

ERICSSON/CREATIVE MERGER INQUIRY

Summary of hearing with the British Broadcasting Corporation held on Thursday 21 November 2013

Background

1. The British Broadcasting Corporation (BBC) is a British public service broadcasting statutory corporation. Its main responsibility is to provide impartial public service broadcasting in the UK, the Channel Islands and the Isle of Man. It is headquartered at Broadcasting House in London and has major production centres in Salford Quays, Belfast, Birmingham, Bristol, Cardiff and Glasgow, and smaller production centres throughout the UK. The BBC is the world's oldest national broadcasting organization and the largest broadcaster in the world by number of employees, with about 23,000 staff.

Playout requirements

2. The BBC had a number of network channels, with BBC One and Two the most high profile. These two channels had had nations and regional variations for many years. It had regional variations only on BBC One and had nations variations on both BBC One and BBC Two. Red Bee Media (RBM) was responsible for playing out the BBC network streams, whereas the BBC was responsible for playout in the nations and regions.
3. Regions were branded, for example BBC London or BBC South East, during the regional news or a small number of other regional programmes. The nations' branding was always in place, for example BBC One Scotland, with equivalent branding for Wales and Northern Ireland. The BBC did not want to be seen as just a London-centric organization, and the way the channels were presented with nations' idents, graphics and voice-overs that reflected the nations' identity was important to viewers and the BBC.
4. The BBC's other channels did not have regional or nations variants, and therefore were less complex. These channels included BBC Three, BBC Four, CBeebies, CBBC, BBC News, BBC Parliament and BBC Alba.
5. One way the BBC was different from other broadcasters was that its nations commissioned programmes which were shown only in that part of the country. Sometimes licences for sports events would be bought at the nations level, for example more rugby matches covered in Wales, where showing this across the entire network would either be too expensive or not as appealing to the audience. Major cultural events, such as Eisteddfod in Wales and the Edinburgh Festival in Scotland, featured more prominently in the nations than the network programming.
6. The nations' streams added further complexity when the schedule changed as they were totally reliant on the network feed outside of scheduled regional news opt-out slots.
7. BBC One and Two were long-standing mixed-genre channels and a mixed-genre channel had audience expectations which changed frequently. Balancing and managing the output on these channels was extremely difficult due to the regular combination of live and scheduled events. It had obligations to show some events in

their entirety, which would then affect the rest of the schedule. For example, it had to balance the viewing preferences of the sport audience by staying with a sports fixture that overran against a non-sport audience that was joining to watch something completely different.

8. RBM managed its [X], which was aligned to maintaining the network output and making sure it was rock solid in terms of resilience.

Staff

9. BBC One, Two, Three and Four each had a Playout Director in the evening, as well as a live announcer for each of BBC One and Two, with recorded announcements on Three and Four. It also had a Playout Editor who oversaw playout of all network BBC channels. All of these roles were provided under the RBM playout contract and these staff were RBM employees.
10. The nations each had one person, an announcer/director, on duty who was BBC staff. The nations' announcer/director provide continuity announcements over their nations feed, opt out of and back into the network feed, and had to react when the network schedule changed. The nations relied on the Playout Director communicating the schedule changes with the nations via network talkback.
11. If the nations were opted out when the network was experiencing a problem, they would be expected to rejoin at the same time as dictated by the network centre (operated by RBM). One challenging example was one of the Queen's jubilees, as it coincided with major sport events which overran. The challenge was when the nations were opted out, showing pre-recorded and set duration programmes, and getting everyone to rejoin an amended schedule.
12. The combination of events and live events where operational challenges occurred was not every hour, every day, but it was the unpredictability of the combination of events that provided the challenge to delivering playout.
13. Some scenarios could be predicted (a sports match running into a pre-recorded programme or another live event) and Playout Editors would work with the BBC schedulers to plan contingency schedules.
14. The BBC's public service obligations required it to act very quickly when major news stories broke, and it rehearsed regularly how to break into its schedule within 2 minutes. This was led operationally by RBM.
15. The Playout Director was the key operational person on each specific channel, and the Playout Editor was a more senior person who took a pan-BBC view of all channels, and sat behind the Network Directors. BBC One and BBC Two were operated from reactive suites, each with a control room housing the Network Director and a soundproofed booth housing the announcer. BBC Three and Four (during the evening) and the children's channels (during the day) were operated from a combined central space, with the Editor's desk at the back of the room with an engineering support position and an Electronic Programme Guide (EPG) person updating the EPG.
16. Operational teams in RBM were largely dedicated to the BBC contract and therefore would be subject to TUPE regulations and eligible to move to a new provider in future. This included the announcers. The Playout Editors came up through the ranks of Network Director and some of those who remained were ex-BBC employees. There was a degree of turnover of Playout Directors and the BBC had been keen to

stabilize the team for the Queen's Diamond Jubilee and the Olympics. It was strict about the training that Payout Directors underwent before they were entrusted with a BBC channel. It would expect the operational teams to move to a new supplier under TUPE and understood the threshold to be over 50 per cent of time spent on one contract.

17. However, the BBC's main concern would be [redacted]. These staff were not dedicated to the BBC and would not transfer under TUPE. [redacted].
18. The BBC had a research and development (R&D) team who were engineers focused on developing and approving new technology, for example in refining coders to squeeze more channels down the same bandwidth.
19. The process of moving to HD posed challenges as it had high quality thresholds for up and down converters.
20. Television streams were more complicated than just delivering sound and vision, including metadata for the EPG, access services, sound formatting, picture aspect ratio data etc. The BBC's R&D team therefore sometimes needed to test components that RBM proposed to use to test the effect on the quality of its signals. The BBC used a test rig of equipment for this purpose, but this equipment would not be able to be used for operational payout purposes.
21. It was important to have both technical and operational expertise informing the payout suite design. The BBC had a lot of examples where there had been a mismatch of the technical and operational solutions. If a broadcaster only played out pre-recorded programmes, this was incredibly straightforward and some of its channels reflected this, such as CBeebies.

Tenders

22. The BBC was a publicly funded organization and therefore had to follow the rules set out in the Public Contract Regulation 2006 for procurement.
23. The BBC recently took three companies through its Access Services procurement and worked hard to ensure that bidders understood the complexity of the Access Services requirements. It recognized from Access Services procurement the value of ensuring a level playing field in order to get a genuine competition. Payout was a lot more complicated than Access Services.
24. [redacted]
25. The knowledge and understanding was a combination of the technical and operational staff. The BBC expected that the technical team would not TUPE but the operational team would.
26. The BBC used different technology from Channel 4, [redacted].
27. Current technical solution options were analogous to buying a hi-fi system in components or an all-in-one solution. For example, simple channels could use 'channel in a box' solutions, whereas the BBC, ITV and Channel 4 to date required separate specific components to be assembled in a particular configuration. These components could come from different companies and the integration of the servers, mixers, automation, converter equipment etc, was the challenge.

28. Technology was evolving at a rapid pace though the BBC had doubts about when the most innovative solutions would be sufficiently developed and tested for its requirements. It would go to the market with an output-based requirements specification, although it wanted to understand the technological developments to be an informed buyer.
29. The BBC no longer had sufficient technological capability and capacity to fully insource all of its playout operations.
30. It estimated that the number of staff that [REDACTED] in order to demonstrate the necessary knowledge and understanding would be between [REDACTED] and [REDACTED].
31. The main reason for not outsourcing the nations' playout function was because the nations operations teams had to make editorial decisions without referring back to somebody central [REDACTED].
32. The RBM Playout Editors would never change the output of a channel from a programming point of view without authorization from BBC schedulers or controllers. This was contrasted with the nations where the announcer/directors made editorial decisions. The only time the RBM Playout Editors would intervene without authorization would be if there was a technical breakdown including a major problem with the broadcast centre, [REDACTED].
33. The BBC decided, [REDACTED], that it did not have the capability to insource the network playout function currently provided by RBM.
34. RBM provided three roles to the BBC that were not typically provided by playout operators. These were the Playout Editors, the announcers, and some planners who helped fine-tune the schedules before they went to press. [REDACTED]. However, the OJEU procurement process did not allow additions to tenders once issued, [REDACTED]. This would depend on the responses from bidders. The BBC had received feedback from its market soundings from a number of companies that [REDACTED].
35. The announcer role gave guidance advice on what a programme included, for example strong language. The announcer needed to be able to write good scripts, and be calm even when there was a major news story breaking. Channel 4 kept its announcers and 'playout editors' in-house.
36. [REDACTED]
37. The BBC had issued a Request for Information (RFI) in November 2012 and had recently had meetings with [REDACTED] companies for its market-sounding exercise and described this process as one of getting the market to understand the scale and complexity of its requirements. The companies were [REDACTED].
38. Discussions of the BBC's recent contract extension of the playout services contract began in November 2012 as, at that time, there was a dependency on the DMI project that would have affected the BBC's future tender requirements and the DMI programme was in serious difficulties. DMI had since been closed.
39. The BBC required a two-year transition period and it concluded that due to the problems with DMI, there was insufficient time to run a procurement and switch providers prior to the original contract end date of 31 December 2015. New Year was not a practical time for a broadcaster to switch providers, and sport-filled summer 2016 with Olympics also presented challenges. It therefore extended the contract until March 2017.

40. [REDACTED]
41. [REDACTED]
42. The BBC had a formal change control process with RBM. It proposed requirements, RBM responded with a technical design, the BBC's technology and R&D staff interrogate that this design would integrate with the BBC's wider infrastructure, and the BBC asked for a breakdown of costs of materials and performed spot checks to ensure that it was paying a fair price. [REDACTED].

Views on the merger

43. The BBC's stated view of the merger was that Ericsson would be a very good fit for a company like RBM, as it had made a clear statement of policy to move into this market and had huge knowledge and innovative capability.
44. One company providing BBC, ITV, Channel 4, UKTV and BT Sport would have a very strong and powerful market position, although not quite a monopoly.
45. It would create a very powerful company, arguably with greater creative mass than others who would hope to compete with it for contracts.
46. [REDACTED]
47. The BBC would welcome [REDACTED] stepping forward to partake in the procurement for its linear playout contract.
48. The BBC would not split BBC One and Two as it managed the channels as a portfolio. It would move programmes between channels where necessary, for example if a major news event occurred. BBC Four and BBC Two, and BBC Three and BBC One were also inextricably linked.

Barriers to entry and/or expansion

49. The BBC was unable to sponsor a new entrant into the playout market as it was a publicly funded body.
50. The BBC's ability to [REDACTED] such that it could receive consistent price reduction [REDACTED].
51. Technicolor had experience with ITV, which had the most similar requirements to the BBC, though ITV had advertisements. [REDACTED] also had experience of mixed-genre channels with advertisements as it provided playout for [REDACTED]. If the merger did not go ahead, Technicolor would [REDACTED].
52. The BBC could not and did not financially sponsor Deluxe in its engagement with the Access Services procurement. It was tough with the incumbent during that exercise in demanding information to be shared with all bidders so they all understood the complexity of the requirements. This enabled competition [REDACTED].
53. The Access Services contract demonstrated that it was serious about having credible competitors, and that the runner up had submitted a credible bid. The BBC would talk to potential bidders to encourage them to step up to the plate, using all of their available experience.
54. The BBC's procurement of the playout contract would involve feedback to bidders on their proposed solution on the basis of whether it fulfilled the requirements or not.

[REDACTED]. Bids could propose different solutions but, as long as they fulfilled the requirements, they would be considered.

55. In the commercial discussions that took place during major procurements the BBC asked for transparent pricing, acknowledging that it was comfortable paying a fair and honest margin. It would never share pricing proposals between competitors. However, it would be able to identify areas for each bidder where it needed to think about its commercial proposal.
56. Transition costs would be included in any tender as the BBC tendered contracts on a whole-life-cost basis. [REDACTED]. The incumbent also had transition costs as it would be moving to new technology.
57. The selection criteria for the playout tender would include technology solution, operating model and commercial approach to change management, and approach to transition. The BBC would also look at its approach to staff, recruitment, retention, training, cultural fit, and approach to disaster recovery.
58. The BBC assessed financial stability at the early stages of the process and most of the bidders would be large companies. [REDACTED].

Bundling

59. Large parts of BBC Technology were sold off to Siemens in 2004 and then Atos and were managed under the Technology Framework Contract (TFC). Two technology elements upstream and downstream were Central Circuits and Apparatus (CCA) and Centralised Coding Mux (CCM) respectively. Atos currently provided both CCA and CCM. CCA involved the different streams of content coming from, for example, Glastonbury or a sports event, and they would undergo technical quality checks on their way to RBM to be played out, or to other parts of the BBC such as production, journalism and radio. CCM was the process of encoding television signals so that it could fit large quantities of information through limited bandwidth.
60. [REDACTED]
61. Siemens and Atos had not found other clients for these services, and a lot of technology changes for HD and Freeview had been supported using the expertise of the BBC R&D team.
62. [REDACTED]
63. [REDACTED]. The risk was that the BBC did not consider that it had sufficient technical capability or capacity to fully insource all its playout operations, [REDACTED].
64. The BBC was still undecided whether to tender for only playout or a wider range of requirements. [REDACTED].
65. The same make of equipment was currently used by both nations and network playout operations. [REDACTED].
66. [REDACTED]
67. The most important consideration was that the BBC had a robust solution. The contract would have to reflect rapidly changing technology and therefore the contract length would likely be [REDACTED]. The contract length would be discussed as part of the procurement dialogue process.

68. The BBC wanted bidders to propose the best technology solution and then it would challenge them on the solution and the price. [X].
69. Ideally the BBC would require a provider that could deliver a robust solution that also enabled the migration to new technologies in future.
70. There were a large number of third party providers involved in broadcasting, and in the BBC's broadcast chain it currently had BBC, RBM, Atos, Arqiva, and many other smaller providers of specific services.
71. The BBC needed a minimum of [X] bids to have an effective competition.
72. The BBC had been very open in its market sounding that insourcing all BBC playout was not considered an option. In addition, it may include the nations' playout technical design and build this in the procurement in order to obtain a holistic solution.
73. The BBC thought it would currently get [X] bids [X] in response to its playout tender.
74. The [X] bidders for its Access Services contract were [X].

Price

75. The BBC had only sporadic and inconsistent opportunities to leverage the open book process to secure the value that it required at refresh points. It required a point in time where the market operated in a truly competitive environment with all the best solutions and prices.
76. Quality assurance and price were its main considerations, which equated to value for money.

Merging parties

77. The BBC believed that Technicolor had definitely been strengthened through its acquisition by Ericsson because Ericsson had significant resources, R&D expertise across Europe, and a clear strategy to move into this area to combine linear and non-linear playout.
78. The BBC believed that Technicolor was still suffering reputational damage from its 2010 World Cup playout error. The BBC thought Technicolor had been unfairly stigmatized for that error and it did not materially impact its view in terms of Technicolor as a competitor to RBM. No one had a completely clean playout record. It was a complicated operation, which was why the industry used specialist outsourced providers to supply it.
79. If Technicolor lost the ITV contract, the BBC thought it was likely it would remain a competitor though it would depend on the reaction by Ericsson and how long it took for it to win another major contract.
80. If RBM lost the BBC playout contract, it would be a large loss but it would be likely to continue as a competitor with other existing contracts including Channel 4, UKTV and BT Sports, and other BBC contracts such as access services which ran to 2019.

81. The BBC would have to bear the transition cost as part of the whole-life-cost contract.
82. The BBC could not take into account possible effects on future competition when awarding a contract. It evaluated the solutions presented in line with the published criteria. Its selection criteria were as robust and objective as possible.
83. It did not have material concerns about a single provider supplying ITV and BBC. However, it would assess the robustness of the service provision proposed in the procurement process and test this in the dialogue process.
84. RBM already supplied BBC and Channel 4 and appropriate confidentiality and information security arrangements were in place.

Views on the merger

85. The BBC saw positive benefits from the merger, particularly if RBM had access to new capital and investment enabling it to be more innovative and competitive, and to develop its R&D function.
86. The BBC did not think the merger affected [REDACTED].
87. The merger could result in potentially unfair exertion of power by the merged entity, and this affected other broadcasters including Channel 4 and ITV. From a procurement perspective, [REDACTED].
88. The BBC was less concerned in the medium to long term as the market would open up, technology would evolve and it believed that there would be lower barriers to entry into the market.
89. [REDACTED]