwidth necessary to implement requirements. Alternatively, some operators may charge channels for the additional bandwidth that would be needed to broadcast such programmes.

7. In addition, many licence holders may also face significant operational issues that will differ from those in the UK. While broadcasters' commissioning processes and supply sector relationships may well be more established in the UK, many have never commissioned a programme of any type in certain EU markets. They will have to develop relationships with suppliers from scratch, oversee the development process, script edits, casting and financing. Depending on the market in question, this process could easily take a year.
8. Our strong preference from a cost and operational point of view is for additional subtitling. However, we stress that even subtitling presents a number of significant challenges to implement across different channels in different markets.
9. Therefore, while we welcome the proposed extension to the transitional period in principle, we are concerned that one year may not be sufficient. While licence holders have of course known for some time that some form of requirements are to be introduced, it is impracticable to start planning for the provision of access services in any meaningful way until it is clear which type will be required in each market, and at what level. It must be borne in mind that many broadcasters have never provided certain types of access services in particular markets, and that launching such services is no small undertaking, requiring, for example, commissioning, development and the setting up of entirely new processes.
10. We therefore ask Ofcom to establish the type and level of access services for each territory and set the deadline for implementation a year from that point. This will allow licence holders to plan in a reasonable manner for implementation. If the requirements are announced mid-way through 2016, that will be too late to implement them under the current proposed deadline of December 31 2016.
11. At the very least, a flexible approach to the transitional period may be necessary, with different deadlines set for different markets depending on what is required in those markets and the particular challenges in those markets.
12. We are also concerned that there is a lack of clarity about how Ofcom will determine whether the thresholds for audience share have been reached in different Member States. Clearly this presents a challenge and we understand that Ofcom intends to use standard industry data in different markets where possible, or data from other sources, including channels themselves, where standard data is not available. We agree this is a reasonable approach under the circumstances,

but at the same time are concerned that this creates a risk of using unreliable data. Where recognized and reliable industry standard data is not available in a market, we therefore ask Ofcom to commit to consult with the relevant channels about the best way to establish audience share.

13. In addition, we ask Ofcom to consider the potential for channels to drop in or out of scope from one year to the next if their audience share changes. We ask Ofcom to consider whether channels have achieved the relevant audience share consistently over a period of two to three years before requiring them to invest in the provision of access services. This would be particularly welcome where overseas markets are more volatile in terms of audience share than the UK, or in countries with less developed infrastructure than the UK where there are greater challenges for setting up access services.
14. Finally, on a broader point, it is regrettable that the statutory framework excludes on-demand as an option for delivering access services in non-domestic markets where rights are available. We firmly believe that audiences in many markets would like to access content on an on-demand basis, subject to rights being available, and that this desire will only increase in the future. In addition to meeting audience demand, such an approach would overcome a variety of technical and cost issues, allowing the BSLBT, for example, to make content available via its website for European audiences. This would be expected to lead to a greater range and volume of content being available than a quota-based linear approach. While we appreciate Ofcom's options are limited by current UK and EU laws, we ask Ofcom to bear in mind the benefits of a more flexible approach in delivering access services in the future during the ongoing debate over new AVMS rules.

## Introduction

1. The Commercial Broadcasters Association (COBA) is the industry body for multichannel broadcasters in the digital, cable and satellite television sector.
2. COBA members play a vital – and growing - role in the success of the UK broadcasting sector. The multichannel sector is one of the fastest growing parts of the television landscape. In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, and has helped establish the UK broadcasting sector as the largest in Europe by turnover.<sup>3</sup>
3. As part of this growth, the multichannel sector has doubled direct employment over the last decade.<sup>4</sup> In addition, it has increased investment in UK television production to a record £725m per annum, up nearly 50% on 2009 levels.<sup>5</sup>
4. **For further information please contact Anna Maria Missouri at [Anamaria@coba.org.uk](mailto:Anamaria@coba.org.uk) or 0203 327 4054**

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<sup>3</sup> Ofcom International Broadcasting Market Report 2013

<sup>4</sup> Skillset, Television Sector – Labour Market Intelligence Profile

<sup>5</sup> COBA 2014 Census, Oliver & Ohlbaum Associates for COBA

## Response to consultation questions

**Q1. Do you agree that the transitional period should be extended to 31 December 2016, during which time broadcasters would be able to provide additional subtitling (comprising 5% of their qualifying hours) on top of their existing subtitling quota, in lieu of their signing obligations?**

- 1.1 While we welcome the extension to the transitional period in principle, we are concerned that one year may not be sufficient. As Ofcom acknowledges, audiences in the various 28 EU Member States are likely to differ in their preferences for access services. This is a point we have highlighted previously and which has been confirmed in our discussions with audience groups in the UK and overseas.
- 1.2 The problem is that this uncertainty makes it impracticable to start planning for the provision of access services in any meaningful way until it is clear which type will be required in each market, and at what level. While licence holders have of course known for some time that some form of requirements are due to be introduced, it must be borne in mind that many have never provided certain types of access services in particular markets, and that launching a service such as sign-presented content is no small undertaking, requiring commissioning, development and the setting up of entirely new processes. It is impracticable to develop plans for providing such significantly new services without confirmation that they will be necessary, and we believe it would be disproportionate for the regulator to expect broadcasters to do so.
- 1.3 In addition to differing audience preferences from market to market, this uncertainty is exacerbated by a number of factors, including:
  - The significant technical and operational differences for each market. For example, channels may not control the bandwidth that operators use - in some markets certain channels are delivered via contribution feeds which operators uplink to their own satellites using their own capacity. It may be the case that platforms will restrict what is possible. Alternatively, they will pass additional charges on to broadcasters for the bandwidth.
  - The fact that some channels are facing significant jumps in their provision as soon as they cross the 0.05% share threshold due to being established in a market for a number of years.
  - In the most extreme cases, original sign-presented content will have to be commissioned from scratch. To do this, broadcasters would need to find production companies in markets where they may never have

commissioned this type of content. This will involve establishing a commissioning presence, developing material and planning schedules.

- 1.4 We therefore ask Ofcom to establish the type and level of access services for each territory and set the deadline for implementation a year from that point. This will allow licence holders to plan in a reasonable manner for implementation. If the requirements are announced mid-way through 2016, that will be too late to implement them under the current proposed deadline of December 31 2016.
- 1.5 Even subtitling, although regarded as relatively straightforward to implement compared to other forms of access services, may require a longer transitional period than that proposed in the consultation.
- 1.6 At the very least, a flexible approach to the transitional period may be necessary, with different deadlines set for different markets depending on what is required in those markets and the particular challenges in those markets.
- 1.7 In addition, we ask Ofcom to consider the potential for channels to drop in or out of scope from one year to the next if their audience share changes. In these cases, considerable resources may have to be deployed to provide access services, only for them not to be required a year later. We therefore ask Ofcom to consider whether channels have achieved the relevant audience share consistently over a period of two to three years before requiring them to invest in the provision of access services. This would be particularly welcome where overseas markets are more volatile in terms of audience share than the UK, or in countries with less developed infrastructure than the UK where there are greater challenges for setting up access services.

**Q2. Do you agree that requirements on non-domestic channels to provide minimum amounts of sign-presented programming should rise over time, as shown in the table at Figure 3, in the same way as the requirements on domestic channels?**

- 2.1 Ofcom should first establish the appropriate requirement in each territory and then whether there is a need for it to rise over time, and if so to what degree. We do not believe it is reasonable to introduce a rise in perpetuity without analysis of audience demand and supply costs in each market.
- 2.2 Furthermore, it is impossible for us to comment on the appropriate level and time frame until it is clear which type of access services are required in each market. The European television market is fragmented, with varying business

and funding models, as well as market and regulatory conditions in different Member States.

- 2.3 On this point, Ofcom's market impact assessment acknowledges that the cost of providing access services differs from one country to another in line with labour cost differences. However, a number of other important factors will also vary from one market to another, which we outline below:

Technical issues:

- 2.4 Firstly, a range of technical issues will vary between Member States, influencing costs in different ways, as we have noted in the previous question. While we agree with Ofcom to some extent that non-domestic broadcasters will be able to draw on the technical expertise they have acquired in providing domestic access services in the UK<sup>6</sup>, it is difficult to overcome technical issues in local markets over which broadcasters have no control.
- 2.5 Furthermore, while other technical challenges may not be insurmountable, this does not mean that they are not inconsiderable. Some European markets have a much larger number of distribution platforms than the UK, for example. According to Poland's regulator, Krajowa Rada, 694 cable operators were registered in 2013.<sup>7</sup> In Bulgaria, over 600 cable network operators were registered in 2013.<sup>8</sup> With so many distribution platforms operating across Europe, it is unclear whether they all have the necessary technologies in place to carry access services, and whether they have all transitioned from analogue to digital. If not, then incorporating access services may require extra capacity, which the platforms may not be able to provide, so the content would not reach deaf audiences. In that case channels would be burdened with a cost that would deliver no benefit to deaf audiences.
- 2.6 Finally, as Ofcom is aware, many multi-territory channels do not have the technology in place to implement a burnt-in sign-interpreted window on screen, or sign presented interpretation, as most of the channels are only able to transmit a single channel feed into multiple territories, meaning that programmes cannot vary from one market to another. We therefore welcome Ofcom's statement in the consultation that, "it is not reasonable to make broadcasters provide sign presented interpretation or sign-presentation on

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<sup>6</sup> Access services on non-domestic channels, Ofcom, October 2012, pg.114, point 2.40

<sup>7</sup> European Commission, Mavise, Database on TV and on-demand audiovisual services and companies in Europe, TV and on-demand audiovisual services in Poland, December 2013

<sup>8</sup> European Commission, Mavise, Database on TV and on-demand audiovisual services and companies in Europe, TV and on-demand audiovisual services in Bulgaria, December 2013



channels showing the same programmes at the same times in many different European markets.”

#### Non-Labour Costs:

2.7 Additionally, our understanding of the Eurostat data for labour costs used by Ofcom is that they “are made up of wages and salaries plus non-wage costs such as employers' social contributions.”<sup>9</sup> They do not, according to our understanding, reflect the significant differences in studios, post production and production equipment, and clearing any rights that are part of production costs.

#### Editorial and operational issues:

2.8 Finally, while Ofcom appears to dismiss overhead costs, there are potentially significant operational issues facing many licence holders that will be different from those in the UK. While broadcasters' commissioning processes and supply sector relationships may well be more established in the UK, many have never commissioned a programme of any type in certain EU markets. They will have to develop relationships with suppliers from scratch, oversee the development process, script edits, casting and financing. This process could easily take a year and will involve considerable resources in terms of time. It is conceivable that this would be managed overall from the UK, but without doubt an editorial team will need to be on the ground in the respective markets at key times.

2.9 It is also highly questionable whether many markets will have a supply sector with any experience of providing sign-presented content. The UK is relatively advanced in this respect but, according to the BSLBT, the signing supply sector here remains small and the deaf-led production companies are “struggling to survive at all.”<sup>10</sup>

2.10 Rather than a blanket approach, therefore, our view is that Ofcom should first establish the appropriate type of access services to be required in each market, and then look at the appropriate time line for introducing those services on a market by market basis.

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<sup>9</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Hourly\\_labour\\_costs](http://ec.europa.eu/eurostat/statistics-explained/index.php/Hourly_labour_costs)

<sup>10</sup> [Changes to signing arrangements for relevant domestic TV channels](#), Ofcom, May 2015, page 16, point 3.24 and 3.25

**Q3. Do you agree that any requirements to provide sign-interpreted programmes or extra subtitling should rise over time as indicated in the table at Figure 3?**

- 3.1 Many of the issues raised in the response to the previous question are relevant here, and we ask Ofcom to first establish the type of service to be required in a market, and then look at what constitutes a reasonable timeframe for implementation.
- 3.2 In addition, sign-interpreted programmes raise a number of specific issues. Our understanding is that compared to most European countries, the UK is relatively advanced in producing sign-interpreted programmes across all genres and we believe very few examples exist of other EU member states producing similar levels of such content. We therefore question whether many markets will have a supply sector with any experience of providing sign-interpreted content and therefore whether the programmes would meet the needs of audiences with sensory impairments across Europe.
- 3.3 Furthermore, although according to Ofcom's impact assessment sign interpretation is relatively low cost, it affects broadcasters' revenues in other ways. Audiences have complained that their viewing experience diminishes when watching sign-interpreted content as the signer featured in the corner of the screen decreases the image and programme quality. This therefore affects audience share, which consequently decreases advertising revenues and ultimately impacts broadcaster's bottom line.
- 3.4 Finally, as previously noted, we welcome Ofcom's statement in the consultation that, "it is not reasonable to make broadcasters provide sign presented interpretation or sign-presentation on channels showing the same programmes at the same times in many different European markets."

**Q4. Do you agree that, in cases where Ofcom has decided that a substitute requirement is appropriate, it should:**

**a) Consider proposals for alternative arrangements that would contribute to the provision of the same type of assistance; and**

- 4.1 We support the provision of alternative arrangements that meet the same objectives where appropriate.
- 4.2 The means of delivering access services are changing with more deaf audiences shifting their viewing to on-demand services, and with many now using a range of new technological innovations, such as apps, to access TV

programmes. In fact, we are anticipating more use of second-screen apps that will be synched with the linear stream in the future. It is therefore regrettable that the statutory framework excludes on-demand as an option for providing alternative arrangements as recent consumer behaviour indicates that greater flexibility is needed in the way access services are provided in today's converged environment.

- 4.3 We firmly believe that audiences in many markets would like to access content on an on-demand basis, and that this desire will only increase in the future. In addition to meeting audience demand, such an approach would overcome a variety of technical and cost issues, allowing the BSBLT, for example, to make content available via its website for European audiences. This would be expected to lead to a greater range and volume of content being available than a quota-based linear approach.
- 4.4 While we appreciate Ofcom's options are limited by current UK and EU laws, we ask Ofcom to bear in mind the benefits of a more flexible approach in delivering access services in the future during the ongoing debate over new AVMS rules.

**b) Make the consequential changes to its Guidance as shown in Annex 5?**

- 4.5 Yes, we welcome replacing references to 'sign-presented programming' with 'accessible programming'.

**Q5. Do you agree that the proposed minimum contributions towards alternative arrangements should rise over time, as set out in the table at Figure 3, and be protected from inflation by index-linking to the UK Consumer Price Index?**

- 5.1 Ofcom should first establish the appropriate requirement in each territory and then whether there is a need for it to rise over time, and if so to what degree. We do not believe it is reasonable to introduce an inflation-linked rise in fees in perpetuity without analysis of audience demand and supply costs in each market.
- 5.2 Furthermore, inflation levels and costs vary between markets, and this should be taken into account to ensure proportionate regulations.

**Q6. Do you agree with the proposed amendments to the Code and Guidance?**

- 6.1 Yes, except for our concerns raised in this submission.
- 6.2 Additionally, the examples of technical difficulty cited in Section 22 of the Code should also be extended to include other issues, such as we have noted above, that are more relevant to non-domestic services.

**Q7. Do you agree with Ofcom's initial view that requiring non-domestic channels broadcasting in the Republic of Ireland be subject to specific signing obligations would be disproportionate?**

- 7.1 Yes, we agree that it would be disproportionate to require non-domestic channels broadcasting in the Republic of Ireland to be subject to specific signing obligations as there is a small proportion of sign language users. Additionally, as the consultation notes, a high number of programmes shown in the Republic of Ireland are subtitled.
- 7.2 By the same token, many other markets have a comparable level of sign language users and should therefore not be subject to requirements to provide signing. The 4,500 Irish sign language users compares to 4,000 in Denmark<sup>11</sup>, 6,500<sup>12</sup> in Croatia, and just 1,500<sup>13</sup> in Estonia.

**Q8. Do you agree that qualifying channels targeting EEA EFTA countries should be required to start providing access services from 1 January 2017?**

- 8.1 While we welcome Ofcom's decision that it would be impracticable for qualifying channels to start providing access services in EEA EFTA countries immediately, we are concerned about the lack of data on access services costs in Norway. It should not be assumed that they correspond to the costs for subtitling and audio description in Sweden and Denmark. Although the Norwegian broadcasting market may share similarities with the Swedish and Danish ones, fundamentally they are three separate markets with different pricing patterns. This is demonstrated by the disparity in average hourly labour costs, with Norway averaging much higher at €54 per hour than Sweden (€37.4 per hour) and Denmark (€40.3 per hour)<sup>14</sup>.
- 8.2 Furthermore, we believe that it may be disproportionate to require channels to provide sign-presented content in Norway as there are even less sign-

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<sup>11</sup> European Union of the Deaf: [Denmark](#)

<sup>12</sup> European Union of the Deaf: [Croatia](#)

<sup>13</sup> European Union of the Deaf: [Estonia](#)

<sup>14</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour\\_costs\\_per\\_hour\\_in\\_EUR,\\_2004-2014\\_whole\\_economy\\_excluding\\_agriculture\\_and\\_public\\_administration.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Labour_costs_per_hour_in_EUR,_2004-2014_whole_economy_excluding_agriculture_and_public_administration.png)

language users than in the Republic of Ireland (2,500<sup>15</sup>). At the very least, however, we ask Ofcom to establish an evidence base for Norway as a distinct market before setting requirement levels.

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<sup>15</sup> European Union of the Deaf: [Norway](#)