
How Ofcom regulates the BBC's impact on competition

Proposals for changes to guidance and requirements

[How Ofcom regulates the BBC's impact on competition](#) – Welsh overview

CONSULTATION:

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1. Overview

- 1.1 In June we published our review of BBC regulation, *How Ofcom regulates the BBC* ('**June review**'). This review looked at how regulation should change to ensure that it is fit for purpose in the fast-moving environment in which the BBC operates.
- 1.2 The BBC needs to adapt its services to continue to reach and remain relevant to audiences, so that it can continue to fulfil its Mission and promote the Public Purposes. At the same time, it is important to protect fair and effective competition in the UK media market so that audiences continue to enjoy high quality content from a range of providers. It is important that competition regulation strikes the right balance between allowing the BBC to make the necessary changes to its services to meet audience needs and protecting competition.
- 1.3 In the June review we recommended that the Government should make some changes to the Agreement to give Ofcom more flexibility to determine how and when to undertake competition assessments. We also said we would publish a separate consultation on proposed changes to competition regulation under the current Charter and Agreement, and that we would set out our views on competition in the main sectors where the BBC operates.
- 1.4 This document sets out proposed changes to our guidance on how the BBC's competition impact is assessed. Our proposals seek to ensure that our current processes are efficient and are used flexibly, and encourage positive engagement between the BBC and its competitors regarding changes to the BBC's public services. We also set out the changes that the BBC is making to its processes to address the concerns raised in our review of BBC Studios, and we propose some small changes to the Trading and Separation requirements and guidance, to ensure that they are clear.
- 1.5 In addition, we provide our view of the BBC's current position within the audiovisual and audio sectors. Our aim is to give the BBC and other stakeholders more clarity about how we are likely to approach consideration of BBC competition impacts.

What we are consulting on – in brief

We are proposing the following changes to our guidance on how the BBC's competition impact is assessed:

- **Setting a specific requirement for the BBC to publicise the changes to public services which are likely to be subject to an assessment of materiality by the BBC**, to encourage it to be more transparent with stakeholders about its plans and more consistent about how it makes them public.
- **Putting in place new guidance explaining what a reasonable and proportionate approach to engagement during the materiality process should look like**, to support a more open dialogue between stakeholders and the BBC about changes to BBC services, while ensuring that the early engagement process remains proportionate.
- **Giving more guidance about the information the BBC should provide to stakeholders when it consults as part of a public interest test**, to help ensure that the BBC provides sufficient information to allow stakeholders to respond meaningfully.
- **Providing more detail in the guidance about Ofcom's role in the assessment of materiality**, so that the process is clearer to stakeholders.
- **Changing our guidance to add flexibility for Ofcom to decide whether consulting on materiality at the initial assessment stage is necessary**, removing duplication in our BBC competition assessment (BCA) process wherever possible.
- **Providing further guidance about what we expect to see in the BBC's public value assessment**, based on our experience of reviewing the BBC's public value assessments. We will also give the BBC and stakeholders more guidance about where we think there is potential for the BBC to generate significant public value by addressing the challenges it faces.

We are also proposing some changes to the Trading and Separation requirements and guidance.

This is to provide greater clarity about the activities to which our rules apply and to ensure that the BBC embeds the changes it is making to respond to our review.

The overview section in this document is a simplified high-level summary only. The proposals on which we are consulting, and our reasoning, are set out in the full document.

Our view of the market

- 1.6 In this document we have also set out our views on the BBC's current position within the audiovisual and audio sectors.¹ This is no more than a starting point for any future competition assessment. The BBC and Ofcom will still need to consider the competition impact of changes the BBC intends to make on a case-by-case basis and take into account how these changes will affect competitors.
- 1.7 Our view is that in the current market context, the risk of competitive harm from changes specific to BBC Sounds or BBC iPlayer is likely to be low. This is because the impact is likely to be spread across a range of competitors, including those with global scale, and competitive conditions are likely to make it difficult for the BBC to make large gains at the expense of competitors. However, we recognise that there may be circumstances where the risk is higher, such as if the impact of the change is expected to be concentrated on specific domestic commercial provider(s), so we would expect the BBC to consider this as part of its assessment.
- 1.8 In contrast, we consider that a change to the BBC's TV and radio services could potentially have a bigger impact on domestic competitors, although we expect future changes to be more digitally focused, given the BBC's strategy.

¹ While we do not consider the potential competition impact of the BBC's online activities beyond the audiovisual and audio sectors in this document, it is important to note that other services such as the BBC News website/app also play a crucial role in delivering the Mission and Public Purposes.

2. Background to this consultation

2.1 In this section we:

- provide an overview of how we regulate the BBC's impact on competition;
- summarise the key proposals for the future of BBC competition regulation from our June review; and
- set out the aims and structure of the remainder of this document.

Overview of BBC competition regulation

Regulating the competition impact of the BBC's public services

- 2.2 The BBC is a large publicly funded organisation which operates across the television, radio and online sectors in the UK. In meeting the requirements set out in the Charter² and its Mission and the Public Purposes, the BBC has an impact on competition in the media industry. Maintaining healthy competition in the UK media sector benefits audiences because it ensures the availability of high-quality content from a range of providers.
- 2.3 The BBC needs to adapt its services to continue to reach and remain relevant to audiences, so that it can continue to fulfil its Mission and promote the Public Purposes. BBC changes which improve existing services or expand the range of its services may be positive for competition by offering more choice, stimulating audience demand or encouraging innovation.
- 2.4 However, if the BBC changes its public services in a way that leads audiences to switch away from commercial services to BBC services, commercial providers' revenue may diminish. This may in turn limit commercial providers' ability to invest in their services, reducing the overall choice, quality and range of content available for UK audiences. We refer to this effect as 'crowding out'.³ In some extreme cases companies may cease providing services altogether, undermining plurality and choice within the UK media sector.
- 2.5 The BBC must seek to avoid adverse impacts on competition that are not necessary for the fulfilment of its Mission and Public Purposes. The Agreement provides two means of addressing competition concerns that might arise out of the BBC's activities: firstly, a means of considering changes to the BBC's activities before they are implemented, and secondly, a means of considering the effect of services on competition on an ongoing basis.
- 2.6 Under the Agreement, the BBC is responsible for assessing whether proposed changes to its public services may be 'material' (a materiality assessment). A change is material if the BBC is launching a new UK public service, or if it is making a change to an existing service

² The Charter and Agreement set out the different roles and duties of the BBC and Ofcom, including the principal functions of the BBC Board. The BBC Board is responsible for ensuring that the BBC delivers its remit, which includes fulfilling the BBC's Mission and its Public Purposes, and for setting the strategic and creative direction of the organisation. Ofcom holds the BBC to account for delivering its remit, regulates the BBC's editorial standards and complaints, and regulates the BBC's impact on competition. The current Charter and Agreement end on 31 December 2027.

³ Crowding out is not the only way in which the BBC can harm competition – for example, there is a risk that BBC activity may cause harmful impacts on services elsewhere in the UK media supply chain.

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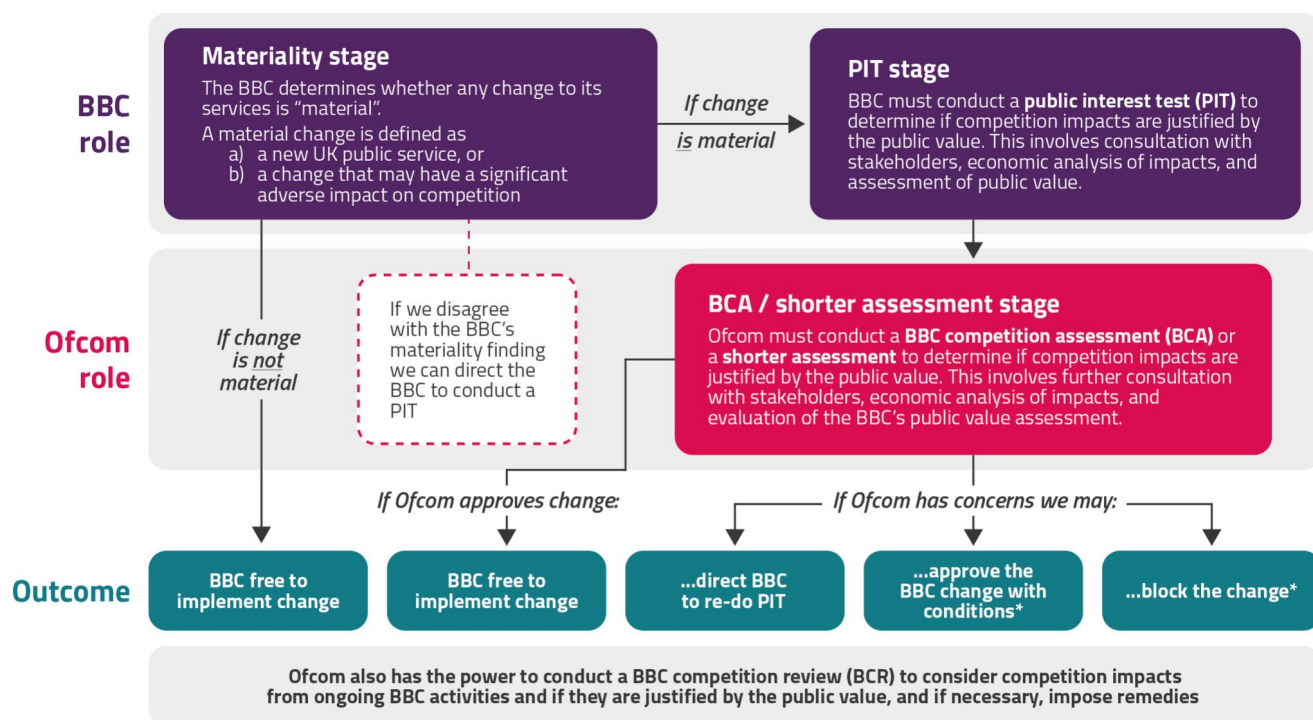
that may have a significant adverse impact on fair and effective competition.⁴ There are also decisions that the BBC makes which are 'business-as-usual' decisions and not 'material' in the specific sense of the term set out in the Agreement. These include changes that leave the service's existing character and scale essentially unchanged. The BBC sets out its approach to business-as-usual changes in its policy on material changes.⁵

- 2.7 Where a change is material, the BBC conducts an assessment of whether competition impacts are justified by the public value (a public interest test, or 'PIT'). Under the Agreement Ofcom is required to review and approve all material changes to BBC services before they are implemented. While the Agreement does not set out a specific role for Ofcom to review the findings of materiality assessments where the BBC has found that a change is not material, we do have the power to step in and direct the BBC to conduct a PIT if we disagree on materiality.
- 2.8 Where evidence emerges of harm to competition from ongoing BBC activities, Ofcom has the regulatory tools to address this, using a BBC competition review (BCR). We may carry out a BCR if we have reasonable grounds for believing that the carrying out of a UK public service is having a significant adverse impact on fair and effective competition. For example, one role of a BCR is to examine existing services where the BBC has made incremental changes over time which have not warranted a BBC competition assessment individually, but which may (cumulatively) have an adverse impact on competition over time. As part of a BCR we must assess whether the public value of the relevant activity justifies any adverse impact on fair and effective competition. We may conclude that the BBC can continue the activity, or stipulate that it must make modifications, or continue the activity subject to conditions.
- 2.9 Figure 1 below provides a summary of the BBC and Ofcom's roles in regulating the competition impact of the BBC's public services.

⁴ Clause 7(7) of the Agreement.

⁵ BBC, 2017, [Policy on material changes to the BBC's public service activities and commercial activities](#).

Figure 1: Summary of the BBC's and Ofcom's roles under the Charter and Agreement for regulating the competition impact of the BBC's public services



*Using a shorter assessment we may only approve a change or direct the BBC to re-do its PIT.

Regulating the BBC commercial services

- 2.10 We also have a role in preventing competitive harm that could arise from the BBC's commercial activities as a result of these activities' relationship with the public service. Where the BBC engages in commercial activities, the Charter requires it to undertake these through separate commercial subsidiaries, of which BBC Studios is by far the largest.
- 2.11 Without appropriate regulatory safeguards, the BBC's public funding could be used to subsidise or benefit its commercial subsidiaries by offering them services on favourable terms, or could distort competition by giving those commercial subsidiaries an unfair competitive advantage.
- 2.12 We have put in place Trading and Separation requirements and guidance to ensure that this does not occur. These cover operational separation, transfer pricing (where goods and services are traded between the commercial subsidiaries and the public service) and ensuring that the commercial subsidiaries and their lines of business earn a commercial rate of return over an appropriate period of time.
- 2.13 The Agreement also requires the BBC to consider whether any changes it proposes to make to its commercial services are 'material'. A change to the BBC's commercial services is defined as material if it is proposing to carry out a new type of activity as a commercial activity, or if it constitutes a significant change to the BBC's commercial arm where there is a significant risk that the change may distort the market or create an unfair competitive advantage as a result of the relationship with the public service. If a proposed change is

material, the BBC must carry out a commercial test to satisfy itself that the commercial activities in question will not distort the market or create an unfair competitive advantage.

- 2.14 If we consider that a change to the commercial activities is a material change and the BBC has failed to publish the proposed change, we may direct the BBC to carry out a commercial test and, if the test is satisfied, publish the proposed change (while this is happening we expect the BBC to stop implementing the change). Alternatively, we may direct the BBC to stop carrying out the change in accordance with such directions as we consider appropriate.

Balancing protecting competition with allowing the BBC to adapt and innovate

- 2.15 The BBC is operating in sectors which are undergoing significant change. Audiences are increasingly watching and listening to content whenever they want, accessed via a wide range of different devices. This has been driven in recent years by improved broadband speeds, advances in new technology for consumers, and increasing choice of services and content. We discuss these trends further in section 3. If the BBC is to continue to deliver its Mission and Public Purposes in the future, it must adapt and transform its services to ensure that it reaches and remains relevant to, viewers and listeners across the UK.
- 2.16 In our June review, we set out our view that although the sectors in which the BBC operates are changing rapidly, we did not consider that market conditions have changed to the point where it is appropriate to step back from competition assessments before the implementation of a change to the BBC's services. Nor did we think that it was appropriate to introduce greater regulatory scrutiny, as any increase in the length or complexity of the current processes would make it harder for the BBC to implement the changes that are urgently required to enable it to deliver its Mission and Public Purposes. However, we considered that there could be greater flexibility for the BBC to make changes more rapidly in areas where its impact on competition may have diminished, and in areas where the BBC could deliver significant additional public value.
- 2.17 We therefore recommended that the Government should consider making changes to the Charter and Agreement to give Ofcom more flexibility in its regulatory processes, while ensuring that we still have all the tools we require to address competition impacts where these are not justified by the public value. The changes we recommended are as follows:
- i) removing the link between the BBC undertaking a public interest test and Ofcom doing a BBC competition assessment, so that we can approve the change without conducting a competition assessment if we agree with the BBC's analysis, and if the BBC has effectively engaged with stakeholders;
 - ii) enabling Ofcom to approve a BBC change with conditions using a shorter assessment; and
 - iii) changing the definition of a 'material' change so that new public services are not automatically considered to be material (they would still be subject to the test of whether the change/new service may have a significant adverse impact on fair and effective competition).

Addressing concerns about the BBC's commercial activities

- 2.18 In addition, given the concerns raised in our review of BBC Studios, and to reflect the BBC's response, we are proposing changes to the Trading and Separation requirements. This is to ensure that there is further clarity about the activities to which our rules apply, and to ensure that the BBC embeds the changes it is making to respond to our review.

Equality impact assessment

- 2.19 We have given careful consideration to whether our proposals will have a particular impact on persons sharing protected characteristics (broadly including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents and political opinion in Northern Ireland), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998.⁶
- 2.20 We do not consider that our proposals have equality implications under the 2010 Act or the 1998 Act. Nor do we consider it necessary to carry out separate EIAs in relation to race or gender equality or equality schemes under the Northern Ireland and Disability Equality Schemes. Our Equality Impact Assessment is included in Annex 3.

Aims and structure of this document

- 2.21 Alongside our recommendations to the Government, our June review said that we intended to update our guidance on how the competition impact of BBC public services is assessed. We propose to update our guidance to:
- encourage a more productive dialogue between the BBC and its stakeholders;
 - provide clarity on our approach on public value and our expectations of the BBC's assessment;
 - provide stakeholders with a better understanding of how regulatory processes work; and
 - enable greater flexibility for Ofcom to decide whether it is necessary to consult on whether a change is material.
- 2.22 In this document we are consulting on these proposed changes to our guidance. We are also setting out our views on the BBC's position in the audiovisual and audio sectors and the risk that changes to the BBC's services in these sectors might harm competition. Our intention is to provide greater certainty for both stakeholders and the BBC about how we are likely to approach consideration of changes to BBC services in these areas.
- 2.23 We also set out our proposed change to the Trading and Separation requirements to:
- make it clear that the transfer pricing rules apply when the public service is supplying content or IP for secondary exploitation; and

⁶ Further detail is set out in section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.

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- to allow Ofcom to direct the BBC to undertake a review of its internal controls and accounting processes to ensure they are adequate and enable the BBC to comply with the transfer pricing requirements.

2.24 In the remainder of this document:

- a) **Section 3** sets out our views on the BBC's position and its ability to impact competition in the audiovisual and audio sectors.
- b) **Section 4** sets out our proposed changes to our guidance on how the competitive impact of a change to the BBC's public services, and the public value which that change delivers, are assessed.
- c) **Section 5** sets out proposals for changes to the BBC's Trading and Separation requirements and guidance.
- d) **Annex 1** provides the full text of our guidance for assessing the impact of proposed changes to the BBC's public service activities, with our proposed updates to the text shown.
- e) **Annex 2** provides the full text of our Trading and Separation requirements and guidance, with our proposed updates to the text shown.
- f) **Annex 3** provides our EIA.
- g) **Annexes 4 to 7** provide information on how to respond to this consultation, Ofcom's consultation principles, the coversheet for consultation responses, and a complete list of consultation questions.

3. The BBC's impact on competition in the audiovisual and audio sectors

3.1 In this section, we set out our general views on the BBC's position in the audiovisual and audio sectors and the risk that changes to the BBC's services in these sectors might harm competition.

Our approach

3.2 We explained in our June review how market changes have made delivering the Mission and Public Purposes more challenging. Faced with these challenges, it is essential that the BBC adapts its services so that it can continue to deliver the Mission and Public Purposes. But in doing so it is important that the BBC does not have a significant adverse impact on fair and effective competition that is not justified by the public value that the change delivers.

3.3 Over time, market developments are likely to reduce the BBC's impact on competition in some areas, particularly given the scale of global competition. But in other areas it is likely that there will continue to be the potential for the BBC to have a significant impact on its UK competitors.

3.4 Our aim in this section is to give the BBC and other stakeholders more clarity about how we are likely to approach consideration of the materiality of proposed changes to BBC services in some of the sectors in which the BBC operates, and how we might approach future competition assessments in these areas.

3.5 In providing our view we draw on our market understanding and experience of regulating the BBC over the last five years. We are setting out our high-level views on competitive conditions and the potential impact that future changes by the BBC could have on its UK competitors. Where the risk to fair and effective competition is low, the BBC should be able to implement these changes quickly, subject to appropriate regulatory oversight.

3.6 These views are based on the current state of the market and current trends. We will continue to closely monitor market developments and will update our views as necessary. As part of this we will monitor key metrics in relation to the BBC's position in the audiovisual and audio sectors, and the impact of changes to the BBC's services, including their cumulative impact.

3.7 The views presented in this section do not replace or change the process which the BBC and Ofcom must carry out when assessing a proposed change to a BBC public service. It will continue to be important for the BBC to identify relevant changes to its services, to publicise these changes and to engage with stakeholders at an early stage in order to identify the potential competition impacts. Rather, we expect this section to provide a starting point for assessing any proposed changes in the sectors considered. Any additional evidence, future market developments, and case-specific facts would be considered as part of the usual processes. For all material changes, the BBC will still need to consider how any changes to its services deliver public value and the Mission and Public Purposes, as well as

how they will enable it to fulfil its obligations under the Operating Licence. We set out further guidance on public value in Section 4.

We have focused on the audiovisual and audio sectors

- 3.8 The BBC seeks to meet its Mission and Public Purposes through a range of services and activities. In this section, we set out our views on the audiovisual and audio sectors.⁷ The majority of BBC spending and activity takes place in these sectors, and they are also the areas in which we have the most experience of considering the BBC's competition impact.⁸ Going forward, we may consider other sectors, taking into account market developments and any changes the BBC seeks to make to its services.
- 3.9 We recognise that within the audiovisual and audio sectors, the BBC and its competitors provide a wide range of services and different types of content – such as news, education, entertainment, music, sports and speech content. In some cases, these services are national, regional or local, rather than UK-wide. However, in setting out our views on competition, we focus on overarching themes that apply generally across these sectors. We have not attempted to set out a detailed assessment of competitive conditions in each of these areas, or to carry out a formal market definition exercise.⁹ This reflects our intention to provide a starting point for assessing future changes; the competition impact from specific changes will still require consideration on a case-by-case basis.

We have focused on crowding out as the main potential harm to competition

- 3.10 In setting out our views on the potential impact that the BBC can have on competition, we focus on the concern that the BBC may 'crowd out' the activities of its commercial rivals. This has been the main concern that we have considered in our past assessments.
- 3.11 Crowding out will not occur in all cases where a change to BBC public services leads audiences to switch to BBC services away from commercial rivals. What matters is whether a change to BBC services causes the reduction of commercial providers' revenues and profits to such an extent that these providers significantly reduce their investment in new or existing services. In the most extreme cases commercial operators could be deterred from entering the sector, or cease providing services altogether. These outcomes may ultimately harm consumers by reducing choice, quality and innovation in the UK media market.
- 3.12 In general, we would expect crowding out to be a higher risk to domestic competitors than to large global competitors. This is because a given impact caused by a BBC change is likely to be proportionally larger for domestic than for global providers, and the BBC is likely to have limited ability to affect competition at the level of global platforms (which often make

⁷ For the purpose of this section, audiovisual includes linear TV, on-demand streaming services, and YouTube viewing. Audio content includes radio and online audio services.

⁸ While we do not consider the potential competition impact of the BBC's online activities beyond the audiovisual and audio sectors, other services – such as the BBC News website/app – also play a crucial role in delivering the Mission and Public Purposes.

⁹ We recognise that the competitive impact in different areas may differ somewhat. For example, the competitor set and the potential impact on competition of a change in the areas of news and children's services are likely to be very different.

investment decisions at a multinational level). Therefore, we have focused our analysis below on the potential impact of changes on UK competitors.¹⁰

- 3.13 We recognise that crowding out is not the only way in which a BBC change could have an impact on competition. Another risk is that BBC activity may cause harmful impacts elsewhere in the UK media supply chain. For example, as part of the BBC iPlayer BCA in 2019, we considered whether the BBC's proposals to add more content to BBC iPlayer would adversely affect competition in the production sector.¹¹ When assessing future BBC changes, we will continue to assess these possible harms, where relevant, and we expect the BBC to do the same. However, these other concerns are more case-specific, for example relying on the exact nature of supply chains, so are not covered in this section.
- 3.14 In considering the risk of crowding out, we have focused on the closest competitors to BBC services in the audiovisual and audio sectors, as these are likely to be the most affected and therefore most at risk of crowding out. We recognise that in practice, the BBC's changes to its audiovisual and audio services could also affect consumption of services outside the sectors we have considered. In the audiovisual sector we consider changes to linear services and BBC iPlayer-specific changes separately. In the audio sector we distinguish between changes in radio services and other online-only audio services delivered via BBC Sounds.

Audiovisual services

The BBC's position

- 3.15 Since the start of the Charter period, the trend away from broadcast to on-demand viewing has accelerated. Competition from well-funded global technology and media companies has increased, with the reach and number of international subscription video-on-demand (SVoD) services offered in the UK growing, and developments in their services ongoing (e.g. the recent launch of ad-funded tiers to subscription services).¹²
- 3.16 Although UK broadcast video-on-demand (BVoD) services do not have the same budgets as global providers, they are still investing heavily in their online players to make them more appealing to audiences.¹³ On-demand streaming services now form an integral part of the public service broadcasters' (PSBs) strategies as they use online streaming platforms to compete for audiences as linear viewing declines. We expect this online focus to continue

¹⁰ We also have a duty to secure and maintain a sufficient plurality of providers of different TV and radio services. This includes the UK's public service broadcasters (PSBs), which play a crucial role in delivering a range of high-quality content and supporting a thriving media market across the UK. The importance of the PSB system was explored in our most recent PSB Review, [Small Screen: Big Debate](#).

¹¹ Ofcom, 2019, [BBC iPlayer Competition Assessment: Final determination](#), pp.33-38.

¹² We discuss the developments and trends in audiovisual services in more detail in our Media Nations report. [Ofcom, 2022. Media Nations: UK 2022](#).

¹³ For more information see [Media Nations: UK 2022](#), pp.56, 71.

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into the long term, with the BBC,¹⁴ ITV¹⁵ and Channel 4¹⁶ all announcing a focus on digital growth.

- 3.17 These dynamics are reflected in viewing shares. Table 1 below shows that between 2018 and 2021, linear TV's share of all audience viewing fell from 74% to 60%. SVoD services have captured most of this reduction; their share of viewing has doubled from 10% to 20%. BVoD services have also increased their share of viewing, but these gains have not made up for the decline in their linear viewing, or matched the gains experienced by the global video-on-demand (VoD) players (increasing from 3% to 5%). Among younger audiences, the shift in viewing trends has been even more pronounced.¹⁷
- 3.18 As audiences have moved away from linear television to the global SVoD services, the BBC's share of total viewing has declined from 24% in 2018 to 21% in 2021. Although BBC iPlayer's share of viewing has increased, this has not made up for the drop in the BBC's linear viewing hours. And despite being the most popular BVoD service, its share of viewing remains small compared to both total viewing and total VoD viewing.¹⁸

¹⁴ In May 2022, the BBC announced a digital-first strategy, setting out the ambition for BBC iPlayer to reach 75% of BBC viewers per week. BBC Media Centre, 27 May 2022. [Plan to deliver a digital-first BBC](#) [accessed 18/11/2022].

¹⁵ ITV has made streaming one of its three critical priorities and later this year is launching ITVX, a new streaming service underpinned by a major investment in programming and improved user experience. ITVX will replace ITV's three digital services in the UK, ITV Hub, Hub+ (which offers ITV content without ads for £3.99 a month) and BritBox.

¹⁶ In 2020, Channel 4 announced a five-year plan to double viewing to All4 by prioritising digital growth. Channel 4 new release, 4 November 2020. [Channel 4 sets out path to digital future with new strategy: Future4](#) [accessed 18/11/2022].

¹⁷ Among those aged 16-34, the share of viewing accounted for by linear TV was 30% in 2021 (down from 45% in 2018). By 2021, two-thirds of younger audiences' viewing was captured by SVoD providers (34%) and YouTube (30%) with BVoD accounting for just 6%.

¹⁸ A similar picture can be seen for younger audiences, where the BBC's share of total viewing has also fallen (from 12% in 2018 to 10% in 2021).

Table 1: Estimated viewing shares for all linear, BVoD and SVoD services, and YouTube

	Aged 4+		Aged 15-34	
	2018	2021	2018	2021
Broadcast - Live + recorded playback share	74%	60%	45%	30%
BBC linear portfolio	23%	19%	10%	7%
ITV incl. portfolio channels	17%	13%	11%	7%
Channel 4 incl. portfolio channels	8%	6%	7%	5%
Channel 5 incl. portfolio channels	5%	4%	3%	2%
Multichannels	22%	18%	15%	9%
BVoD share	3%	5%	4%	6%
BBC iPlayer	1%	2%	2%	2%
ITV Hub	<1%	1%	<1%	1%
All 4	<1%	1%	1%	1%
Other players	1%	1%	2%	1%
SVoD share	10%	20%	23%	34%
Netflix	7%	12%	18%	20%
Amazon Prime Video	2%	4%	3%	6%
Disney+		3%		5%
Other SVoD	1%	2%	2%	2%
YouTube share via devices	13%	14%	28%	30%
YouTube	13%	14%	28%	30%
BBC live + recorded playback + BBC iPlayer total	24%	21%	11%	10%
Total	100%	100%	100%	100%

Source: Ofcom analysis modelled on BARB, Comscore and IPA TouchPoints data.¹⁹

¹⁹ The IPA TouchPoints data is based on fieldwork conducted between June and September 2021, and January and April 2018. Viewing shares may vary seasonally. The IPA TouchPoints data is self-reported and samples all individuals in Great Britain aged 15+ and 15-34 while BARB surveys UK individuals aged 4+ and 16-34. Self-reported BVoD viewing data could include some live viewing.

Impact of potential changes to BBC audiovisual services

3.19 Future changes to the BBC's audiovisual services could lead to an increase in viewing. We have considered the potential impact such changes could have on competition, including where that increase in viewing is likely to come from and how significant the impact is likely to be on the BBC's competitors. We first consider the likely impact of changes specific to BBC iPlayer, and then consider changes to the BBC's linear services.²⁰

Changes to BBC iPlayer

3.20 BBC iPlayer launched in 2007 as a seven-day catch-up service. Since then, the service has grown in size and functionality. In 2019 the BBC proposed an expansion of its content library to extend the length of time titles were available, a change which we cleared following a full competition assessment.²¹ This year the BBC has proposed a substantial increase to its archive titles available on iPlayer, which we have today agreed is not a material change.²² We expect that the BBC will continue to develop BBC iPlayer in line with its stated strategy to create a "modern, digital-led and streamlined organisation".²³

3.21 We think that the risk that changes specific to BBC iPlayer will crowd out commercial competitors is low, for the reasons set out below.

3.22 First, not all increases in viewing resulting from a change to BBC iPlayer will come at the expense of commercial providers. Any increase in BBC iPlayer viewing is expected to draw from other BBC services (e.g. its own linear services), which would have no impact on viewing of commercial providers' services.²⁴ Indeed, one aim of the BBC's iPlayer strategy is to capture BBC linear viewing so that audiences are retained as they move online.

3.23 Second, where increased viewing does come from commercial providers, the impact is likely to be spread across a wide range of services, diluting the impact on any individual commercial provider. Whereas previously we might have expected any gains by the BBC to come from primarily domestic competitors, this no longer appears to be the case. This is because many people who watch BBC iPlayer also watch content from a range of providers, including linear, other BVoD and/or other SVoD services:

- a) **Other linear services** – most people watch a mix of linear TV and online services, with 84% of regular BBC iPlayer users also watching linear TV on a weekly basis.²⁵
- b) **Other BVoD and SVoD services** – most people use both SVoD and BVoD services, with an average of 4.4 VoD platforms used.²⁶ There is a high degree of overlap between the use of BBC iPlayer and other BVoD and SVoD services, with 71% of weekly BBC iPlayer

²⁰ Changes to the BBC's linear services can affect both viewing of the linear broadcast services and viewing of BBC iPlayer. This is because BBC iPlayer carries live streams of BBC linear channels and offers the same programmes on catch-up. Current live viewing of BBC linear channels on BBC iPlayer is very low.

²¹ Ofcom approved changes to BBC iPlayer in 2019 [BBC iPlayer competition assessment final determination](#), August 2019

²² [Ofcom, 2022. Ofcom review of proposed increased amount of archive content on BBC iPlayer: Conclusion of initial assessment](#)

²³ May 2022. BBC Media Centre, 26 May 2022. [Plan to deliver a digital-first BBC](#) [accessed 18/11/2022].

²⁴ The BBC expected some of the increase in viewing of BBC iPlayer to come from its BBC linear services as part of its latest public interest test. See BBC, 2022, [BBC iPlayer II: Public Interest Test](#), pp. 73-75.

²⁵ IPA TouchPoints wave 1 2022.

²⁶ Ofcom VoD Survey 2022.

users also viewing content on an SVoD each week and 72% using at least one other BVoD service.²⁷ Other free-to-view video services are also regularly used by viewers, with YouTube the second most popular free-to-view service for watching programmes, films or other video content (used by 56%).²⁸

- c) **Other audiovisual and non-audiovisual services** – there is also likely to be overlap with other audiovisual services (for example, short-form content on YouTube, Facebook and TikTok is increasingly popular)²⁹ and/or other activities, although these are likely to be less close substitutes for BBC iPlayer, given their different characteristics.

3.24 We recognise that some of the services mentioned above are closer substitutes for BBC iPlayer than others (and this could vary by user), so the impact is unlikely to be uniform across all commercial providers. Nevertheless, we expect that BBC iPlayer would need to have a very large increase in viewing at the expense of commercial providers (or for the pool of affected competitors to be particularly concentrated) to have a discernible impact on competition. However, a very large uplift in BBC iPlayer viewing at the expense of commercial providers seems unlikely:

- a) BBC iPlayer currently accounts for a relatively small share of total viewing time (3% in 2021). And the BBC's share is especially low among young audiences, a key audience group at whom the BBC may target future iPlayer changes.
- b) Due to competitive conditions, it is likely to be difficult to gain significant viewing share rapidly. As discussed above, domestic and global competitors are continually investing in and innovating their online services to attract and retain audiences; service developments are necessary just to maintain current viewing share. For example, when the BBC made significant changes to BBC iPlayer in 2019, greatly expanding the content available, this did not lead to a large increase in BBC iPlayer's viewing share. We also do not expect the changes set out by the BBC in its most recent proposal to significantly increase the BBC's viewing share.³⁰

3.25 In the light of these observations, we consider that changes to BBC iPlayer are unlikely to have a significant impact on the viewing share – and therefore revenues – of domestic competitors, and so do not expect a significant risk of crowding out. However, we recognise that the risk could be higher if the impact of a specific change was expected to fall on a concentrated pool of domestic commercial providers, and such a change would be more likely to require closer scrutiny.

²⁷ IPA TouchPoints wave 1 2022.

²⁸ Ofcom VoD Survey 2022.

²⁹ Short-form video was watched by a third (32%) of online adults in Great Britain aged 15+ daily in Q1 2022, with viewing skewing more to younger audiences. Source: TouchPoints wave 1 (January – March) 2022, GB adults 15+. See [Ofcom Media Nations 2022](#), p.24.

³⁰ For the purposes of our assessment, we considered how BBC iPlayer might evolve in the light of the BBC's proposal over the next few years. The proposal indicates that the BBC expects to see an increase of less than three times the current levels of archive content on BBC iPlayer during this time. This would constitute a smaller percentage change than the increase in content on BBC iPlayer since the change to BBC iPlayer in 2019.

Changes to linear services

- 3.26 During this Charter period the BBC has introduced two new linear services – BBC Scotland and BBC Three. These changes have not added significant viewing share, suggesting that it may be difficult in practice for the BBC's linear services to gain significant viewing at the expense of commercial providers.³¹
- 3.27 Nonetheless, we consider that there is the potential for a larger impact on competition from changes to the BBC's linear services, for the reasons set out below.
- 3.28 First, the BBC's linear services are still relatively large in terms of viewing (broadcast linear viewing accounts for 19% of all viewing).³² This suggests that changes the BBC makes to its linear services could have a greater impact on competition than changes to BBC iPlayer.
- 3.29 Second, while an increase in viewing of the BBC's linear services might be expected to draw in part from other BBC services, where any audience gains do come from commercial providers the impact could be disproportionately borne by other domestic linear services. This is because there are differences in the characteristics of linear and VoD services, suggesting other linear services are likely to be closer substitutes to a BBC linear service. For example, people who watch BBC linear channels often access them via an electronic programme guide or by 'channel surfing'. In these cases BBC linear services appear alongside other domestic linear channels, including PSB channels. Previous assessments of changes to BBC linear services have identified other domestic linear services as those most likely to be affected. For example, in the recent assessment of the relaunch of the BBC Three linear channel, the closest competitors were expected to be linear broadcast competitors.³³
- 3.30 In the light of these points, we expect that a change to the BBC's linear services may have the potential to have a bigger impact on domestic competitors, and so could pose a higher risk of crowding out than changes to iPlayer. In any event, audiences are increasingly moving their viewing online, and the BBC's strategic focus is on developing its digital services, so it seems less likely that the BBC will seek to make significant changes to its linear services that risk crowding out.

³¹ BBC Three is a UK-wide channel. Six months into its launch, it has only a 1.1% share of linear viewing among its target 16-34 demographic in its own transmission hours. BARB. From 1 Feb 2022 to 30 Sept 2022 during its transmission hours, the average share of linear viewing for BBC Three for all individuals was 0.6%. From 1 Jan to 30 Sept 2022 during its transmission hours, the average share of viewing for BBC Scotland for all individuals was 2.2% within the BBC Scotland region.

³² Some linear viewing also occurs via BBC iPlayer.

³³ Consumer survey evidence suggests that about 21% of all diversion was expected to come from SVoD and BVoD platforms (excluding BBC iPlayer), 33% from other BBC services, and 46% from linear broadcast competitors.

Audio services

The BBC's position in audio

- 3.31 How audiences access and listen to audio content is also changing.³⁴ Radio remains the most popular form of audio, although it is gradually declining. Radio content is consumed and transmitted across different media, with analogue and DAB the most common, although listening to radio stations online is increasing (supported by smart speakers). Both the BBC and commercial providers offer radio services across all these broadcast platforms.³⁵
- 3.32 Audiences are also increasingly accessing other online audio services, including music streaming and podcasts. This shift in audience habits has been driven by developments such as the emergence of global streaming platforms like Spotify and Apple Music, and devices such as smart speakers.
- 3.33 These dynamics are reflected in listening shares. Table 2 shows that between 2015 and 2021 total radio listening (including listening online) had declined from about 80% of all audio listening to about 65%, with the growth in online listening unable to offset significant declines in other listening. Streamed music services appear to have captured most of this reduction, with their share of all audio listening increasing from 5% to 18% over this period. This trend is more pronounced among younger audiences, with music streaming services accounting for almost 40% of all their listening in 2021.
- 3.34 In this context, the BBC's share of all audio listening has been decreasing, from 43% in 2015 to 33% in 2021.³⁶ This reflects the gradual shift away from radio listening, where the BBC continues to hold a strong position, and the increasing take-up of other online services (particularly streamed music).
- 3.35 In particular, nearly all the BBC's listening share is to its radio services, where the decline in listening on a radio set (41% in 2015 to 29% in 2021) has not been offset by increases in online listening via BBC Sounds (2% to 4% over the same period).
- 3.36 BBC Sounds also provides access to other forms of audio content such as podcasts, audiobooks and music mixes, where it competes with a diverse range of competitors (both UK and international platforms such as Spotify, Apple and Amazon). However, this makes up a very low share of all listening (less than 1%).³⁷

³⁴ We discuss these wider developments in audio services in more detail in the Radio and Audio section of our [Media Nations report](#).

³⁵ The BBC transmits many of its stations across both analogue and DAB. All DAB and analogue stations are also made available online using BBC Sounds. All major commercial radio stations also transmit via DAB and / or analogue and are available online.

³⁶ The BBC's share of listening is significantly lower among younger audiences, accounting for just over 10% of total listening among those aged 15-34 in 2021.

³⁷ This non-radio content accounted for 35% of listening time on BBC Sounds in Q3 2022, with live radio accounting for the remaining 65%. BBC ATi, Q3: w/c 04/07/22 – w/c 26/09/22 inclusive.

Table 2: Total audio listening shares: 2015 and 2021

	Aged 15+		Aged 15-34	
	2015	2021	2015	2021
Radio (not including online)	74%	55%	50%	29%
BBC Radio	41%	29%	19%	9%
Global Radio	14%	12%	12%	8%
Bauer Media	10%	9%	11%	7%
Wireless	2%	2%	2%	1%
Other	7%	3%	6%	4%
Online radio listening (live and catchup)	5%	10%	6%	7%
BBC Radio	2%	4%	2%	2%
Global Radio	1%	2%	1%	2%
Bauer Media	1%	2%	1%	2%
Wireless	<1%	1%	<1%	<1%
Other	1%	1%	1%	1%
Podcasts		5%		7%
Spotify		4%		
Apple Music		1%		
Amazon Prime		1%		
Google		<1%		
BBC Sounds		<1%		
Other		<1%		
Streamed music	5%	18%	12%	39%
Spotify		12%		31%
Apple Music		2%		3%
Amazon Music		3%		3%
Google		1%		2%
BBC Sounds		<1%		<1%
Other music streaming service		<1%		1%
Other forms of audio³⁸	17%	12%	30%	16%
BBC (Radio and Sounds)	43%	33%	21%	11%

Source: Ofcom analysis modelled on IPA TouchPoints and RAJAR data.

³⁸ Personal music (CD and digital), music video sites/channels, audiobooks

Impact of potential changes to BBC audio services

- 3.37 We have considered the potential impact on competition of changes that lead to increases in listening to the BBC's audio services. This includes considering where that increase in listening is likely to come from and how significant the impact might be on the BBC's competitors.
- 3.38 To do this, we have considered the potential impact of changes that are specific to the BBC Sounds platform (i.e. changes to online-only audio services such as podcasts and music mixes), as well as changes to BBC live radio broadcasting.³⁹

Changes that only affect BBC Sounds

- 3.39 The BBC may make changes that are limited to the BBC Sounds platform. While BBC Sounds provides access to BBC radio services (which we consider further below), it also includes a range of other audio content that is only available online. This online-only audio includes on-demand (i.e. catch-up) radio programmes, podcasts, streamed music (including 'music mixes'⁴⁰ and online audio streams such as CBeebies Radio, Radio 1 Dance and Radio 1 Relax) and audiobooks.⁴¹
- 3.40 We consider that changes that are limited to BBC Sounds are likely to pose a low risk of crowding out domestic commercial providers, for the reasons set out below.
- 3.41 Where a change to BBC Sounds increases its audience share at the expense of commercial providers, the impact is likely to be spread over a wide competitor set, including domestic and global players offering radio and other audio content. This is because:
- a) BBC Sounds may draw some of any increase in listeners from other BBC services.⁴²
 - b) Services delivered by global providers like Spotify, Amazon or Apple Music are likely to be close substitutes for BBC online-only audio services such as podcasts or streamed music, in addition to competing services from UK providers.
 - c) Many users of BBC Sounds also listen to audio content from a range of commercial providers. On average, people who use BBC Sounds each week use 4.5 online audio services (including BBC Sounds), compared to the average of 1.9 services used by any weekly online audio listener.⁴³
 - d) When accessing online audio, audiences can more easily switch between different providers and a range of services (including music streaming, audiobooks and podcasts, as well as radio) using the same device – for example, a mobile phone or a smart speaker.

³⁹ As BBC live radio broadcasting is also available online, changes will affect listening both on radio sets and on BBC Sounds.

⁴⁰ Curated music playlists that can be listened to on demand.

⁴¹ Currently only a limited number of audiobooks are available on BBC Sounds.

⁴² Our BBC Sounds statement found that the evidence suggested that use of BBC Sounds does not make listeners less likely to use other services, and that it was not attracting listeners away from commercial radio operators and keeping them on its own platform. Ofcom, 2021, [Market position of BBC Sounds](#), paragraph 4.26.

⁴³ Ofcom Audio Survey, 2022

- 3.42 For these reasons, we consider that a change to BBC Sounds would need to create a very large uplift in listening to BBC Sounds at the expense of commercial providers, or draw from a very specific and limited set of competitors, in order to have a significant impact on the listening share of commercial providers. But a very large uplift at the expense of commercial providers seems unlikely because:
- a) Listening to the BBC's online-only audio content currently accounts for a very small share of total listening time (less than 1% in 2021).
 - b) Competitive conditions make it difficult to significantly expand BBC Sounds' listening share, as its online-only services face a range of competitors, including global companies, which are also investing in their services and gaining audiences.
- 3.43 In summary, we consider that changes that only affect BBC Sounds are unlikely to have a significant impact on the listening share – and therefore the revenues – of domestic competitors, and so do not expect a significant risk of crowding out.

Changes to BBC radio services

- 3.44 BBC radio services include a number of radio stations, currently broadcast live via radio sets (analogue and DAB) and also made available online via BBC Sounds. We consider that changes to the BBC's radio services which increase its listening at the expense of commercial providers could have a greater impact on competition compared to changes that only affect BBC Sounds, for the reasons set out below.
- 3.45 First, the BBC's radio portfolio accounts for a sizeable proportion of listening. Within radio, across all platforms, the BBC's listening share is just below 50%.⁴⁴ This suggests that changes the BBC makes to its radio services could have a greater impact on competition than changes that only affect BBC Sounds. But we also recognise that the BBC's share of all radio listening has been declining.⁴⁵ In part this reflects the fact that commercial radio providers have been more successful at attracting online listeners (including among younger age groups) than the BBC.⁴⁶
- 3.46 Second, while a change to the BBC's radio services could draw listeners from across radio and other audio services, we consider the impact is likely to be disproportionately borne by other domestic radio services, as these are currently likely to be closer substitutes. This is based on the following:
- a) Alternative online audio services are less readily available on radio sets, which account for 55% of all listening.⁴⁷ As a result, we would expect these audiences to be more likely

⁴⁴ RAJAR Q3 2022

⁴⁵ The latest radio industry listening figures indicate that, for the first time, commercial radio accounts for over half of all radio listening (51%) while the BBC has recorded its lowest figure of 47%. RAJAR Q3 2022.

⁴⁶ Our review of BBC Sounds also found that the BBC's share of online listening to radio (41% of hours) was lower than its share of overall live radio listening hours (51%), suggesting that it had not been able to fully translate its historically strong position in broadcast radio to the online space, and that commercial radio has been more successful at attracting listeners online. Ofcom, 2021, [Market position of BBC Sounds](#), paragraph 4.29.

⁴⁷ IPA TouchPoints 2022 w1

to switch between radio stations than they are to switch to other types of audio services, such as podcasts or music streaming.⁴⁸

- b) When audiences do listen to radio online, commercial radio providers may still be the closest alternatives, even if switching between different online audio services is relatively straightforward. Live radio (however delivered) is presenter-led and offers live news and information, as well as reactions to events as they happen, unlike streamed music or podcasts.⁴⁹

3.47 Nonetheless, we recognise that any impact on other radio stations will vary according to the nature of the change, and some changes could have an even more concentrated impact on commercial providers. For example, the affected competitors are likely to differ according to whether the changes affect local or national services, or speech radio rather than music-based services. If a change affects a smaller pool of competitors, the individual impact could be bigger, even for a comparatively small overall increase in BBC listening. As such, in assessing the risk of crowding out from any specific change to the BBC's radio services, consideration would need to be given to both the scale of any increase in listening to BBC radio services, and where that audience is expected to be drawn from.

3.48 In the light of these factors, we consider that a change to the BBC's radio services which resulted in a significant increase in listening has the potential to have a bigger impact on domestic commercial radio providers. As such, we consider there is a higher risk of crowding out from such changes, compared to changes that are limited to BBC Sounds.

⁴⁸ We recognise that the ability to switch, and ease of switching from offline to online audio services, and between online services, is likely to increase as the use of online services and smart devices grows.

⁴⁹ For example, Figure 86 of the [Media Nations 2022 report](#) illustrates how the reasons given for listening to podcasts, music radio and speech radio differ (Ofcom Podcast Survey 2022). We recognise that product innovations such as Spotify's 'Daily Drive' – a playlist aimed at commuters which includes a mix of news, music and podcasts – as well as online-only services, might increase the similarity between services offered.

4. Changes to the guidance underpinning BBC competition regulation

- 4.1 In the June review we recommended that the Government should make some changes to the Agreement to give Ofcom more flexibility to determine how and when to undertake competition assessments. We also said we would publish a separate consultation on proposed changes to our guidance on assessing the competition impact of the BBC's public services.
- 4.2 Our guidance was put in place in 2017 when we first took over regulation of the BBC. Since then we have undertaken three BCAs and reviewed 18 materiality assessments. This experience, alongside feedback from stakeholders, has led us to propose some changes to our guidance.
- 4.3 The changes to guidance we are proposing have the following broad aims:
- a) to encourage a more productive dialogue between the BBC and its stakeholders;
 - b) to provide clarity on our approach to public value and our expectations of the BBC's assessment; and
 - c) to promote a better understanding among stakeholders of how regulatory processes work, as well as more flexibility around Ofcom consulting on materiality.
- 4.4 This chapter summarises the changes we are proposing to make and explains our reasoning. Our proposed changes to guidance on changes to the BBC's public services are shown in full in the updated guidance document at [Annex 1](#).

Changes to our guidance to support open and transparent engagement between the BBC and stakeholders

Engagement during the materiality process

- 4.5 Under the Charter and Agreement, the BBC is required to assess whether a proposed change to its public services is material. A change is material if it may have a significant adverse impact on fair and effective competition, or if it is a new public service.
- 4.6 It is important that the BBC engages with stakeholders during the materiality process so that it can develop a broad understanding of which stakeholders may be impacted by a change, and the extent and nature of any potential impacts. The BBC should also use its engagement with stakeholders to consider whether a proposal might be amended to mitigate concerns raised by stakeholders.
- 4.7 Our current guidance advises that to facilitate discussion with stakeholders, the BBC should use its annual plan to *"give third parties a good understanding of the areas where important strategic thinking is taking place, in sufficient detail to enable comment and*

debate", which should allow the BBC to "engage with interested parties to identify which proposals might be material."⁵⁰

- 4.8 As we highlighted in our June review, some stakeholders are dissatisfied with their experience of engaging with the BBC while its plans are still at an early stage of development. AudioUK argued that the BBC carries out materiality assessments with 'insufficient' input from stakeholders, leading to "widespread concern among the wider broadcasting and production industry".⁵¹ Radiocentre has said that "engagement is often inconsistent" and 'rarely' meets stakeholders' expectations.⁵² Some stakeholders, including Radiocentre and the Professional Publishers Association (PPA) have argued that the materiality process should involve the BBC formally consulting with stakeholders.⁵³
- 4.9 The BBC has argued that adding further requirements to engage with stakeholders when assessing materiality would add unnecessary delays to its implementation of changes. It considered that this would make it harder for it to evolve its services, undermining its ability to continue delivering the Mission and Public Purposes in the long term.
- 4.10 As we set out in our June review, we think that requiring a formal consultation process as part of the BBC's materiality assessments would be disproportionate and could make it more difficult for the BBC to adapt its services to keep pace with the changing market. However, we consider there is benefit in adding further detail to our guidance on the materiality processes to provide the BBC and stakeholders with a clear view of what a reasonable and proportionate approach to engagement during the materiality process should look like.
- 4.11 We set out our proposed additions to guidance and our reasoning below. The proposed changes to guidance can also be seen in context at paragraphs 4.14-4.20 of the proposed updated guidance document at [Annex 1](#).

Providing stakeholders with sufficient information

- 4.12 Although the BBC publishes an annual plan, stakeholders have told us that this does not set out enough detail about specific BBC proposals to allow stakeholders to be clear on what the BBC plans to do in the year ahead and where potential competitive harms may occur. Other concerns are that the BBC does not set out information about its plans in a consistent way, and that it sometimes does not allow enough time for stakeholders to consider plans before they are implemented.⁵⁴
- 4.13 We are proposing to introduce an **enforceable requirement** to ensure that the BBC informs stakeholders about planned changes which are likely to be subject to an

⁵⁰ Ofcom, 2017. [Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance](#), p.13, paragraph 4.12.

⁵¹ [AudioUK response to How Ofcom Regulates the BBC consultation](#), p.5.

⁵² [Radiocentre response to How Ofcom Regulates the BBC consultation](#), pp.43, 46.

⁵³ [Radiocentre response to How Ofcom Regulates the BBC consultation](#), p.44; [PPA response to How Ofcom Regulates the BBC consultation](#), p.7; [TAC response to How Ofcom Regulates the BBC consultation](#), p.2; [AudioUK response to How Ofcom regulates the BBC consultation](#), p.6.

⁵⁴ Ofcom discussions with stakeholders, 2021-2022; [Radiocentre response to How Ofcom Regulates the BBC consultation](#), p. 7.

assessment of materiality (i.e. changes that are not 'business as usual changes')⁵⁵ in advance so they can comment during the BBC's assessment process. We propose that this requirement will be set out as part of the specified requirements within our guidance. The requirement we are proposing is as follows:

The BBC must publicise proposed changes to its public service activities in sufficient detail, and in sufficient time, to enable stakeholders to comment during an assessment of materiality by the BBC.

- 4.14 We are proposing that guidance should clarify our expectations of how the BBC should communicate its plans to stakeholders in the following way:

We would expect the BBC to explain what the change consists of, to allow stakeholders to comment on any concerns they have regarding the potential impact of the BBC's plans on competition.

One way in which the BBC can do this is through its annual plan, which the BBC is required to publish. The BBC's annual plan should give third parties a good understanding of the areas where important strategic thinking is taking place, and the changes to its services that the BBC is planning in order to deliver on its strategy, in sufficient detail to enable comment and debate. This should allow the BBC to engage with interested parties to identify which proposals might be material.

When the BBC develops plans outside the normal timescale for inclusion in the annual plan, it should use an alternative, consistent means of communication to enable potentially affected parties to easily access the relevant information.

- 4.15 We consider these additions to be proportionate and believe that they will serve to clarify that the BBC's annual plan should not only set out the BBC's strategy, but should also include detail on the specific changes that the BBC is planning to make to deliver on that strategy.

- 4.16 We have also made it clear that all other communication from the BBC regarding planned changes should be in a consistent form. Previously, the BBC has used various means to set out its plans outside the annual report – including blog posts, emails and speeches. We consider it important the BBC takes a more consistent approach. For example, this could be via a dedicated page on the BBC website that is regularly updated, or through scheduled, regular discussions with relevant stakeholders.

⁵⁵ Business-as-usual changes which the BBC makes as part of its day-to-day business (e.g., individual programme scheduling decisions). See: Ofcom, 2017. [Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance](#), p.13, paragraph 4.10.

Consultation question

- 1) Do you agree with our proposals to:
 - a) place a requirement on the BBC to publicise its planned changes to public services?
 - b) provide further guidance on how the BBC should set out information about its planned changes?

If not, please explain which changes, if any, should be made to the guidance and where appropriate, provide relevant evidence supporting your view.

Supporting a positive approach to dialogue between the BBC and stakeholders

- 4.17 As well as setting out sufficient information about its planned changes, effective engagement during the materiality stage is likely to require the BBC to proactively seek dialogue with stakeholders.
- 4.18 In some cases, those most affected by a change to the BBC's services might be small companies with limited capacity to monitor BBC developments. For example, a change to the BBC's local content provision may have a greater impact on small companies that do not have an existing relationship with the BBC. We would expect the BBC to take this into account when considering how to engage with stakeholders as part of a materiality assessment.
- 4.19 We are proposing additions to our guidance to set clearer expectations of the respective roles of the BBC and stakeholders in facilitating dialogue. These additions to the guidance are also intended to reflect the fact that engagement during the materiality phase is a two-way process and relies on timely input from stakeholders. Both the depth of analysis and the level of engagement that the BBC undertakes as part of a materiality assessment must be proportionate to the scale of the proposed change. Stakeholders should engage in a way that fits with the BBC's process, provided that this is reasonable.
- 4.20 We expect the BBC to consider information provided by stakeholders on the impact of the specific proposal. For dialogue to be productive, the focus of engagement should be the specifics of a proposed change to a BBC service. There is a risk that stakeholders will focus on the question of whether the BBC should be operating in a given area of activity, as a matter of principle. But unless the change proposed by the BBC involves the BBC's expansion into an entirely new area of activity, this is unlikely to be relevant to the consideration of whether or not a change is material.
- 4.21 The additions to guidance that we are proposing are as follows:

The BBC should make reasonable efforts to seek dialogue with parties who may be affected by the change as part of its consideration of whether the change is material. We would expect the BBC to explain how it has engaged with stakeholders, and taken account of this engagement, as part of any materiality assessment.

The BBC should ensure that it is easy for stakeholders to raise concerns with the BBC – for example, by having a dedicated and monitored email inbox which stakeholders could use to get in touch with the BBC.

Stakeholders should describe specific concerns with the BBC's proposal and justify these concerns with appropriate reasoning and, where possible, evidence. Where appropriate, the BBC should consider whether it should adjust its proposed change to reduce the impact on stakeholders.

The timescales for any dialogue would be set by the BBC and we would not expect dialogue to consist of a lengthy formal process. We do not expect the BBC to delay implementation of a change if stakeholders have not engaged in dialogue where there has been a reasonable opportunity for them to do so.

Consultation question

2) Do you agree with our proposals to put in place more guidance about how stakeholders and the BBC should engage during the assessment of materiality by the BBC?

Engagement during the PIT process

- 4.22 The BBC publishes two main documents as part of a PIT: its consultation, in which it sets out the proposal for change and asks for stakeholder input, and the final statement where it reaches its conclusion.
- 4.23 The level of information provided by the BBC in its PIT consultations has attracted criticism from stakeholders. Our review of the PIT for the previous set of changes to BBC iPlayer in 2019 set out our dissatisfaction with the level of detail contained in the BBC's PIT consultation.⁵⁶ Several stakeholders have also raised concerns that the BBC did not set out sufficient information in its latest PIT consultation, regarding proposed changes to BBC iPlayer.⁵⁷ On this occasion we found that, following the BBC's PIT statement, there was sufficient information for Ofcom to consider whether the BBC's iPlayer proposals were material.⁵⁸ However, we consider that the BBC could have provided more detail to help stakeholders understand the potential impact on their businesses. This in turn would better enable the BBC to take account of stakeholder concerns as it develops its plans for iPlayer.
- 4.24 In our June review, we recommended to Government that Ofcom should have discretion over whether to launch a BCA or a shorter assessment following a BBC PIT. If this change is implemented, it may not always be necessary for Ofcom to proceed with a BCA or a shorter assessment, provided that the BBC conducts a sufficiently thorough PIT. If we were to allow the BBC to proceed with implementation on the strength of its PIT alone, we would have to be satisfied with the level of engagement that the BBC had undertaken as part of its PIT – including providing sufficient detail to stakeholders as part of the PIT consultation.

⁵⁶ Ofcom, 2019. [BBC iPlayer Competition Assessment: Consultation on Ofcom's provisional determination](#), pp.6-7.

⁵⁷ [Sky response to the BBC iPlayer Public Interest Test consultation](#), p.2; [Virgin Media O2 response to Ofcom review of proposed increased amount of archive content on BBC iPlayer](#), p.4; [Directors UK response to Ofcom review of proposed increased amount of archive content on BBC iPlayer](#), p.3-4.

⁵⁸ [Ofcom, 2022. Ofcom review of proposed increased amount of archive content on BBC iPlayer: Conclusion of initial assessment.](#)

- 4.25 We propose to strengthen our guidance to describe more precisely what information we would expect the BBC to set out as part of its PIT consultation, with the following additional text:

[...] At a minimum, we would expect any BBC PIT consultation to include:

- *a clear description of the change including identification of the content or functionality that is new;*
- *a firm indication of the scale of the changes;*
- *the target demographic(s);*
- *where possible, take-up forecasts of new content or functionality; and*
- *timescales for implementation of the change.*

Consultation question

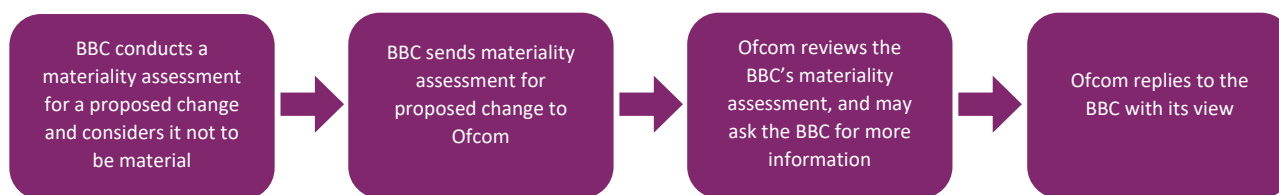
3) Do you agree with our proposals to include further guidance on what the BBC should include in its public interest test consultation?

Providing more detail about how the materiality assessment process works

- 4.26 Under the Charter and Agreement, it is the BBC's responsibility to consider whether any changes it proposes to make to its services are material. We are not required under the Agreement to review the BBC's materiality assessments, but we do have the power to direct the BBC to conduct a PIT if the BBC has failed to identify a material change.
- 4.27 Our competition guidance currently focuses on the processes for BCAs and shorter assessments. However, stakeholders have indicated to us that there is a lack of clarity around the respective roles of the BBC and Ofcom in assessing the materiality of changes, and have raised concern about lack of oversight of the BBC's materiality assessments when a change is found not to be material. Radiocentre, for example, has described the materiality process as 'opaque'.⁵⁹
- 4.28 In practice, the BBC provides Ofcom with its assessment of materiality and Ofcom will normally review this to assure itself that the change is not material. Up to now, the BBC has produced a documented 'materiality assessment' setting out how it has considered the potential impact of a change. But the Agreement does not set out what form the BBC's assessment must take, so this could potentially vary. The scope, amount of analysis undertaken and level of detail of the assessment depend on the nature of the proposal.
- 4.29 The process of Ofcom reviewing the BBC's materiality assessment provides assurance to the BBC of our view on the materiality of the change, and also ensures that Ofcom is aware of the proposed change and how the BBC has come to its conclusion on materiality. The typical process for changes that are not material, including both the BBC's and Ofcom's roles, is set out below.

⁵⁹ Radiocentre, 2021. [Response to How Ofcom Regulates the BBC consultation](#), p.43

Figure 2: the typical process for a change the BBC considers not to be material



4.30 On some occasions, where we have considered it helpful to stakeholders, we have published our view on the BBC's materiality assessment. For example, when assessing the materiality assessment for R1 Relax, we published our letter to the BBC on our website.⁶⁰

4.31 Given stakeholders' uncertainty regarding how non-material changes are assessed, we are proposing the following addition to our guidance to provide more clarity:

We expect the BBC to engage appropriately with us to keep us apprised of its developments. As part of this engagement, when the BBC conducts a materiality assessment and finds a proposed change to be not material, we expect the BBC to send the materiality assessment to Ofcom for review. We consider this to be good practice.

Consultation question

4) Do you agree with our proposals to provide more detail in our guidance about the materiality assessment process?

Adding flexibility for Ofcom to decide whether consulting on materiality is necessary following a BBC PIT

4.32 Following a BBC PIT, Ofcom conducts an initial assessment to consider whether the BBC's proposals are material, and if so, whether it is appropriate to conduct a BCA or a shorter assessment.

4.33 Our guidance currently sets out that, as part of an initial assessment, we will invite third parties to comment on whether they consider the BBC's published proposals to be material and what further assessment may be required.⁶¹

4.34 An early consultation can be useful to help us assess stakeholder views of a BBC proposal at the start of the BCA or shorter assessment process, but it is also resource-intensive for Ofcom and stakeholders. In most cases, the BBC will have already found that a change is material and conducted a PIT as a precursor to any initial assessment. Given that we would expect to have engaged closely with the BBC throughout these processes, there is often limited value in Ofcom consulting specifically on the materiality of the change as part of our initial assessment. In all cases there would be a further consultation as part of the BCA or a shorter assessment to follow.

⁶⁰ [Ofcom letter to the BBC and Radiocentre](#), 26 July 2021.

⁶¹ Ofcom, 2017. [Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance](#), p.16, paragraph 4.29.

- 4.35 We are therefore proposing that there should be flexibility for Ofcom to decide whether a consultation at the initial assessment stage is necessary. We propose the following update to our guidance to provide greater flexibility:

We may invite third parties to comment on whether they consider the BBC's published proposals to be material and what further assessment may be required. If we do this, generally we will place a limit of two weeks for third parties to respond.

Consultation question

5) Do you agree with our proposal for additional flexibility for Ofcom to determine whether it is necessary to consult on materiality following a PIT in which the BBC has determined the change is material?

Providing more detail about how public value should be considered within the competition framework

- 4.36 Public value is an important consideration within the regulatory framework, both in measuring the BBC's performance and in considering changes the BBC proposes to make to its public services.
- 4.37 Where a change is material, the BBC conducts an assessment of whether the competition impact is justified by the public value that the proposed change will generate. Under the competition framework it is our role to review the assessment of public value conducted by the BBC as part of its PIT (as well as to assess the risks to fair and effective competition). As such, public value plays an important role in determining whether the BBC can proceed with a proposed material change.
- 4.38 The existing guidance sets out some of the factors that we are likely to consider in reviewing the BBC's public value assessments.⁶² In our June review we said that we would provide more detail on certain elements of public value that we expect to see in the BBC's PITs, based on our experience of reviewing past assessments.
- 4.39 We are now consulting on providing further guidance on what we would expect to see in the BBC's public value assessment, with examples to help illustrate potential considerations. We also set out our views on how certain types of impact, resulting from changes to BBC services, could generate significant public value.

How the BBC should approach public value assessments

- 4.40 The BBC creates public value by delivering its Mission and Public Purposes, and we would expect these to be central to any public value assessment.⁶³ Within this, there are different aspects of public value that it may be useful for the BBC to consider and clearly set out in its assessments.

⁶² Ofcom, 2017. [Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance](#), pp.29-31.

⁶³ The BBC's mission and public purposes are set out in the Royal Charter. For more information on the BBC's mission, values and public purposes see [this page](#) on the BBC website.

Identifying the public value that the change will deliver

- 4.41 Changes to the BBC's public services could have a range of benefits to individuals and broader society. We expect the BBC to clearly articulate the types of public value, including by reference to the Public Purposes, and to explain how its proposal delivers these benefits.
- 4.42 We therefore propose to add the following text to our guidance to set out the types of public value we expect the BBC to consider:

What constitutes public value

Delivery of its Mission and Public Purposes is central to the BBC's creation of public value. Therefore, we would expect the BBC's assessment of public value from a proposed change to be grounded in its Mission and Public Purposes.

Within this, there are various aspects of public value that it may be useful for the BBC to consider in its assessment:

- a) People may personally benefit from using the service offered by the BBC – for example, watching content they enjoy, learning something new, or being better informed and able to engage with the world around them.*
- b) When people use the BBC's public services, they may change their attitudes and behaviour in ways that benefit those around them. This can generate public value over and above the individual user's value. For example, providing impartial news could foster active and informed participation in the democratic process that improves the lives of fellow citizens.*
- c) There may also be public value arising from the production of the service. As set out in the BBC's Public Purposes, the BBC has a role in supporting the creative economy across the United Kingdom. Its approach to commissioning and producing content may create public value by contributing to this Purpose (for example, by supporting the sustainable development of the creative economy in the nations and regions).*

Identifying which audiences are likely to benefit from the public value generated

- 4.43 We also expect the BBC to consider whether the impact of a proposed change varies significantly across the population, as this can help inform the scale of public value. For example, some changes may largely benefit existing users of BBC services – either by displacing alternative services or by generating additional consumption. Other changes may also attract new audiences and create public value by reaching otherwise underserved audiences, which are crucial for the BBC's ability to deliver its Mission and Public Purposes in the long term.

The additional public value created by the change

- 4.44 Consistent with our approach to assessing adverse impacts on fair and effective competition, the focus of assessment is on the changes to public value that result from the BBC's proposal. Accordingly, we would expect the BBC's analysis to consider the additional public value associated with the proposal. This approach recognises that other services (both BBC and non-BBC) also provide benefits to viewers and listeners, wider society, and

the UK creative economy. It is therefore the overall change in public value as a result of the proposal which is relevant for assessing whether any adverse impact on competition is justified.

- 4.45 We recognise the challenges for the BBC in assessing public value generated by other broadcasters, and so our intention is not for the BBC to assess – or quantify – the public value of each commercial provider. Rather, we would expect it to consider the additional public value a proposed change would provide, over and above the services currently available (from the BBC and others), and to describe this as part of its public value assessment.
- 4.46 For example, the BBC may be able to deliver greater additional public value through changes that focus on or enhance the distinctiveness of its services.⁶⁴ We consider that distinctiveness can take a range of forms; for example, offering something not currently provided by others, or providing a perspective or approach different to that of commercial providers. Key drivers of distinctiveness include the breadth and quality of output, the volume of new and original UK content, risk-taking and innovation, and the range of audiences the BBC reaches and serves. However, distinctiveness does not mean that every BBC programme needs to be different from what other broadcasters provide.
- 4.47 Where relevant, we would expect the BBC to clearly articulate how a proposed change contributes to its distinctiveness, as part of any public value assessment. If the BBC were to propose to make changes to its services that rendered these services less distinctive, it is likely that this would create less additional public value, thereby making adverse impacts on competition harder to justify.
- 4.48 We propose to set out in the guidance our expectation that the BBC considers the additional public value of its proposal:

Consistent with our approach to assessing adverse impacts on fair and effective competition, the focus of assessment is on the changes to public value that result from the BBC's proposal. Accordingly, we would expect the BBC's PIT to include a qualitative consideration of the additional public value associated with the proposal. As part of this, we would expect the BBC to clearly articulate how a proposed change contributes to the distinctiveness of the BBC.

This approach recognises that other services (both BBC and non-BBC) also provide public value, and so it is the overall change in public value as a result of the proposal that is relevant for assessing whether any adverse impact on competition is justified.

The period during which public value will be delivered

- 4.49 We recognise that different elements of public value will probably be delivered over different time horizons, and this should be recognised in the BBC's assessment of public value, where relevant. We propose to set this out in our guidance:

We recognise that some elements of public value will be delivered in the short term, and that others may occur over a longer time period. For example, audiences using the service

⁶⁴ As set out in the Charter, in delivering its Mission and Public Purposes the BBC's services should be distinctive from those provided elsewhere.

may benefit immediately, but benefits to wider society could take longer to develop. These longer-term benefits could be important but may also be difficult to evidence. We consider it reasonable for the BBC's public value assessments to consider effects over a longer time period where relevant, but given their longer-term nature, assessments should reflect that these effects might be more uncertain.

How certain types of impact from changes to BBC services could generate significant public value

- 4.50 As described above, delivering against the Mission and Public Purposes for all audiences can create significant public value. However, as set out in Section 2, the changing market context has made this more challenging for the BBC, particularly among audiences who consume much of their content online.
- 4.51 In order to continue to deliver its Mission and Public Purposes and create public value in the future, it is essential that the BBC adapts to continue to reach and remain relevant to all audiences across the UK. This is the focus of the BBC's digital strategy, and we expect many of the changes the BBC may make in audiovisual and audio for the remainder of the Charter period will relate to the execution of its online strategy.⁶⁵
- 4.52 We consider that changes that are directly linked to addressing the challenges the BBC faces in continuing to connect with audiences, and which are strongly linked to the delivery of its Mission and Public Purposes, have the potential to generate significant additional public value, both today and in the future. For example:
- a) Changes that enable the BBC to better reach underserved audiences have the potential to generate high additional public value over and above existing services (from the BBC and other broadcasters). Such groups could include specific demographics or communities. For example, the potential for a new channel dedicated to delivering more content designed to reflect the lives of people living in Scotland was a key consideration in our decision to approve the launch of the BBC Scotland channel in 2018.⁶⁶
 - b) Changes that allow the BBC to better appeal to audiences that it currently struggles to reach are also crucial to its ability to deliver its Mission and Public Purposes in the long term. For example, younger audiences are critical for the future sustainability of the BBC but are less likely to consume and engage with BBC content.⁶⁷ The potential for the BBC Three proposals to target underserved younger audiences and to further the BBC's overall strategy in this space were important considerations in our review of the BBC's public value assessment.⁶⁸
- 4.53 When considering a change to its services, we would expect the BBC to consider how a proposed change may contribute to its ability to continue to create public value in the

⁶⁵ BBC, 26 May 2022, [BBC's plan to deliver a digital-first BBC](#).

⁶⁶ Ofcom, 2018. [BBC Scotland Competition Assessment: Final determination](#), pp.15-16.

⁶⁷ Across all age groups the estimated total number of minutes per day spent consuming BBC content is 143, but this falls to 60 minutes per day for those aged 16-34. Ofcom modelling from BARB, BBC iPlayer data, RAJAR and measured as BBC in Comscore. The modelling approach has been modified for 2020 data and backdated to 2019 data in the 2021 Annual Report. Radio data for 2020 has been modelled from RAJAR 2019 and IPA Touchpoints 2020 data combined

⁶⁸ Ofcom, 2021. [BBC Three television channel competition assessment](#).

longer term, despite the challenges it faces. The BBC should explicitly set out its consideration of this within its public value assessments, wherever relevant.

4.54 The fact that the BBC can potentially create significant public value by reaching underserved audiences does not mean that it should avoid making changes that are focused on existing, well-served audiences, or that changes cannot bring benefit to all audiences. Indeed, ensuring that existing linear audiences continue to use the BBC as they move online is also vital for the BBC's ability to deliver its Mission and Public Purposes in the longer term.⁶⁹ We are simply recognising that connecting with all audiences is critical for the overall sustainability of the BBC, and so changes targeted at underserved groups have the potential to deliver greater additional public value.

4.55 We propose to set out in our guidance that where appropriate, the BBC should consider the public value of changes that contribute to its long-term sustainability:

We also acknowledge that the BBC is facing several challenges, and so to continue to provide public value in the future it is essential that it continues to reach, and remain relevant to, audiences across the UK. In considering the public value associated with a proposed change, it may therefore be appropriate for the BBC to consider how the proposed change contributes to the BBC's long-term sustainability – for example, through reaching audiences currently not well served by the BBC, or by increasing positive awareness of the BBC brand among harder-to-reach audiences.

Consultation question

6) Do you agree with our proposals to add further guidance on our expectations for the BBC's public value assessment?

⁶⁹ We said in our *Small Screen: Big Debate* statement that public service broadcasters (PSBs) need to accelerate their digital plans to maintain a strong link with audiences.

5. Changes to our requirements and guidance on the BBC's commercial activities

- 5.1 In 2017, we put in place [Trading and Separation requirements and guidance](#) (the “rules”) to make sure that the BBC's commercial subsidiaries do not gain an unfair competitive advantage as a result of their relationship with the BBC public service.⁷⁰ The BBC must put in place appropriate and robust controls and procedures to ensure that it follows these rules.
- 5.2 The BBC's commercial activities have changed substantially in recent years. BBC Studios was created in 2017 when the BBC moved most of its production staff into the commercial activities. In 2019, the production and distribution arms were merged into BBC Studios, and the BBC has continued to move other activities into the subsidiary in recent years. BBC Studios produces and distributes content for consumers to watch in the UK and around the world. It owns and operates channels (e.g. UKTV), and outside the UK, in partnership with ITV, owns the subscription video-on-demand service BritBox. BBC Studios also sells programme formats internationally (such as Strictly Come Dancing) and consumer products such as DVDs and merchandise.
- 5.3 Given the changes in the market that have taken place, and the continued evolution of BBC Studios, we recently undertook a review to better understand how the BBC had implemented the rules. This was different from an enforcement investigation, the purpose of which would have been to investigate specific concerns we might have had about compliance. Our findings from our [review of BBC Studios](#) were published in June 2022.
- 5.4 We found two areas where we were not satisfied that the BBC had appropriate controls and processes in place to ensure compliance with the rules. We said that we expected the BBC Board to look at the issues raised and satisfy itself that its processes and arrangements are consistent with the rules.
- 5.5 This section sets out how the BBC has responded to our concerns, our views of the changes the BBC is planning to make, and some small changes we are proposing to make to the rules. Our proposed changes to the rules are shown in full in the updated requirements and guidance document in [Annex 2](#). We will provide an update on how the BBC has implemented its planned changes in our 2023 Annual Report on the BBC, including providing guidance on what we consider represents a range for a commercial rate of return and the appropriate period over which BBC Studios (and its lines of business) should earn this rate.⁷¹

⁷⁰ The Trading and Separation requirements and guidance have been updated since they were put in place, most recently in 2019.

⁷¹ In the BBC Studios Review, we said we would provide guidance on what constituted a commercial rate of return for BBC Studios and its lines of business and the period this should be earned over. However, given our concerns regarding secondary content sales, we had decided not to publish the results of our benchmarking work in the review. We said we would set out a timeline for the publication of benchmarking in our autumn consultation.

Our review of BBC Studios highlighted two areas of concern

5.6 Our review found that, in some areas, the BBC had appropriate processes and measures in place. We were broadly satisfied with the BBC's approach to the exchange of information, the commercial governance structure and its reporting arrangements that ensure that there is appropriate separation between the public service and BBC Studios, and its approach to charging BBC Studios for use of the BBC brand.

5.7 However, our review found two significant areas where we were not satisfied that the BBC has appropriate controls and procedures in place to ensure that it is operating in line with our regulation:

- a) **Secondary content sales:** For certain categories of content that BBC Studios distributes, where the BBC public service owns the intellectual property, co-production arrangements are in place. Under these arrangements BBC Studios is entitled to the entirety of the profit related to the distribution of the associated secondary content rights. This is a long-established practice, and it did not appear to us that the BBC had fully reviewed and updated it in the light of our rules.

We did not see evidence that the public service has undertaken objective tests to ensure that its co-production arrangements with BBC Studios are at arm's length and on commercial terms, and therefore it was not clear to us how the BBC is satisfying itself that it is compliant.

- b) **Supply and pricing of goods and services (transfer pricing):** The public service sells a range of goods and services to its commercial subsidiaries and to the market (including BBC Studios). To better understand the way the BBC does this, we looked at a small sample of transactions. Our review found some issues with the administrative processes in place. We were not able to satisfy ourselves that the BBC was using sufficient information and evidence and had all the necessary checks and balances in place, to ensure compliance with the rules.

The BBC is making changes to respond to our findings

5.8 The BBC wrote to us in November outlining its response to our findings (BBC letter). We have published this letter alongside this consultation.⁷²

5.9 The BBC said it took very seriously the concerns Ofcom raised in relation to its approach to secondary content sales for certain types of BBC content and the transfer pricing errors highlighted. It noted that the Fair Trading Committee had carefully considered the issues raised, on behalf of the BBC Board and proposed a number of changes to address our concerns and ensure that the BBC's processes and arrangements are consistent with the rules.

⁷² [Letter from the Chair of the BBC Board's Fair Trading Committee, 8 November 2022.](#)

Secondary content sales

- 5.10 The BBC noted that Ofcom's concerns related to 20 long-standing programmes originally produced by BBC in-house production, and a number of current in-house production programmes that BBC Studios had invested in. The BBC stated that these represented a small proportion of BBC Studios' total investment in BBC programmes and a small proportion of BBC Studios' overall costs.
- 5.11 To address the concerns raised, the BBC is putting in place a formal process for assessing these deals on a case by case basis when they are re-commissioned or there is a re-investment decision. The BBC said the deals will be approved by the public service and this process *'...will include a clearly articulated and recorded rationale for the deal parameters for each transaction and in particular the basis on which the value the public service receives from BBC Studios as its co-producer is reasonably considered to be in line with the value of the rights being traded'*.
- 5.12 The BBC stated that the analysis would include:
- a) The structure of the deal – for example, the involvement of other producers or investors, allocation of rights in and ex-UK and for different formats;
 - b) Level of investment;
 - c) The extent of the creative input BBC Studios is supplying; and
 - d) The qualitative value of the programme to public service slate.⁷³
- 5.13 While the BBC considered that its historic approach was consistent with the rules, it acknowledged that this process might change the type of deal for certain titles. It said that this might have *'implications for the level of Studios' investment in certain programmes and in turn mean Public Service Commissioning either receiving greater share of net profits directly from sales or exploring third-party investment for the rights'*.

Supply and pricing of goods and services

- 5.14 The BBC said it has thoroughly reviewed its processes in light of our observations and concerns. It stated that it has taken the opportunity to make further improvements to project management processes, training and assurance processes to reduce the likelihood of such issues in the future. The BBC has taken the following actions:
- a) Improved project management processes by designating finance and legal leads in the BBC and BBC Studios (and other commercial subsidiaries) who are responsible for liaising, drafting, checking numbers, and tracking progress of the service level agreements for supply of goods and services by the BBC Public Service to the commercial subsidiaries.
 - b) Established an in-depth mandatory training programme for all finance teams involved in transfer pricing and other reporting for Ofcom.

⁷³ For more information on the BBC's criteria refer to page 2 of BBC's letter dated 8 November 2022.

- c) In 2021, the Fair Trading Committee commissioned the BBC's Internal Audit team to review the transfer pricing processes. The BBC said that it had implemented a number of recommendations based on this review. The Fair Trading Committee has also decided that the Internal Audit team should continue to carry out and report on regular spot-checks of the transfer pricing regime.

Proportionality of the regulatory requirements

- 5.15 The BBC noted that the total value of transfer charges is small compared to BBC Studios overall operating costs (8.8% for 2021/22). The BBC therefore argued that there was little if any risk of market distortion or unfair competitive advantage.
- 5.16 The BBC reiterated its request that the requirements should be amended to better target areas where there is a demonstrable risk of harm. Alternatively, it argued we should provide guidance on what level of cross-subsidy would be likely to represent a material risk of such harm occurring i.e. a form of *de minimis* threshold for the raising of concerns or investigation.

Our response

- 5.17 We discuss our response to the changes the BBC has made or is planning to make separately for secondary content sales and transfer pricing below.

Secondary content sales

- 5.18 We welcome the BBC's plan to put in place a formal process to determine whether the value the public service receives from BBC Studios is in line with the value of the rights being traded. It has said that this may result in changes to some of these deals on a forward-looking basis and we understand that this could include a more traditional sales agent arrangement where the residual revenue is returned to the Public Service as the rights holder.
- 5.19 In principle, this should address our concerns for any future investment that BBC Studios is making on public service IP programmes and the BBC has confirmed that all of the 20 remaining series will be reassessed before the end of 2023/24 financial year. However, we will look in detail at the criteria the BBC is using to make its assessment and monitor how this is implemented in practice to ensure its new approach addresses the issues we have identified. We also expect the BBC to apply these new criteria when considering deals with third party distributors who are investing in public service IP programmes. If, following our engagement with the BBC, we have concerns about compliance of its new approach with the rules, we will consider taking enforcement action.
- 5.20 While the BBC's new process should address our concerns for future deals, BBC Studios will continue to earn some revenue from previous series of Public Service IP programmes. There is a question about whether all of this revenue for previous deals should remain with BBC Studios – for example where the future investment is not considered a co-production. This would only apply to any investment deal undertaken after our rules were put in place in April 2017.

- 5.21 We asked the BBC to supply information to us on the likely quantum of the revenue for these contracts on an ongoing basis. The BBC has provided some information that indicates revenues from secondary content sales typically decline significantly over time. This suggests that any revenue BBC Studios might be retaining which could have gone back to the Public Service if it had implemented the new process earlier could be small and will continue to decline over time. As the BBC is taking steps to address this issue on a forward looking basis, we have therefore decided not to take any further action on series of BBC IP programmes that BBC Studios invested in between 2017 and now.
- 5.22 We are also making a small change to the rules to make it clear that the transfer pricing rules apply where the public service is supplying content or IP to BBC Studios for secondary exploitation. We are therefore proposing to add the following wording in relation to Requirement B.3 (which sets out the principles by which the BBC must set prices and terms for goods and/or services supplied by the Public Service to Commercial Subsidiaries):

Requirement B.3 does apply to the supply of content / IP for secondary exploitation by the Public Service to the Commercial Subsidiaries. The Public Service must ensure that the value it receives from the Commercial Subsidiaries is at least equivalent to the revenue the Public Service could have earned if the content/ IP for secondary exploitation was sold to a third party i.e. in line with the opportunity cost principle as set out in B.12.

Consultation question

7) Do you agree with our proposal to make it clear that the transfer pricing rules apply when the public service is supplying content or IP for secondary exploitation?

Transfer pricing

- 5.23 We welcome the changes the BBC has made to improve its project management procedures, training and assurance processes. The steps the Fair Trading Committee took in 2021, and the work by the BBC's Internal Audit team, are also important in addressing our concerns. We will work with the BBC to review the internal audit findings and the subsequent actions it has undertaken and to monitor their impact in the future.
- 5.24 It is important that the BBC continues to identify and address any weaknesses in its internal controls and accounting processes as it implements the changes discussed above. We therefore propose to add a new requirement to enable us to direct the BBC to undertake a review of its transfer pricing processes to ensure any further concerns are identified promptly:

Where directed by Ofcom to do so, the BBC must carry out a review of its internal controls and accounting processes to ensure they are adequate and enable the BBC to comply with our requirements with regard to the supply of goods and services as set out in Section B.

- 5.25 Given that the BBC has only recently made the changes outlined above, we would not anticipate directing the BBC to undertake a review until these changes have had a chance to bed down and take effect (i.e. not before 2024).

Consultation question

8) Do you agree with our proposal to add a requirement that allows Ofcom to direct the BBC to undertake a review of its internal controls and accounting processes to ensure they are adequate and enable the BBC to comply with the transfer pricing requirements?

Proportionality of the regulatory requirements

- 5.26 As discussed above and in our review of BBC Studios, the BBC has asked for some changes to the rules to ensure they are proportionate.
- 5.27 We consider our requirements are focused on areas where there may be a risk of unfair disadvantage being conferred to the commercial subsidiaries which could cause distortion and harm in the market. We focus our requirements on supply of goods and services between the BBC public service and the commercial subsidiaries, the rate of return of the commercial subsidiaries, and operational separation procedures.
- 5.28 We consider that a materiality threshold would depend on the specific markets and the size of the specific operators which we aim to protect with our rules. We often have a clear idea about these when the actual circumstances come to pass. To set an *ex ante* threshold would be speculative and could be inappropriate in those actual circumstances. The BBC has referred to the materiality thresholds set by the NAO in its audit work. We consider that these thresholds are set for entirely different purposes, namely the regularity and statutory audits, and not the competition and market harm concerns which we may have.
- 5.29 We therefore do not propose to set a materiality threshold. However, we expect that the level of evidentiary and computational detail which the BBC applies in setting transfer charges is proportionate to the relative size of those charges. For example, while significant charges will require detailed supporting data and calculations, smaller charges could be based on simplified estimates.

6. Summary of proposed changes

- 6.1 We are proposing to introduce an enforceable requirement to ensure that the BBC informs stakeholders about planned changes in advance, to enable stakeholders to comment during the BBC's materiality assessment process.
- 6.2 We are also proposing the following changes to our competition guidance:
- i) providing further guidance on how the BBC should set out information about its planned changes;
 - ii) additional clarification on how stakeholders and the BBC can engage in constructive dialogue during the assessment of materiality by the BBC;
 - iii) describing with greater precision what information we would expect the BBC to set out as part of its PIT consultation;
 - iv) providing additional clarity on how the materiality process typically works, including Ofcom's role;
 - v) removing the need for Ofcom to consult on materiality in all cases as part of our initial assessment (we would still do this whenever necessary); and
 - vi) providing further clarity on how the BBC can conduct effective assessments of the public value delivered by a proposed change to its services.
- 6.3 We are also proposing changes to our Trading and Separation requirements:
- i) to make it clear that the transfer pricing rules apply when the public service is supplying content or IP for secondary exploitation; and
 - ii) to allow Ofcom to direct the BBC to undertake a review of its internal controls and accounting processes to ensure they are adequate and enable the BBC to comply with the transfer pricing requirements.

A1. Guidance for assessing the impact of proposed changes to the BBC's public service activities – updated text for consultation

A1.1 Document published separately on [Ofcom website](#).

A2. The BBC's commercial and trading activities: requirements and guidance – updated text for consultation

A2.1 Document published separately on [Ofcom website](#).

A3. Equality impact assessment

- A3.1 Section 149 of the Equality Act 2010 (the “2010 Act”) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- A3.2 Section 75 of the Northern Ireland Act 1998 (the “1998 Act”) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom’s Revised Northern Ireland Equality Scheme⁷⁴ explains how we comply with our statutory duties under the 1998 Act.
- A3.3 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our proposals on persons sharing protected characteristics, and in particular, whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- A3.4 We have not considered it necessary to carry out separate EIAs in relation to race or sex equality, or equality schemes under the Northern Ireland and Disability Equality Schemes. This is because we anticipate that our proposed changes to our guidance on the assessment of competition impacts from changes to the BBC’s public services, and our Trading and Separation requirements and guidance, will not have a differential impact on people of different sexes, or ethnicities, consumers with protected characteristics in Northern Ireland or disabled consumers, compared to consumers in general.
- A3.5 We have not identified any potential negative impacts on any groups sharing protected characteristics that are directly linked or relevant to our specific proposals, for the following reasons:
- i) Our proposals partly concern how the competition impacts of changes to BBC services are assessed. The nature of any real-world impacts on audiences therefore depends on the specific changes that the BBC may propose, and how our framework is applied to those changes (which may or may not be of relevance to any groups sharing protected characteristics).
 - ii) Our proposals also concern our rules on Trading and Separation, which are in place to prevent the BBC from gaining an advantage from its association with the BBC Public Services. Our rules help to prevent any potential negative impact on competition in the sectors that BBC Studios operates in (including the production and distribution sectors). A negative impact on competition could potentially lead to a decrease in the diversity of the sector. The aim of the changes set out in this

⁷⁴ Available at: https://www.ofcom.org.uk/data/assets/pdf_file/0023/123737/Revised-NI-Equality-Scheme.pdf

How Ofcom regulates the BBC's impact on competition

consultation are to provide further clarity in our rules and allow us, if necessary, to require the BBC to provide further assurance on its transfer pricing procedures and processes in the future. The BBC has written to us explaining the actions it is taking to address the concerns raised in our review of BBC Studios and ensure it complies with the Trading and Separation requirements.

- A3.6 We consider that, in general, our proposals should have an over-arching positive impact on the BBC's ability to continue to deliver its Mission and Public Purposes for all audiences, including those from groups sharing protected characteristics, while ensuring that all audiences continue to benefit from fair and effective competition in the sectors in which the BBC operates.

A4. Responding to this consultation

How to respond

- A4.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 6 February 2023.
- A4.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/how-ofcom-regulates-bbcs-impact-on-competition-proposals>. You can return this by email or post to the address provided in the response form.
- A4.3 If your response is a large file, or has supporting charts, tables or other data, please email it to BBCCompetitionConsultation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only, and will not be valid after 31 March 2023.
- A4.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Content Policy Team
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A4.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
 - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A4.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential).
- A4.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A4.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A4.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 7. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A4.10 If you want to discuss the issues and questions raised in this consultation, please contact us by email at BBCCompetitionConsultation@ofcom.org.uk.

Confidentiality

- A4.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on [the Ofcom website](#) at regular intervals during and after the consultation period.
- A4.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A4.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A4.14 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website. This is the Department for Business, Energy and Industrial Strategy (BEIS) for postal matters, and the Department for Culture, Media and Sport (DCMS) for all other matters.
- A4.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A4.16 Following this consultation period, Ofcom plans to publish a statement by April 2023.
- A4.17 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A4.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 5.
- A4.19 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A4.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A5. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A5.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A5.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A5.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.
- A5.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A5.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A5.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A5.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A6. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A7. Consultation questions

Question 1: Do you agree with our proposals to:

- a) place a requirement on the BBC to publicise its planned changes to public services?
- b) provide further guidance on how the BBC should set out information about its planned changes?

If not, please explain which changes, if any, should be made to the guidance and where appropriate, provide relevant evidence supporting your view.

Question 2: Do you agree with our proposals to put in place more guidance about how stakeholders and the BBC should engage during the assessment of materiality by the BBC?

Question 3: Do you agree with our proposals to include further guidance on what the BBC should include in its public interest test consultation?

Question 4: Do you agree with our proposals to provide more detail in our guidance about the materiality assessment process?

Question 5: Do you agree with our proposal for additional flexibility for Ofcom to determine whether it is necessary to consult on materiality following a PIT in which the BBC has determined the change is material?

Question 6: Do you agree with our proposals to add further guidance on our expectations for the BBC's public value assessment?

Question 7: Do you agree with our proposal to make it clear that the transfer pricing rules apply when the public service is supplying content or IP for secondary exploitation?

Question 8: Do you agree with our proposal to add a requirement that allows Ofcom to direct the BBC to undertake a review of its internal controls and accounting processes to ensure they are adequate and enable the BBC to comply with the transfer pricing requirements?