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# How Ofcom regulates the BBC's impact on competition

Changes to guidance and requirements

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[Welsh overview available](#)

**STATEMENT:**

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# 1. Overview

In November, we published a consultation on how Ofcom regulates the BBC's impact on competition. This set out proposals to change our guidance about how the BBC's competition impact is assessed and to place a requirement on the BBC to publicise planned changes to its public services. This consultation followed our review of [How Ofcom regulates the BBC](#) published in June 2022 ('June review').

This document sets out our decisions to make changes to our guidance and to impose a new requirement on the publication of planned changes. These changes will encourage greater transparency from the BBC about changes to its public services, and positive engagement between the BBC and affected stakeholders. We also explain how our processes will support transparency.

In addition, we set out our views on the updates that the BBC is making to its processes, to address the concerns raised in [our review of BBC Studios](#), and our decisions on changes to the Trading and Separation requirements and guidance. We have made these updates to ensure that our rules are clear, and effectively hold the BBC to account.

In November, we also provided our view on the BBC's position in the audiovisual and audio sectors, and how we are likely to approach consideration of competition impacts. Stakeholders made a number of comments in response to our analysis and views, and we have responded to these in this document.

## What we have decided – in brief

We are putting in place a new **requirement for the BBC to publicise changes to its public services that are likely to be subject to a materiality assessment by the BBC**, to encourage it to be more transparent with stakeholders about its plans and more consistent about how it makes them public.

We are also making the following **changes to our guidance on how competition impacts from changes to the BBC's public services are assessed**:

- 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 public services;
- setting clearer expectations about the information that the BBC should provide to stakeholders when it consults as part of a public interest test (PIT), to help ensure that the BBC provides sufficient information to allow stakeholders to respond meaningfully;
- providing more detail about Ofcom's role in the assessment of materiality, so that the process is clearer to stakeholders;
- adding flexibility for Ofcom to decide whether consulting on materiality at the initial assessment stage is necessary, removing duplication in our assessment process wherever possible; and
- providing further guidance about what we expect to see in the BBC's public value assessment, based on our experience of reviewing these assessments. We will also give the BBC and stakeholders more guidance about where we consider there is potential for the BBC to generate significant public value by addressing the challenges it faces in meeting audience needs in a rapidly changing market.

We have also decided to make some small changes to the **Trading and Separation requirements and guidance**. Our additions to the requirements and guidance provide greater clarity about the activities to which our rules apply, and will ensure that the BBC embeds the changes it is making in response to our [review of BBC Studios](#).

The overview section in this document is a simplified high-level summary only. The decisions we have taken in relation to the specified requirement and the guidance, and our reasoning, are set out in the full document.

## 2. Our regulation of the BBC's impact on competition

2.1 In this section we:

- provide an overview of how we regulate the BBC's impact on competition, including key findings from our [June review](#) and our recommendations to Government;
- summarise the key proposals we made in [our consultation](#); 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 Charter<sup>1</sup> and its Mission and the Public Purposes, the BBC has an impact on competition in the media industry. This impact may be positive and stimulate demand or encourage innovation. But the BBC's activities may also harm the ability of others to compete effectively. 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 sectors in which the BBC operates are changing rapidly, with significant changes in how UK audiences watch and listen to content. 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 the increasing choice of services and content. 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. The changes the BBC makes 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 the BBC's 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'.<sup>2</sup> In some extreme cases companies may cease

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<sup>1</sup> [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.

<sup>2</sup> 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.

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.<sup>3</sup> The Agreement<sup>4</sup> provides two means of addressing competition concerns that might arise out of the BBC's activities: firstly, the BBC and Ofcom consider changes to the BBC's activities before they are implemented, and secondly, Ofcom can consider the effect of BBC 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 making a change to an existing service that may have a significant adverse impact on fair and effective competition.<sup>5</sup> 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.<sup>6</sup>
- 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.<sup>7</sup> 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 have the power to step in and direct the BBC to conduct a PIT if we consider the change is material.<sup>8</sup>
- 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.<sup>9</sup> For example, one role of a BCR is to examine existing services where the BBC has made incremental changes over time that 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.

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<sup>3</sup> Clause 11(2a) of the Charter.

<sup>4</sup> Refer to footnote 1.

<sup>5</sup> Clause 7(7) of the Agreement.

<sup>6</sup> BBC, 2017, Policy on material changes to the BBC's public service activities and commercial activities.

<sup>7</sup> Clause 9(1) of the Agreement.

<sup>8</sup> Clause 9(6) of the Agreement.

<sup>9</sup> Clause 12(1) of the Agreement.

## Regulating the BBC's commercial services

- 2.9 We also have a role in preventing competitive harm that could arise from the BBC's commercial activities as a result of their 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.<sup>10</sup> The Agreement requires the BBC's relationship with commercial subsidiaries to be at arm's length and on commercial terms.<sup>11</sup>
- 2.10 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.
- 2.11 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.
- 2.12 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:
- a) is proposing to carry out a new type of activity as a commercial activity, or
  - b) 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.<sup>12</sup>
- 2.13 The BBC must carry out a commercial test on any proposed material change to satisfy itself that the change meets the commercial criteria.<sup>13</sup> If the BBC is satisfied that the proposed change meets this test, and would like to implement it, it must publish the change, sending Ofcom a copy.<sup>14</sup> Ofcom must then also assess whether the proposed change is a material change.<sup>15</sup> Where we consider it to be material, we will notify the BBC, undertake a trading and separation assessment and determine whether the proposed change to the commercial activities can be carried out.<sup>16</sup>
- 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:

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<sup>10</sup> Clause 7(1d) of the Charter.

<sup>11</sup> Clause 28 (1) of the Agreement.

<sup>12</sup> Clause 23(14) of the Agreement.

<sup>13</sup> Clause 24(1) of the Agreement. The commercial criteria are that the activities fit with the Mission and Public Purposes; exhibit commercial efficiency; do not jeopardise the good reputation of the BBC or the value of the BBC brand; and do not distort the market or create an unfair competitive advantage as a result of the relationship with the BBC public service.

<sup>14</sup> Clause 24(2) of the Agreement.

<sup>15</sup> Clause 25(1) of the Agreement.

<sup>16</sup> Clause 27 of the Agreement.

- a) 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); or
- b) to stop carrying out the change in accordance with such directions as we consider appropriate.<sup>17</sup>

## Balancing protecting competition with allowing the BBC to adapt and innovate

- 2.15 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 significant 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.
- 2.16 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:
- a) 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;
  - b) enabling Ofcom to approve a BBC change with conditions using a shorter assessment; and
  - c) 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).
- 2.17 We note that concerns were raised by Virgin Media O2 and Sky about our proposal to remove the link between the BBC undertaking a public interest test and Ofcom doing a BBC competition assessment. Virgin Media O2 was concerned that the BBC would be 'marking its own homework' and considered there was not sufficient guidance about how we would determine if we agreed with the BBC's analysis or what would constitute effective engagement.<sup>18</sup> Sky was concerned that Ofcom would be more inclined to agree with the BBC's assessment. It considered this could be especially problematic if the BBC's findings

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<sup>17</sup> Clause 25(6) of the Agreement.

<sup>18</sup> [Virgin Media O2 response](#), p.4.



were flawed due to ineffective stakeholder engagement or stakeholders' inability to provide confidential information to the BBC.<sup>19</sup> A stakeholder also expressed concerns that we were retreating from substantive regulatory scrutiny in favour of giving the BBC much greater freedom.

- 2.18 As noted above, we have been clear that there is still a need for continued regulation in this area and that it is not appropriate for Ofcom to step back from competition assessments at this time. However, we consider that there is scope to improve the way the current framework operates, and we think our recommendation to Government provides this, while retaining sufficient protection against the potential for unjustified competition impacts.
- 2.19 We recognise the concerns that our recommendations could lead to potential competition impacts not being properly identified. However, as noted above, if the Government was to make these changes, we would only use this additional flexibility where we were satisfied that the BBC had both appropriately assessed the impacts and effectively engaged with stakeholders, taking account of their concerns. As part of this we would we talk to stakeholders to understand the engagement they had had with the BBC and to ensure we were aware of any concerns about the effectiveness of the engagement process. Should our recommendations be implemented by the Government, we would need to consult on updating our guidance to reflect the changes to the Agreement and provide greater detail on how the process would work in practice. Currently DCMS is considering our proposals as part of its [Mid-Term Review of the BBC](#).

## Summary of proposals made in our November consultation

- 2.20 In November we published our consultation, ('November consultation'). This set out proposed changes to our guidance on how the BBC's competition impact is assessed. Our proposals sought to encourage positive engagement between the BBC and its competitors regarding changes to the BBC's public services, and, where possible, to ensure that the current processes are efficient and are used flexibly. We also set out the changes that the BBC was making to its processes to address the concerns raised in our [review of BBC Studios](#), and proposed some small changes to the Trading and Separation requirements and guidance.

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<sup>19</sup> [Sky response](#), p.5.

### What we consulted on – in brief

We proposed the following changes to the BBC's specified requirements and 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 also proposed to 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 proposed some changes to the Trading and Separation requirements and guidance 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.

## Equality impact assessment

2.21 We have given careful consideration to whether the new specified requirement and changes we have decided to make to our guidance and Trading and Separation requirements 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.<sup>20</sup>

2.22 We do not consider that the new specified requirement and the changes we have made to our guidance and Trading and Separation requirements have equality implications under

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<sup>20</sup> Further detail is set out in section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.

the 2010 Act or the 1998 Act. 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. We did not 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 4.

## Structure of this statement

- 2.23 In the following sections of this document, we reiterate the proposals that we set out in the November consultation, discuss the stakeholder comments received and our response to those, and explain the final decisions we have made to set a new specified requirement and amend the guidance and trading and separation requirements and guidance.
- 2.24 In November we also shared our analysis of the market in which the BBC operates, and we received a number of responses from stakeholders in relation to this. We have engaged with a range of stakeholders to further understand their views, and we have set out our response to these views in Section 3.
- 2.25 The remainder of this document is organised as follows:
- a) **Section 3** sets out our views on the BBC's position and its ability to impact competition in the audiovisual and audio sectors, including our response to stakeholder comments.
  - b) **Section 4** sets out stakeholder comments, our views and decision on our proposal to add a new specified requirement on the BBC, and each of our proposals for changes to the competition guidance.
  - c) **Section 5** discusses stakeholder comments and our decision on modifications to the Trading and Separation requirements and guidance regulating the BBC's commercial services.
  - d) **Annex 1** contains our views on the BBC's impact on competition in the audiovisual and audio sectors, as first set out in our November consultation.
  - e) **Annex 2** contains the Guidance for assessing the impact of proposed changes to the BBC's public service activities.
  - f) **Annex 3** contains The BBC's commercial and trading activities: requirements and guidance.
  - g) **Annex 4** contains our Equality Impact Assessment.

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

- 3.1 In our November consultation we set out our high-level views on the BBC's position within the audiovisual and audio sectors, and how we are likely to approach consideration of the competition impact of changes to BBC public services in these sectors.
- 3.2 In summary, we set out our expectations that:
- a) Changes to BBC iPlayer are unlikely to have a significant impact on the viewing share – and therefore revenues – of domestic competitors. They are therefore not expected to carry 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.
  - b) Changes to the BBC's linear television services<sup>21</sup> 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 BBC iPlayer. Yet as audiences are increasingly moving their viewing online, and the BBC's strategic focus is on developing its digital services, it seems less likely that the BBC will seek to make significant changes to its linear services that risk crowding out.
  - c) 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 we do not expect a significant risk of crowding out.
  - d) Changes to the BBC's radio services<sup>22</sup> which result in a significant increase in listening have 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.
- 3.3 For ease of reference, we have included our views as set out in the November consultation in Annex 1.
- 3.4 Our views were intended to help stakeholders understand where we are likely to start from when considering questions about the BBC's impact on competition in these areas. As we noted in the consultation, our views do not change the regulatory process which each of the BBC and Ofcom must carry out when assessing a proposed change to a public service. The BBC and Ofcom will still need to consider the competition impact of specific changes the BBC intends to make on a case-by-case basis and take into account how these specific changes will affect competitors.

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<sup>21</sup> This includes all broadcast linear television, including live streams of these services on BBC iPlayer. Online only linear streams, e.g. FAST channels are considered as part of the BBC iPlayer-specific changes.

<sup>22</sup> 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.

- 3.5 Several stakeholders provided comments on our general approach and the underlying analysis. In this section we provide our views on those responses. These should be read in conjunction with the views provided in the November consultation, which continue to reflect our current thinking. We remain open to comments and evidence from stakeholders in this area and will take such views into account as the market develops.

## Stakeholder views

### Responses on our conclusions reached

- 3.6 Stakeholder responses differed on our assessment of the risk of changes to the BBC's public services affecting competition. Regarding changes to BBC iPlayer, Virgin Media O2 disagreed with our view that these are not expected to carry a significant risk of crowding out, while Sky characterised our view as saying that no change to iPlayer would ever be material and disagreed with this conclusion.<sup>23</sup> However, Sky agreed with our view that changes to the BBC's linear channels could be material.<sup>24</sup>
- 3.7 Radiocentre and News Broadcasting disagreed with our view that changes that only affect BBC Sounds are unlikely to have a significant impact on the listening share of domestic competitors and are therefore not expected to have a significant risk of crowding out.<sup>25</sup>
- 3.8 The BBC generally agreed with our overall assessment but noted that the level of competition it faces is likely to increase over time, and welcomed our commitment to continue to monitor market developments.<sup>26</sup>
- 3.9 Stakeholders made a number of points in support of these views, as set out below.
- 3.10 In addition, the Professional Publishers Association (PPA) asked that we also consider the market for the online written journalism sector and set out our views, as we did for the audiovisual and audio sectors in the consultation.<sup>27</sup>

### Concerns about the level of detail in our analysis

- 3.11 Some stakeholders raised concerns that our assessment of the likely impact of BBC changes in the audio and audiovisual sectors did not consider important aspects of competition. Radiocentre suggested that our market share analysis was overly simplistic, and we should have considered a more detailed analysis of the closeness of competition, including additional factors such as content genres, target audiences and ways of consuming content. The BBC said we should consider target audiences as well as reach, and potentially competitor set, when assessing changes to BBC linear services, reflecting the heterogeneity of these services.<sup>28</sup> Radiocentre also suggested that we had we paid

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<sup>23</sup> Virgin Media O2 response, p.5, Sky response pp.1-2.

<sup>24</sup> Sky response, pp.1-2.

<sup>25</sup> [Radiocentre response](#), p.1; [News Broadcasting response](#), p.3.

<sup>26</sup> [BBC response](#), pp.1,3,6. The BBC also noted that the current requirements of the Agreement mean it is required to carry out a PIT if wants to launch a new UK public service, regardless of what the market evidence suggests on substantive likely impact.

<sup>27</sup> [PPA response](#), p.4.

<sup>28</sup> BBC response, p.6.

insufficient attention to how differences in business models and the size of rivals influences the impact of BBC changes on its rivals.

- 3.12 Some stakeholders stated that our analysis did not take adequate account of the particular risk to UK-based operators posed by BBC changes.<sup>29</sup> News Broadcasting stated that domestic competitors are closer rivals than global firms in audio.<sup>30</sup> One stakeholder said that many domestic operators are significantly smaller than the BBC and are particularly exposed to its activities. Radiocentre argued that our analysis was overly focused on the largest rivals to the BBC, and it appeared that we considered impacts on smaller players to be less important. Radiocentre also noted that it is incorrect to assume global players will be less affected by crowding out.<sup>31</sup>
- 3.13 Radiocentre and News Broadcasting stated that in audio we had not reflected that BBC Sounds benefits from the BBC's overall position in the audio market and its broad content portfolio.<sup>32</sup>
- 3.14 News Broadcasting questioned why we treated changes limited to BBC Sounds separately from changes to the BBC's radio services, given that radio and audio listening is increasingly shifting online.<sup>33</sup> The BBC also stated that it would welcome further guidance from Ofcom on how we will deal with the increasing integration of linear and on-demand services.<sup>34</sup>

## Theories of harm considered

- 3.15 Some stakeholders were concerned that the theory of potential harm we focused on was too narrow.
- 3.16 Radiocentre was concerned that our definition of crowding out was too narrow and risked overlooking instances where crowding out marginally affects investment, slows growth, or changes the mix of investment. Radiocentre also argued we should not solely focus on whether changes in BBC public service activity materially reduce revenues for certain commercial rivals, but also on ensuring that the range of content and content providers in the UK is as broad as possible, which requires consideration of the impact of the BBC's behaviour on the mix of content and the providers supplying it.<sup>35</sup>
- 3.17 Some stakeholders raised the question of the ability of BBC changes to also affect competition in other parts of the supply chain.<sup>36</sup> Virgin Media O2 said we must consider the impact of changes on content providers, broadcasters, and distributors of the BBC's content and services, including traditional TV platforms. Virgin Media O2 also stated we should consider the impact of BBC changes on the secondary rights market.<sup>37</sup> Pact was

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<sup>29</sup> News Broadcasting response, pp.3-6, Radiocentre response, p.5

<sup>30</sup> News Broadcasting response, p.5.

<sup>31</sup> Radiocentre response, pp.5,7.

<sup>32</sup> News Broadcasting response, pp.3-5; Radiocentre response, pp.8-9.

<sup>33</sup> News Broadcasting response, p.7.

<sup>34</sup> BBC response, p.7.

<sup>35</sup> Radiocentre response, pp.5-7.

<sup>36</sup> Radiocentre response, pp.7,2; Virgin Media O2 response p.2,

<sup>37</sup> Virgin Media O2 response, p.5.

concerned that impacts on the production sector are often not taken into account.<sup>38</sup> The BBC agreed with our focus on crowding out as the main theory of harm and noted that BBC changes can also increase, rather than crowd out, rival investment.<sup>39</sup>

- 3.18 Radiocentre argued that by focusing on individual changes Ofcom risks ignoring the cumulative effect of BBC changes.<sup>40</sup>

### Concerns about implications for Ofcom's regulatory approach

- 3.19 Stakeholders were concerned that the views set out in the consultation on the potential competition impact of BBC changes amounted to a change in Ofcom's regulatory approach. News Broadcasting said Ofcom risked shifting from an *ex ante* to an *ex post* model if it became less willing to intervene on changes to BBC Sounds.<sup>41</sup> Radiocentre said the apparent pre-judgment of the materiality of any change to BBC Sounds is at odds with Ofcom's obligation to conduct a fair consultation.<sup>42</sup> Sky argued that we should not prioritise the BBC's desire for greater flexibility over our duties to protect fair and effective competition, and to hold the BBC to account.<sup>43</sup>

### Our approach

- 3.20 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.
- 3.21 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.
- 3.22 In this context, we set out our high-level views on competitive conditions in the audiovisual and audio sectors, and the potential impact that future changes by the BBC to its public services could have on its UK competitors in these areas. The aim of this was 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 public services in the audiovisual and audio sectors, and how we might approach future competition assessments in these areas.
- 3.23 In line with the aim of this analysis, we focused on providing general insight rather than a detailed assessment of competitive conditions or the impact of any and all possible future

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<sup>38</sup> [Pact response](#), p.4.

<sup>39</sup> BBC response, p.3.

<sup>40</sup> Radiocentre response, p.7.

<sup>41</sup> News Broadcasting response, p.8.

<sup>42</sup> Radiocentre response, p.2.

<sup>43</sup> Sky response, p.1.

changes that the BBC could make. This therefore provides stakeholders with an understanding of where we are likely to start from when considering future questions in these areas. The evidence we used reflects this objective, and we remain of the view that viewing and listening share data is well suited to providing an overview of developments in the audiovisual and audio sectors, and the BBC's general position within them.

- 3.24 While we recognise stakeholder concerns that there are additional factors that we did not consider in detail, these are at a greater level of granularity than is necessary for the overarching understanding of the sectors that we sought to provide. We recognise that there could be specific changes where this general view is less relevant, and so there could be additional factors beyond those discussed here which need to be considered to reach a conclusion on the risk to competition in a specific instance. The BBC and Ofcom will still need to consider the competition impact of proposed changes on a case-by-case basis (as discussed further below), and any additional factors can be included in any future assessment as necessary.
- 3.25 Our views were based on the current state of the market and our experience of regulating the BBC over the last five years. However, market conditions may change, and so we will continue to closely monitor market developments and update these general 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 and will publish our views when appropriate. We will continue to regularly engage with stakeholders about market developments and we are open to comments and evidence from stakeholders in this area.

### **We focused on crowding out as the main potential harm to competition when setting out our views**

- 3.26 The concern that the BBC may 'crowd out' the activities of its commercial rivals has been the main potential concern identified in our past assessments.
- 3.27 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.
- 3.28 In response to the concerns raised by Radiocentre, we clarify that if there was evidence of a significant adverse impact on rivals' investment compared to the expected outcome without the BBC change, we could find investment to be crowded out even if there was not an absolute reduction from current investment levels.
- 3.29 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



investment decisions at a multinational level). For these reasons we focused our analysis on the potential impact of changes on UK competitors.

- 3.30 We recognise that crowding out is not the only way in which a BBC change could have an impact on competition, as raised by several stakeholders. Another risk is that 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.<sup>44</sup> When assessing future BBC changes, we will continue to assess other 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 were not covered in our analysis. Our general views set out on the risk of crowding out do not apply to any future assessment of other competition concerns.<sup>45</sup>

## We have focused on the audiovisual and audio sectors

- 3.31 In our consultation we set out our views on the audiovisual and audio sectors.<sup>46</sup> 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.<sup>47</sup>
- 3.32 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. News Broadcasting and Radiocentre suggested that we should consider competition in these areas separately. However, in setting out our views on competition, we focused 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, nor to carry out a formal market definition exercise.<sup>48</sup> This reflects our intention, as described above, to explain our starting point for assessing future changes; the competition impact from specific changes will still require consideration on a case-by-case basis.
- 3.33 News Broadcasting and the BBC questioned how we were responding to the increasing convergence between different types of audio listening. When assessing the BBC's impact in radio we take account of this convergence by considering together those services that are broadcast live via radio sets (analogue and DAB) and also made available live online. However, we consider 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)

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<sup>44</sup> Ofcom, 2019, [BBC iPlayer Competition Assessment: Final determination](#), pp.33-38.

<sup>45</sup> Virgin Media O2 stated that the BBC should be obligated not to adversely impact the value of the secondary rights market in any changes it chooses to make. We do not consider such a general requirement is necessary or appropriate given the BBC is already required to identify all potential competition impacts (and not just crowding out).

<sup>46</sup> 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.

<sup>47</sup> While we did 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.

<sup>48</sup> 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.

separately. Services that are only available via BBC Sounds currently reach a much smaller audience than radio and have different characteristics to live radio. If there were to be significant further convergence in the use of BBC audio services – for example, as listeners increasingly use BBC Sounds to listen to both radio and other types of content – it may be appropriate to re-examine our approach.

- 3.34 We recognise that the BBC seeks to meet its Mission and Public Purposes through a range of services and activities. In future we may consider other sectors, taking into account market developments and any changes the BBC seeks to make to its services. For example, we are currently undertaking some initial research to better understand the local news sector.

### **Our views provide a starting point for assessments, but do not change the regulatory processes**

- 3.35 Some stakeholders raised concerns that this represented a change in our regulatory approach. As noted above, the views presented in the November consultation 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. While we expect these views to provide a starting point, they do not predetermine or limit the outcome of any assessment. The BBC will still be required by the framework to identify relevant changes to its services, to publicise these changes and to engage with stakeholders at an early stage to identify the potential competition impact of changes in these sectors. We set out more about our expectations around stakeholder engagement in the next section on changes to the guidance.
- 3.36 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. Ofcom will still be required to review and approve all material changes to BBC public services before they are implemented.
- 3.37 Radiocentre raised the concern that our regulatory approach may not be sensitive to incremental changes which the BBC makes. Where evidence emerges that 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, 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 to believe that the carrying out of a UK public service is having a significant adverse impact on fair and effective competition.

## 4. Analysis and decisions: Changes to the guidance underpinning BBC competition regulation

- 4.1 Article 46 of the Charter requires us to set requirements in the BBC's Operating Framework to protect fair and effective competition in the UK in relation to material changes proposed by the BBC to the carrying on of public service activities (the "specified requirements").<sup>49</sup> These are contained in the guidance, which also sets out guidance on the procedures, timescales and approach which we will generally apply when assessing the impact of such changes.
- 4.2 In this section we set out the proposals we made in our November consultation about the creation of a new specified requirement on the BBC, changes to our guidance, the responses we received from stakeholders, our analysis and assessment of the proposed impact of the changes, and the decisions we have made.
- 4.3 These changes have the following broad aims:
- a) to encourage a more productive dialogue between the BBC and its stakeholders;
  - b) to promote a better understanding among stakeholders of how regulatory processes work, as well as more flexibility around Ofcom consulting on materiality; and
  - c) to provide clarity on our approach to public value and our expectations of the BBC's assessment.
- 4.4 This statement sets out our final decision on the new specified requirement and changes to the guidance, therefore our [guidance for assessing the impact of proposed changes to the BBC's public service activities](#) has also been updated accordingly. The updated guidance will take effect four months after this statement's publication, with the relevant guidance applying to materiality assessments and PITs that the BBC carries out thereafter.

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

#### Engagement during the materiality process

##### Our proposals

- 4.5 As we set out in detail in our November consultation, some stakeholders are dissatisfied with their experience of engaging with the BBC while its plans are still at an early stage of

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<sup>49</sup> More detail on the legal framework can be found in section 2 of the Guidance

development.<sup>50</sup> The BBC has argued that adding further requirements to engage with stakeholders when assessing materiality would add delays to its implementation of changes and undermine its ability to continue to deliver the Mission and Public Purposes in the long term.

- 4.6 In our consultation we proposed changes to our guidance on how the BBC sets out its plans and engages with stakeholders when it considers materiality. Our intention is to provide the BBC and stakeholders with a clear view of what a reasonable, proportionate and consistent approach to engagement during the materiality process should look like.
- 4.7 We proposed to introduce an **enforceable specified requirement** to ensure that the BBC informs stakeholders about planned changes which are likely to be subject to an assessment of materiality (i.e. changes that are not 'business as usual changes')<sup>51</sup> in advance, so that stakeholders can comment during the BBC's assessment process.
- 4.8 We also proposed that our guidance should **clarify our expectations of how the BBC should communicate its plans and engage in dialogue with stakeholders**. Our proposed additions included more specific guidance on how the BBC communicates changes in a consistent way, as well as setting clearer expectations of the BBC's role in facilitating dialogue with stakeholders.

### Stakeholder views

- 4.9 The BBC said that it agrees with the principle that it should positively engage with stakeholders, and that in general the updates to guidance on the materiality process are helpful.<sup>52</sup> However, the BBC argued that a new specified requirement to publicise changes would be disproportionate and would go beyond what is required of the BBC under the Charter and Agreement.<sup>53</sup>
- 4.10 The BBC argued that it has fully complied with or exceeded all requirements and guidance relating to transparency, and that our consultation did not present evidence suggesting that harm to competition has occurred because of shortcomings related to transparency and engagement. It had specific concerns that the new requirement would also apply to assessments of non-material changes, which by their nature are very small. It therefore argued that the proposal was not aligned with Ofcom's broad duties and regulatory principles, which stipulate that Ofcom should only undertake regulatory activity where action is needed.<sup>54</sup>
- 4.11 Most other stakeholders welcomed our proposals, including the new specified requirement, as a step towards improving the BBC's transparency about planned

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<sup>50</sup> [Radiocentre response to How Ofcom Regulates the BBC consultation](#), p.44; [PPA response to How Ofcom Regulates the BBC consultation](#), p.7; [Teledwyr Annibynnol Cymru \(TAC\) response to How Ofcom Regulates the BBC consultation](#), p.2; [AudioUK response to How Ofcom regulates the BBC consultation](#), p.6.

<sup>51</sup> 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.

<sup>52</sup> BBC response, pp.1,9.

<sup>53</sup> Clause 12(2b) of Charter.

<sup>54</sup> BBC response, pp.9-11.

changes.<sup>55</sup> However, several stakeholders argued that changes to the guidance should go further and recommended further additions to guidance, including:

- a) Requiring the BBC to demonstrate how it has taken stakeholder views into account as part of its materiality assessment (Radiocentre, Virgin Media O2, PPA)<sup>56</sup> – including some responses that called for the BBC to be required to hold a formal consultation as part of all materiality assessments (News Broadcasting, Radiocentre, News Media Association (NMA)).<sup>57</sup>
- b) Setting higher expectations about the level of detail that the BBC should provide when informing stakeholders about a change – for example, Radiocentre suggested that when publicising a change the BBC should include details about how the BBC has defined the market (NMA, PPA, News Broadcasting, Radiocentre, Virgin Media O2).<sup>58</sup>
- c) Providing more clarity on the timeframe in which the BBC should publicise changes, and how much time it should allow for dialogue with stakeholders to take place (PPA, NMA, Radiocentre, News Broadcasting).<sup>59</sup>
- d) Requiring the BBC to publicise its proposals to the public as well as to stakeholders to ensure that licence-fee payers have the chance to comment (Voice of the Listener and Viewer (VLV)).<sup>60</sup>
- e) Providing additional detail on what method the BBC should use to publicise planned changes and engage in dialogue with stakeholders – for example, specifying that the BBC should have a dedicated webpage where the BBC publicises changes, and/or an email inbox that stakeholders could use to raise concerns.<sup>61</sup> In addition, News Broadcasting and AudioUK argued that the BBC's Annual Plan should provide more detailed information about the BBC's plans, while Pact argued that the BBC should establish a dedicated route for stakeholders to respond to any changes announced in the Annual Plan.<sup>62</sup>

4.12 As well as arguing for several specific additions to guidance listed above, News Broadcasting considered that these should be made into additional specified requirements.<sup>63</sup> Pact and Radiocentre questioned how we would ensure that the BBC

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<sup>55</sup> PPA response, pp.2-3; [AudioUK response](#), p.3; [VLV response](#), p.3; [Directors UK response](#), pp.4-5; Pact response, pp.2-3; Sky response, p.1; Radiocentre response, pp.10-11; News Broadcasting response, pp.9-10; Virgin Media O2 response, pp.2,6,7; [NMA response](#), pp.2,4.

<sup>56</sup> Radiocentre response, p.11; Virgin Media O2 response, p.7; PPA response, p.2.

<sup>57</sup> News Broadcasting response, pp.11-12; Radiocentre response, p.10; NMA response, pp.3-4.

<sup>58</sup> NMA response, p.2-3; PPA response p.2; News Broadcasting response p.11-12; Radiocentre response p.10; Virgin Media O2 response, pp.3-4.

<sup>59</sup> NMA response, pp.2-3; PPA response, p.2; AudioUK response, p.3; News Broadcasting response, p.11.

<sup>60</sup> VLV response, pp.3-5.

<sup>61</sup> PPA response, p.2; NMA response, pp.3-4; Directors UK response, p.5; Radiocentre response, p.10. Other suggested ways that the BBC could publicise changes to stakeholders included setting up an email alert system (Directors UK) and holding regular meetings with stakeholders (PPA).

<sup>62</sup> AudioUK response, p.2; News Broadcasting response, p.10; Pact response, pp.2-3. In contrast, the BBC's response argued that any additions to the guidance that comment specifically on how the BBC should communicate with stakeholders are not necessary. See BBC response, p.9.

<sup>63</sup> News Broadcasting response, pp.11-12.

adheres to new guidance on engagement with stakeholders and adjusting planned changes (where necessary) in response to stakeholder concerns.<sup>64</sup>

- 4.13 Some responses considered that our proposed additions to the guidance placed too much onus on stakeholders to raise concerns with the BBC. The NMA and the PPA argued that it is not appropriate for Ofcom's guidance to say that stakeholders should describe concerns to the BBC with "*appropriate reasoning and, where possible, evidence*", as they argued that this amounts to Ofcom seeking to regulate other stakeholders via its guidance on the BBC.<sup>65</sup> Radiocentre suggested that Ofcom may need to intermediate on some stakeholders' concerns where stakeholders feel they cannot share information directly with the BBC due to commercial sensitivities.<sup>66</sup>

### Our decision

- 4.14 We have carefully considered the BBC's arguments against our proposal to set a specified requirement for it to publicise changes that are subject to a materiality assessment in sufficient detail and in sufficient time, to enable stakeholders to comment during an assessment of materiality.
- 4.15 While we acknowledge that there have been some positive examples<sup>67</sup> of the BBC sharing information about planned changes at an early stage, the BBC has not done so consistently. For the last four years, each of our annual reports on the BBC has raised concerns that the BBC needs to be more transparent about its plans and provide sufficient detail to enable engagement between the BBC and stakeholders on competition issues. We have also identified this as a key area for improvement in our recent review of BBC regulation since 2017.<sup>68</sup> We have also highlighted a specific need for the BBC to set out more information about its plans for changes to BBC Sounds.<sup>69</sup>
- 4.16 As set out in our June review, stakeholders have raised concerns about the BBC's transparency and engagement about its planned changes. For instance, stakeholders told us that the BBC's annual plan does not set out enough detail about specific BBC proposals to provide clarity on what the BBC plans to do in the year ahead and where potential competitive harms may occur.<sup>70</sup> Stakeholders have also told us that the BBC does not set out information in a consistent way other than in its annual plan, and that it sometimes

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<sup>64</sup> Pact response, p.3; Radiocentre response, p.11.

<sup>65</sup> PPA response, p.2; NMA response, p.5.

<sup>66</sup> Radiocentre response, p.11.

<sup>67</sup> Pact's consultation response said that the BBC showed that it had become "*more open to taking stakeholders concerns on board and making information ... available*" and cited the BBC's 'Across the UK' plan as a good example. See Pact response, p.2. News Broadcasting's response said that while BBC engagement is inadequate "*significantly more often than not*", there have also had "*positive experience of the BBC engaging with commercial stakeholders*". See News Broadcasting response, p.9.

<sup>68</sup> Ofcom, 2018. [Ofcom's annual report on the BBC](#), pp.35-36; Ofcom, 2019. [Ofcom's Annual Report on the BBC](#), pp.43-44; Ofcom, 2020. [Ofcom's Annual Report on the BBC 2019/20](#), pp.84-85; Ofcom, 2021. [Ofcom Annual Report on the BBC 2020-21: Including a performance assessment for the Charter period to date: 2017-2021](#), pp.77-78; Ofcom, 2022. [How Ofcom Regulates the BBC](#), pp.22-23; p.50.

<sup>69</sup> Ofcom, 2021. [Market position of BBC Sounds – Statement](#), pp.63-64. Ofcom, 2021. [Letter from Ofcom to BBC and Radiocentre \(Radio 1 Relax stream – materiality assessment\)](#).

<sup>70</sup> Ofcom, 2022. [How Ofcom Regulates the BBC](#), p.21; see also [Pact response to How Ofcom Regulates the BBC consultation](#), p.3; [News Media Association response to How Ofcom Regulates the BBC consultation](#), p.1; Radiocentre response to How Ofcom Regulates the BBC consultation, pp.10,43-46.

does not allow enough time for stakeholders to consider plans before they are implemented.<sup>71</sup>

- 4.17 We have concerns that the lack of a consistent approach (both in terms of timing and the level of information given) makes it difficult for stakeholders to provide informed responses to planned changes for the purposes of the BBC's materiality assessments and to have confidence in the BBC's process. In response to our June review, AudioUK argued that the lack of BBC engagement during materiality assessments has caused "*widespread concern among the wider broadcasting and production industry*".<sup>72</sup> Stakeholders were also concerned that there is no transparency for the market about changes which the BBC determines are not material.<sup>73</sup>
- 4.18 We consider that the new specified requirement is necessary because it will ensure that stakeholders have sufficient information and consistent opportunities to consider how BBC proposals may impact their businesses, and to raise informed and relevant concerns with the BBC while its plans are still at an early stage of development.
- 4.19 We do not think that this disproportionately increases the regulatory burden on the BBC. The new requirement simply reinforces the actions which the BBC should be taking in order to conduct a materiality assessment, while providing stakeholders with regulatory certainty that these are taking place. While we note the BBC's concern that the majority of materiality assessments are of non-material changes, which can be very small, we consider that the new requirement is suitably flexible to allow the BBC to adapt its approach according to the scale of the change – for example, the amount of information which may be considered 'sufficient' will vary on a case-by-case basis.
- 4.20 We are pleased that the majority of stakeholders see our proposed additions to the guidance as beneficial – with many responses supporting the new specified requirement (and none, apart from the BBC, disagreeing with it).<sup>74</sup>
- 4.21 We do not agree that it is necessary to add further new requirements relating to materiality assessments that were proposed by some stakeholders, such as requiring formal consultation, setting out fixed timescales, or expecting the BBC to provide a significantly higher level of detail about market impact as part of all materiality assessments. More formal measures such as these would make it significantly more resource-intensive and time-consuming for the BBC to conduct materiality assessments. Placing this additional regulatory burden on the BBC would not be proportionate, as many of the changes that the BBC considers as part of its materiality assessments are small in scale and highly unlikely to have a significant impact on fair and effective competition.
- 4.22 We remain of the view that there is benefit in setting clearer expectations on the BBC to set out its plans in a consistent manner when these plans fall outside the normal timescales for inclusion in its annual plan. We have added a further clarification that these

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<sup>71</sup> News Broadcasting response, pp.9-10; Radiocentre response, p.11.

<sup>72</sup> AudioUK response to How Ofcom Regulates the BBC consultation, p.5.

<sup>73</sup> News Media Association response to How Ofcom Regulates the BBC consultation, p.4; Professional Publishers Association response to How Ofcom Regulates the BBC consultation, p.4.

<sup>74</sup> AudioUK response, p.3; Directors UK response, p.5; Pact response, p.2; Radiocentre response, p.10; Sky response, p.1; Virgin Media O2 response, p.6; VLV response, p.3; PPA response, p.2. BBC response, pp.9-11.

expectations also apply when the BBC has made reference to a planned change in its annual plan but has not been able to provide sufficient detail to enable stakeholders to comment.

- 4.23 Some consultation responses emphasised the benefits of having a dedicated webpage where the BBC could publicise changes, as well as an email inbox to which stakeholders could submit comments on BBC changes. We consider that adopting these approaches may especially help smaller stakeholders who do not regularly engage with the BBC, and licence fee payers, to comment about the BBC's plans. We have therefore added specific references to a dedicated webpage and the BBC having a clear point of contact in the guidance. We have also made clear that relying only on sporadic means of communication, such as public speeches or occasional blog posts, is unlikely to be sufficient. We strongly encourage the BBC to act on these suggested approaches as a demonstration of its stated commitment to engage with stakeholders in a transparent manner.
- 4.24 We think that the new specified requirement we have proposed, in combination with additional guidance describing the form of engagement the BBC should pursue with stakeholders, is sufficient to ensure that the BBC conducts materiality assessments in a more transparent way. Our changes balance the need to ensure that stakeholders receive the information they need without imposing a more onerous framework that might limit the potential for the BBC to adapt its services in order to serve audiences effectively.
- 4.25 We note the concerns, raised by the PPA and NMA, that by including a reference to the importance of stakeholders providing evidence to support their concerns wherever possible, it may appear as if we are seeking to apply our guidance to non-BBC stakeholders. We have amended our proposed wording to add clarity that we are merely seeking to encourage stakeholders to engage positively in the BBC's process and where possible support their concerns with evidence. We consider that it is not unreasonable to include such an encouragement in our guidance, given that the way in which stakeholders seek to raise concerns with the BBC will have an impact on the BBC's ability to adequately assess whether or not a change is material.
- 4.26 Where evidence is shared between the BBC and stakeholders, Ofcom's role is limited. It is not our role at this stage in the process to act as an intermediary between stakeholders where it may be necessary to share sensitive information in order to provide evidence to the BBC of a material impact. However, we would expect appropriate confidentiality processes to be upheld by the respective organisations, as a matter of good practice.
- 4.27 The specified requirement we are introducing and the changes that we have decided to make to our guidance are set out below (the changes to guidance can be found in paragraphs 4.14 to 4.20, and the specified requirement at paragraph 4.76).<sup>75</sup>

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<sup>75</sup> We have slightly amended the wording of the new specified requirement from that proposed in the consultation - "*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*" - to "*The BBC must publicise **planned** 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*" (changes in bold). This is to avoid any risk of confusion that publication in accordance with this specified requirement is the same as publication of a "proposed change" under clause 9 of the Agreement (i.e. publication of a change which the BBC has decided *is* material and for which it has carried out a PIT).



### **New specified requirement**

The BBC must publicise planned 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.

### **Additions to the guidance**

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 it 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.

Sometimes the BBC may develop plans outside the normal timescales for inclusion in the annual plan, which may mean that those plans are either not mentioned or not set out in sufficient detail in the annual plan. In these cases the BBC should use an alternative, consistent means of communication to enable potentially affected parties to easily access the relevant information. An example of how the BBC could do this is by publishing plans on a dedicated page on its website. Relying only on sporadic and inconsistent means of communication, such as public speeches or occasional blog posts, is unlikely to be sufficient.

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 clear point of contact to enable stakeholders to get in touch with the BBC.

We would encourage stakeholders to 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.

## Engagement during the PIT process

### Our proposals

- 4.28 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 in which it publishes its conclusion.
- 4.29 We have previously noted a lack of detail in some of the BBC's PIT consultations and have said that the BBC should ensure that its PIT consultations provide sufficient information to allow stakeholders to comment meaningfully on its proposals.<sup>76</sup> The level of information provided by the BBC in its PIT consultations has also attracted criticism from stakeholders.<sup>77</sup>
- 4.30 We therefore proposed to strengthen our guidance to describe more precisely what information we would expect the BBC to set out as part of its PIT consultation.

### Stakeholder views

- 4.31 Overall, stakeholders welcomed our setting clearer expectations on the level of information that the BBC should set out in its PIT consultations.<sup>78</sup> However, several responses argued that our proposals should go further in setting expectations and/or requirements on the BBC to provide more analysis, detail or evidence in its PIT consultation.<sup>79</sup>
- 4.32 The PPA and Virgin Media O2 called for the guidance to be more explicit in encouraging the BBC to provide sufficient detail to allow stakeholders to scrutinise its proposals.<sup>80</sup> The NMA argued that there should be a requirement for the BBC to provide empirical evidence in support of its assessment wherever possible, as well as an explanation of the BBC's methodology, as part of the PIT consultation.<sup>81</sup>
- 4.33 The BBC agreed with the proposed list of factors that it would be expected to include within its PIT consultation, except the expectation that the BBC should include take-up forecasts of new content or functionality. The BBC said that such forecasts would not typically be complete at the point when the BBC launches its PIT consultation, and in any case, stakeholders would be able to make their own assumptions about take-up based on their own knowledge of the sector in which they operate.<sup>82</sup>

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<sup>76</sup> Ofcom, 2019. BBC iPlayer Competition Assessment: consultation on Ofcom's provisional determination, pp.6-7; Ofcom, 2022. [Ofcom review of proposed increased amount of archive content on BBC iPlayer: Conclusion of initial assessment](#), p.7.

<sup>77</sup> Sky 2022, [Response of Sky UK Limited to the BBC iPlayer Public Interest Test consultation](#), p.2; Virgin Media O2, 2022, [Virgin Media O2 response to Ofcom review of proposed increased amount of archive content on BBC iPlayer](#), p.4; Directors UK 2022, [Directors UK response to Ofcom review of proposed increased amount of archive content on BBC iPlayer](#), p.3-4.

<sup>78</sup> NMA response, p.5.

<sup>79</sup> News Broadcasting response, pp.11-12; Virgin Media O2 response, p.7; NMA response, pp.5-6; VLV response, p.6; Radiocentre response, p.12; PPA response, p.3; Directors UK response, p.5; AudioUK response, p.4.

<sup>80</sup> PPA response, p.3; Virgin Media O2 response, p.3.

<sup>81</sup> NMA response, p.5.

<sup>82</sup> BBC response, p.11.

- 4.34 Other stakeholders argued that the list of factors that the BBC should be expected to consider in its PIT consultation should go further and include additional factors, such as:
- a) a clear market definition (Radiocentre) or description of the target market (AudioUK);<sup>83</sup>
  - b) detailed analysis of the market impact – including which UK services would be most impacted (Radiocentre, Directors UK, News Broadcasting);<sup>84</sup>
  - c) any views it had already received from stakeholders about the perceived impact (Radiocentre);<sup>85</sup>
  - d) the expected changes to audience engagement and consumption (Radiocentre);<sup>86</sup> and
  - e) an assessment of the impact that the changes may have on the secondary rights market (Virgin Media O2).<sup>87</sup>
- 4.35 The VLV noted that very few members of the public respond to PITs, and argued that the BBC should do more to publicise PIT consultations to enable licence-fee payers to respond directly.<sup>88</sup>

### Our decision

- 4.36 In proposing changes to our guidance, we have looked for ways in which the competition process can be made more efficient, allowing the BBC more flexibility to make changes in a fast-paced market, while continuing to hold the BBC to account and protecting fair and effective competition. Requiring the BBC to provide substantially greater detail, analysis and evidence than it does currently within its PIT consultations – or setting an expectation that the BBC should promote significantly greater public participation in the PIT process – would be inconsistent with this overarching aim, as it would lengthen the PIT process overall.
- 4.37 We therefore do not consider it appropriate to make some of the further additions to guidance recommended by stakeholders, such as setting an expectation for the BBC to provide a detailed analysis of market impacts as part of its PIT consultation. The BBC provides this information in its final PIT, and there is opportunity for stakeholders to comment on the BBC's analysis within the BCA process or the shorter assessment that follows.
- 4.38 If the Government adopts our recommendation to change the Agreement to allow Ofcom the option not to conduct a BCA or shorter assessment where we are satisfied with the BBC's PIT, we would expect the BBC to include a greater level of detail in its PIT consultation to enable us to do this. In this scenario, it would be important for us to be satisfied that stakeholders had been given sufficient opportunity to comment in detail on

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<sup>83</sup> Radiocentre response, p.12; Audio UK response, p.3.

<sup>84</sup> Directors UK response, p.5.

<sup>85</sup> Radiocentre response, p.12.

<sup>86</sup> Radiocentre response, p.12.

<sup>87</sup> Virgin Media O2 response, p.7.

<sup>88</sup> VLV response, pp.5-6.

planned material changes. This change to the Agreement would require further revisions to our guidance.

- 4.39 We remain of the view that we should implement our proposed additions to the guidance setting out the minimum information that we expect the BBC to include in its PIT consultations. We recognise that stakeholders may find it useful to see whether the BBC expects there to be a particular area of the market in which potential harm may occur before it has done any substantial evidence gathering as part of its PIT. We have made a further addition to our proposed changes to guidance to reflect this.
- 4.40 While we acknowledge the BBC's argument that it may not be able to provide detailed take-up forecasts as part of the PIT consultation, these forecasts – even if they are only tentative estimates – are highly relevant to stakeholders' ability to comment on potential competition impacts. We are therefore retaining this expectation in the guidance, which makes clear that the BBC need only provide this information "where possible".
- 4.41 We are making the following addition to our guidance (this can be found in paragraph 4.24 in our guidance):

[...] 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 change;
- the target demographic(s);
- where possible, take-up forecasts of new content or functionality;
- an initial assessment of which area(s) of the market may be affected by a change, and
- timescales for implementation of the change.

## Providing more detail about how the materiality assessment process works

### Our proposal

- 4.42 In response to our June review, stakeholders 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. Some stakeholders were concerned there is a lack of oversight of the BBC's materiality assessments when a change is found not to be material.<sup>89</sup>
- 4.43 Under the Agreement the BBC is responsible for assessing whether changes to its services are material. In our consultation we explained that when the BBC has undertaken an assessment and has decided that a proposed change is not material, it typically provides Ofcom with its assessment of materiality. Ofcom will then review this to assure itself that the change is not material. To date the BBC has produced a documented 'materiality

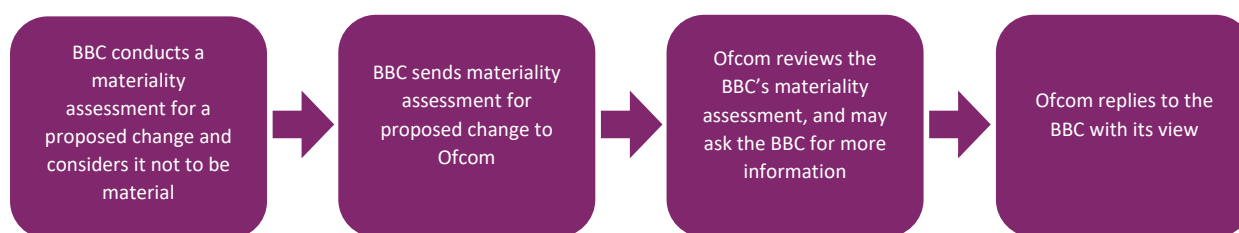
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<sup>89</sup> Radiocentre response to How Ofcom Regulates the BBC consultation, p.43; TAC response to How Ofcom Regulates the BBC consultation, p.2; News Media Association response to How Ofcom Regulates the BBC consultation, p.4; Professional Publishers Association response to How Ofcom Regulates the BBC consultation, p.4.

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 will depend on the nature of the proposal.

- 4.44 Ofcom's review of the BBC's materiality assessment provides assurance to the BBC of our view on the materiality of the change, and ensures that we are 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.

**Figure 4.1: the typical process for a change the BBC considers not to be material**



- 4.45 In the light of stakeholders' uncertainty regarding how non-material changes are assessed, our consultation proposed to add text to our guidance clarifying what we consider to be good practice in terms of the BBC sharing its materiality assessment with Ofcom.

## Stakeholder views

- 4.46 We asked stakeholders if they agreed with our proposals to provide more detail in our guidance about the materiality assessment process.
- 4.47 All stakeholders who responded to this question welcomed more clarity on Ofcom's role when the BBC carries out a materiality assessment. However, some said that the engagement between the BBC and Ofcom during a materiality assessment should be a 'requirement' rather than an 'expectation.'<sup>90</sup>
- 4.48 Some stakeholders stated that the BBC should also be required to publish its materiality assessment<sup>91</sup> and formally consult stakeholders.<sup>92</sup>
- 4.49 A couple of stakeholders noted that we should also publish our view on the BBC's materiality assessment.<sup>93</sup> For example, Pact said it would be useful for stakeholders to understand Ofcom's view where stakeholders have raised serious concerns.<sup>94</sup>

<sup>90</sup> AudioUK response, p.3; News Broadcasting response, p.12; NMA response, p.6; PPA response, p.3; Radiocentre response, p.13.

<sup>91</sup> Radiocentre response, p.13.

<sup>92</sup> News Broadcasting response, p.12.

<sup>93</sup> Pact response, p.4; News Broadcasting response, p.12.

<sup>94</sup> Pact response, p.4.

## Our decision

- 4.50 As our proposed guidance clarified, it is current practice for the BBC to provide Ofcom with its assessment, and where the BBC has concluded that a change is not material, for us to review it. The nature and scale of changes considered under a BBC assessment of materiality differ significantly and we expect the level of analysis undertaken by the BBC to be proportionate to the change being considered. As with the BBC's assessment, our review process can vary in scope and scale depending on the nature of the planned changes. We aim to complete our review within six weeks of receiving the BBC's materiality assessment.
- 4.51 We do not think it is necessary or proportionate to place a new specified requirement on the BBC to provide its assessments to Ofcom, given that this is a well-established practice and the BBC has not indicated that it plans to change it.
- 4.52 Reviewing the BBC's materiality assessments gives us the necessary opportunity to decide whether we agree with the BBC's analysis, and if appropriate, whether to engage further with the BBC or other stakeholders, or to carry out our own further analysis. Given this, we believe that requiring the BBC to formally publish all its materiality assessments would place an unnecessary additional regulatory burden on the BBC. In some instances, when the BBC conducts its materiality assessment and engages with stakeholders on a confidential basis as part of this, a requirement to publish the assessment may make stakeholders less inclined to share concerns with the BBC if they involve confidential or commercially sensitive information. This could potentially limit the amount of information that the BBC can draw on to make its assessment.
- 4.53 On some occasions, Ofcom has published documents setting out our views on the BBC's materiality assessments, including the reasoning behind our decision, and in some cases, a high-level overview of our analysis. We have normally published these where there has been a high level of stakeholder interest. We recognise that there may be circumstances where stakeholders would find it helpful to understand more about Ofcom's view on BBC materiality assessments. In instances when a materiality assessment is of particular stakeholder interest, we will endeavour to provide greater transparency by publishing our assessment.
- 4.54 We have therefore decided to keep our proposed additional guidance (which can be found at paragraph 4.13 of our guidance):

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.

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

### Our proposal

- 4.55 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.
- 4.56 Our guidance currently sets out that, as part of an initial assessment, we invite third parties to comment on whether they consider the BBC's published proposals to be material and what further assessment may be required.<sup>95</sup>
- 4.57 An early consultation can help us understand stakeholders' views on a BBC proposal at the start of the BCA or shorter assessment process, but this is resource-intensive for Ofcom and stakeholders. In most cases, the BBC will already have 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 us consulting specifically on the materiality of the change as part of our initial assessment.
- 4.58 We therefore proposed that there should be flexibility for Ofcom to decide whether a consultation at the initial assessment stage is necessary, and have proposed new text in the guidance to reflect this.

### Stakeholder views

- 4.59 We asked stakeholders whether they agreed with our proposal for additional flexibility for Ofcom to determine whether it is necessary to consult on materiality following a PIT.
- 4.60 While some stakeholders appreciated that in certain cases the removal of an initial materiality consultation would make the competition process more efficient,<sup>96</sup> there were concerns about this proposal.
- 4.61 For most stakeholders the main concern was that this proposal may allow less opportunity overall for stakeholders to comment on a change.<sup>97</sup> For example, some stakeholders argued that it was important for them to be consulted at this stage due to the BBC's scale<sup>98</sup>

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<sup>95</sup> 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.

<sup>96</sup> Radiocentre response, p.14; Directors UK response, p.5; Pact response, p.4; Sky response, p.3; VLV response, pp.6-7.

<sup>97</sup> AudioUK response, p.4; Pact response, pp.4-5; Sky response, pp.3-4; News Broadcasting response, p.13; Virgin Media O2 response, pp.4-7; NMA response, p.7.

<sup>98</sup> Pact response, p.4.

or "*poor track record in engaging with industry...as part of both its materiality assessments and PITs.*"<sup>99</sup> Audio UK said it was important that any changes the BBC makes that may have an impact on the market undergo due scrutiny,<sup>100</sup> and asked for clarification that we had considered other ways in which the competition process could be made more efficient without removing opportunities for stakeholder consultation.

- 4.62 Sky set out its view that it is essential for us to consult with stakeholders at this initial stage in all cases, to assess the quality of the BBC's engagement with stakeholders, and to get stakeholders' early views on the impact of the BBC's changes and its PIT. It argued that it is more efficient for Ofcom to gather stakeholders' views before consulting on a preliminary view, and minimises the risk that stakeholders will provide new information later in the process. NMA argued that Ofcom does not have the resource to fully assess a market and therefore needs stakeholder input,<sup>101</sup> and noted that this consultation might indicate whether the change could be more impactful than the BBC itself had found.<sup>102</sup>
- 4.63 Sky and Radiocentre expressed views that if we are considering a shorter assessment, we should consult stakeholders at this stage.<sup>103</sup>
- 4.64 Sky raised the concern that if the Government were to implement our recommendation to allow Ofcom the discretion not to undertake a BCA or shorter assessment following a PIT, we could choose not to do a BCA without any stakeholder consultation.<sup>104</sup>
- 4.65 Other concerns raised relating to this proposal included that the timeframe set out in the current guidance, for stakeholders to respond to Ofcom's initial consultation on materiality, is too narrow, not allowing stakeholders enough time to gather evidence.<sup>105</sup>

## Our decision

- 4.66 We understand stakeholders' concerns that there may be less opportunity to voice their views or concerns on a BBC change if we do not run an initial assessment on materiality after the BBC undertakes its PIT. It is helpful for us to hear views from stakeholders at an early stage of our assessment. We would still engage informally with stakeholders early in the process; doing this on an informal basis will reduce the regulatory burden both for us and for stakeholders. We would also still run a consultation where there was a question over the materiality of a change.
- 4.67 Stakeholders have raised concerns about the impact of this proposed change (in terms of how they would be able to raise their concerns with us in this process) if the Government takes forward our recommendation to give Ofcom discretion over whether we run a BCA or shorter assessment following a PIT. If the Government makes changes to the Agreement

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<sup>99</sup> News Broadcasting response, p.13.

<sup>100</sup> AudioUK response, p.4.

<sup>101</sup> NMA response, p.7.

<sup>102</sup> NMA response, p.7.

<sup>103</sup> Sky response, p.4; Radiocentre response, p.14.

<sup>104</sup> Sky response, p.3; Radiocentre response, p.14.

<sup>105</sup> PPA response, p.3; Directors UK response, p.5; Pact response, pp.4-5.



based on our recommendations, we will update our guidance to reflect these changes and will consider this issue at that point.

- 4.68 We understand some stakeholders' concerns that under the changes being made in this Statement, if Ofcom conducted a shorter assessment instead of a full BCA, having decided that an initial assessment of materiality was not necessary for a particular change, stakeholders would not have the opportunity to comment. We agree that if we were considering whether a shorter assessment was appropriate, it may be helpful to consult stakeholders at this stage to find out whether they agree, and if not, why they believe a full BCA is needed. We would therefore consider on a case-by-case basis whether it was necessary to consult at the initial stage if we were considering carrying out a shorter assessment. As noted above, we may also reach out to stakeholders informally at this stage, regardless of whether we decide to run an initial assessment.
- 4.69 We note concerns about the consultation timeframe. Ofcom has six weeks from the date of publication of the BBC's final PIT statement to undertake its initial assessment and decide whether the change is material or not. As set out in the Agreement, if we do not inform the BBC of our view within this period, it is free to implement the change. It is important that we have enough time to fully assess stakeholders' views, and to allow for this we need to set a short deadline for stakeholders to comment. We recognise this is a short timeframe to provide a formal consultation response, so our preference is to have more informal engagement with stakeholders at this stage.
- 4.70 Based on our above assessment of stakeholder views we have decided to keep the changes we proposed to our guidance (which can be found at paragraph 4.37 in the guidance):

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.

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

### Our proposal

- 4.71 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.
- 4.72 Where a change is material, the BBC assesses 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 BBC's assessment of public value 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.

- 4.73 The existing guidance sets out some of the factors that we are likely to consider in reviewing the BBC's public value assessments.<sup>106</sup> In our June review we said that we would provide more detail on certain elements of public value that we expected to see in the BBC's assessments, based on our experience of reviewing PITs.
- 4.74 In November, we consulted on providing further guidance on what we expected to see in the BBC's public value assessment. This included:
- a) identifying the public value that the change will deliver;
  - b) identifying which audiences are likely to benefit from the public value generated;
  - c) the additional public value created by the change; and
  - d) the period during which public value will be delivered.
- 4.75 We also set out our views on how certain types of impact, resulting from changes to BBC services, could generate significant public value. We said that changes that are directly linked to addressing the challenges the BBC faces in continuing to connect with audiences (including underserved 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. We recognised that connecting with all audiences is critical for the long-term sustainability of the BBC and proposed that the BBC should consider this in its assessments. We also included a clarification that when considering the public value generated, we will review the BBC's assessment of the public value of a proposed change rather than conducting our own analysis (as we do when considering the competition impact).

## Stakeholder views

- 4.76 We asked stakeholders if they agreed with our proposals to add further guidance on our expectations for the BBC's public value assessment. All stakeholders who responded to this question welcomed the addition of guidance in this area.<sup>107</sup> The BBC noted that it welcomed, in particular, our guidance on the aspects of the public value that it should consider in its assessment.<sup>108</sup> Pact agreed with our proposal and was pleased that we expected the BBC to consider the "*public value arising from the production of the service*". News Broadcasting welcomed the guidance and suggested that it should be broadened to include the public value accruing from the BBC's collaboration with industry, including from partnerships with commercial broadcasters. It said that the BBC's commissioning and production of content, as well as giving independent broadcasters access to the BBC's market-leading platforms, could create public value by supporting the broader media ecosystem and making it easier for licence-fee payers to access a wider range of content.

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<sup>106</sup> Ofcom, 2017. Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance, pp.29-31.

<sup>107</sup> News Broadcasting response, p.13; NMA response, p.8; PPA response, pp.3-4; Radiocentre response, p.15; AudioUK response, p.4; VLV response, pp.7-8; Pact response, p.5; BBC response, p.12.

<sup>108</sup> BBC response, p.13.

- 4.77 While the BBC thought our addition to the guidance, suggesting that the BBC should consider how its proposed changes contributed to its own long-term sustainability, was helpful, several stakeholders expressed concerns,<sup>109</sup> including the concern that focusing on long-term sustainability would give the BBC undue freedom to make changes in any sector.<sup>110</sup> Stakeholders questioned whether reaching audiences not well-served by the BBC would always contribute to public value, if these audiences were already well-served by competitors, noting that changes aimed at these audiences in this scenario would be likely to have a detrimental impact on the incumbent providers.<sup>111</sup> The NMA suggested that the guidance would allow the BBC to enter further into markets – such as local news – where its market power would be substantial.
- 4.78 PPA argued that the guidance should reflect the fact that the BBC needs to consider the overall change in public value, recognising other non-BBC services.<sup>112</sup> Similarly, News Broadcasting suggested that BBC proposals should be considered to contribute to public value only where they build genuinely new audiences, rather than attract audiences from competitors.
- 4.79 A stakeholder argued that equating audience reach and viewing levels with public value created an unhelpful incentive for the BBC to chase volume of consumption at the expense of distinctiveness.
- 4.80 Virgin Media O2 suggested that the BBC should not lose sight of its Mission and Public Purposes when adapting to market changes and competing with SVoD services.

## Our decision

- 4.81 As noted above, most stakeholders welcomed the additional guidance about how the BBC should assess its public value but raised concerns about some of our proposed guidance. In the section below we consider stakeholders' comments on the different aspects of public value that we believe the BBC should consider and clearly set out in its assessments.

### Identifying the public value that the change will deliver, and which audiences are likely to benefit

- 4.82 In our proposed guidance, we recognised that changes to the BBC's public services could have a range of benefits to individuals and to broader society. We set out our expectation that the BBC should clearly articulate the types of public value added, including by reference to the Public Purposes, and explain how its proposal would deliver these benefits.
- 4.83 In our consultation, we also set out our expectation that the BBC should 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

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<sup>109</sup> BBC response, p.14; News Broadcasting response, p.13; PPA response, pp.3-4; Radiocentre response, p.15; NMA response, p.8.

<sup>110</sup> Radiocentre also argued the BBC could do this supported by promotional activities and programming budgets not available to domestic competitors in radio and audio (Radiocentre response, p.15).

<sup>111</sup> PPA also noted that specialist media publishers, by their very nature, are adept at reaching audiences that other media providers often struggle to reach (PPA response, p.4).

<sup>112</sup> PPA response, p.4.

users of BBC services – either by displacing alternative services or by generating additional consumption. Other changes may attract new audiences and create public value by reaching otherwise underserved audiences.

4.84 As noted above, most stakeholders welcomed more detailed guidance in this area. However, News Broadcasting suggested that our guidance should be broadened to capture the public value arising from the BBC's collaboration with industry. We agree that collaboration with industry could give rise to public value. We consider that our proposed guidance is sufficiently broad to capture this, for example, when the BBC considers the public value it generates in supporting the creative economy across the United Kingdom.

4.85 Based on our above assessment of stakeholder views we have decided to keep the changes we proposed to our guidance (which can be found at paragraphs 5.21, and 5.24 to 5.25 in the guidance):

### **Our approach**

(...) When considering the public value generated, we will review the BBC's assessment of the public value of a proposed change rather than conducting our own analysis (as we do when considering the competition impact).

(...)

### **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).

### The additional public value created by the change

- 4.86 In their responses, several stakeholders questioned whether reaching audiences not well-served by the BBC would always contribute to public value if these audiences were already well-served by competitors. In particular, the PPA argued that the guidance should reflect that the BBC needs to consider the overall change in public value, recognising other non-BBC services.<sup>113</sup>
- 4.87 As set out in our consultation, 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.
- 4.88 The BBC welcomed our recognition that there were challenges for the BBC in assessing public value generated by other broadcasters. As set out in our consultation, 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.
- 4.89 In our consultation we set out that the BBC may be able to deliver greater additional public value through changes that focus on or enhance the distinctiveness of its services.<sup>114</sup> Conversely, if the BBC were to propose 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. We noted we would expect the BBC to clearly articulate how a proposed change contributes to its distinctiveness, as part of any public value assessment. The BBC welcomed our comments regarding distinctiveness and how this might be considered in terms of additional value and noted that it plans to build this more clearly into its future assessments.
- 4.90 Based on our above assessment of stakeholder views we have decided to keep the changes we proposed to our guidance (which can be found at paragraphs 5.28 to 5.29 in the guidance):

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<sup>113</sup> PPA response p.4.

<sup>114</sup> As set out in the Charter, in delivering its Mission and Public Purposes the BBC's services should be distinctive from those provided elsewhere.

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

- 4.91 In our proposed guidance we recognised that different elements of public value will probably be delivered over different time horizons, and that this should be recognised in the BBC's assessment of public value, where relevant.
- 4.92 Given that stakeholders raised no concerns, we have decided to keep the changes we proposed to our guidance (which can be found at paragraph 5.26 in the 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 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

- 4.93 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 of our consultation, the changing market context has made this more challenging for the BBC, particularly among audiences who consume much of their content online.
- 4.94 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.
- 4.95 In the consultation, we set out that changes which 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. Such groups could include specific demographics or communities and have the potential to

generate high additional public value over and above existing services (from the BBC and other broadcasters).<sup>115</sup>

- b) Changes that allow the BBC to better appeal to audiences that it currently struggles to reach. For example, younger audiences are critical for the future sustainability of the BBC and its ability to deliver the Mission and Public Purposes in the long term but are less likely to consume and engage with BBC content.
- 4.96 The BBC welcomed this additional guidance, noting it was “*helpful for both the BBC and stakeholders in understanding the ongoing need for the BBC to develop its services*”. However, some stakeholders raised concerns that by focusing on long-term sustainability we would give BBC undue freedom to make changes in any sector, and questioned whether reaching audiences not well-served by the BBC would always contribute to public value (e.g. if they were already served by competitors).
- 4.97 We consider it essential that the BBC is able to continue to reach and remain relevant to all audiences in the long term, to continue delivering its Mission and Public Purposes. Therefore, the impact of a proposed change on the BBC's long-term sustainability is an important consideration in assessing its public value. However, it is not the only consideration; any assessment will need to include all other aspects of public value described in the guidance and would still need to be grounded in BBC's Mission and Public Purposes, which include distinctiveness.
- 4.98 Several stakeholders raised concerns that in seeking to attract audiences, the BBC could become less distinctive. We consider that for public value to occur, content needs to be consumed, so audience reach is a part of assessing public value. However, we do not consider that a narrow focus on reach alone necessarily equates to high *additional* public value. This is reflected in the guidance on additional public value discussed above, which set out an expectation for the BBC to clearly articulate how a proposed change contributes to its distinctiveness in considering the *additional* public value associated with the proposal (and for the assessment to be grounded in the Mission and Public Purposes).
- 4.99 In our consultation we also noted that 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. We recognise that connecting with all audiences is critical for the overall sustainability of the BBC. Our statement on the future operating licence also recognises the importance of the BBC delivering for all audiences, including those who rely on traditional broadcast services as well as those who use online services.<sup>116</sup>
- 4.100 Based on our above assessment of stakeholder views we have decided to keep the changes we proposed to our guidance (which can be found at paragraph 5.27 in the guidance):

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<sup>115</sup> Ofcom, 2018. [BBC Scotland Competition Assessment: Final determination](#), pp.15-16.

<sup>116</sup> Ofcom, 2023. [Modernising the BBC's Operating Licence](#), p.3.

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.



## 5. BBC commercial activities

### Introduction

- 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.<sup>117</sup> 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 out of the public service. In 2018, the distribution arm was merged into BBC Studios, with production, and in recent years the BBC has continued to move other activities into the subsidiary. Given the changes in the market that had taken place, and the continued evolution of BBC Studios, we undertook a review to better understand how the BBC had implemented the rules. Our [findings from our review of BBC Studios](#) were published in June 2022.
- 5.3** Our review found that in some areas, the BBC had appropriate processes and measures in place. However, we found two significant areas where we were not satisfied that the BBC had appropriate controls and procedures in place to ensure that it was 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 (IP), 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 the rules. We did not see evidence that the public service had undertaken objective tests to ensure that its co-production arrangements with BBC Studios were at arm’s length and on commercial terms, and therefore it was not clear to us how the BBC was satisfying itself that it was 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.
- 5.4** 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.

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<sup>117</sup> The Trading and Separation requirements and guidance have been updated since they were put in place, most recently in 2019.

- 5.5 The BBC wrote to us in November 2022 outlining its [response](#) to our findings. The BBC said it took very seriously the concerns Ofcom raised and proposed a number of changes to address our concerns and ensure that the BBC's processes and arrangements would be consistent with the rules.
- 5.6 Our consultation set out proposals to review the plans the BBC had set out in response to the findings of our BBC Studios Review. We also proposed updating our rules in the two areas where we had identified concerns.
- 5.7 In this section, in relation to each of the above issues, we set out the BBC's response to the findings of our Studios Review, our consultation proposals, and the responses we received from stakeholders. We then explain our analysis and assessment of the proposed impact of the changes, consideration of responses, and the decisions we have made.

## Secondary content sales

### The BBC response to the findings of our Studios Review

- 5.8 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.
- 5.9 To address the concerns raised, the BBC said that it was putting in place a formal process for assessing these deals on a case-by-case basis when they are re-commissioned or when there is a reinvestment decision. The BBC said the deals would be approved by the public service and this process would include a clear rationale for the deal.

### Our consultation proposals

- 5.10 We welcomed 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. In principle, we considered this would address our concerns for any future investment that BBC Studios is making in programmes where the public service owns the IP. However, we said we needed to look in detail at the criteria the BBC would use to make its assessment and monitor how it would be implemented in practice, to ensure that its new approach addressed the issues identified. We also said that we expected the BBC to apply these new criteria when considering deals with third-party distributors which are investing in programmes where the public service owns the IP.
- 5.11 The BBC's proposal addressed our concerns only in relation to future deals. Given the small and declining returns that we expect BBC Studios to receive from these types of deals, agreed between 2017 and now, we proposed not to take any further action in relation to them.
- 5.12 In our consultation we proposed making a small change to our 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.

## Stakeholder views

- 5.13 Most stakeholders agreed with our proposed change to the rules.<sup>118</sup> Although Pact agreed with our proposal, it questioned whether BBC Studios should continue to earn revenue from previous series of public service IP programmes. It wanted Ofcom to monitor this and give assurances to stakeholders that the revenue BBC Studios retains is small and declining.<sup>119</sup> Virgin Media O2 considered that our approach needed to be more robust and that we should hold the BBC to account in an open and transparent manner.<sup>120</sup>
- 5.14 The BBC understood the principle that Ofcom was intending to implement with the change to the rules and welcomed the Ofcom's intention to provide greater clarity in regard to the application of this principle. However, the BBC was concerned with the proposed drafting of the condition as it did not understand how it could demonstrate that *"the value ... was at least equivalent to the revenue the BBC could have earned if it ... was sold to a third party."* The BBC put forward three points in relation to this:
- As this is a hypothetical test, the BBC was not clear how it could be expected to demonstrate compliance with a test framed in this way.
  - As the BBC is not required to distribute its content through third parties, it was not clear how Ofcom envisaged the BBC would build up the evidence base that might be required.
  - It is inappropriate for the test to be that the value is *"at least equivalent"*. In a normal market one would expect to find a range of prices or received value for a given service. The BBC should be able to show that it is acting in line with normal market principles and on comparable commercial terms, but it should not be prevented from entering into a similar range of deals as a third party could do, taking into account the different trade-offs that may be present in any given case.
- 5.15 The BBC considered we should reconsider the drafting of this condition so that the agreed intention would be achieved without the problems of practicability it had identified.<sup>121</sup>

## Our decision

- 5.16 We have decided to proceed with making a change to our rules and accompanying guidance 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.
- 5.17 We note PACT's concern in relation to secondary content sales revenue remaining with BBC Studios. As outlined in the consultation, the majority of these agreements were made before Ofcom was appointed the BBC's regulator and as such they were governed by the rules put in place by the BBC Trust. However, we will continue to monitor the revenue that BBC Studios receives from secondary content sales as part of our overall BBC commercial

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<sup>118</sup> News Broadcasting response, p.14; Audio UK response, p.5; VLV response, p.9; Directors UK response, p4.

<sup>119</sup> Pact response, pp.5-6.

<sup>120</sup> Virgin Media O2 response, p.7.

<sup>121</sup> BBC response, pp.14-15.

activities monitoring programme, to understand whether revenue from these pre-2017 titles is declining over time.

- 5.18 It is difficult to provide greater transparency on the BBC's commercial activities (as requested by Virgin Media O2) as they operate in competitive sectors. We consider that our current rules and approach to monitoring provide a robust approach to understanding whether the commercial subsidiaries are benefiting unfairly from their relationship with the public service.
- 5.19 We note the BBC's concerns about our proposed change to the rules and how it would feasibly be able to market test each deal. We have modified the new requirement to make it clear that the BBC needs to ensure that the opportunity cost principle (which was already in the guidance) is followed. This requires the BBC to consider whether the revenue the public service earns from the secondary exploitation is equivalent to what it would have earned if a third-party distributor was selling the content on its behalf (taking account of any creative input BBC Studios is providing that a third-party distributor might not). This retains the principle we intended without the specificity of a deal-by-deal market test.
- 5.20 The BBC is also required to ensure that any goods or services traded with the commercial activities are at arms' length and on commercial terms. We consider that if the BBC can demonstrate that the criteria it applies when making its assessment shows that the agreement is at arms' length and on commercial terms, it should be able to meet the transfer pricing requirements. We have provided the BBC with additional guidance in B16 to demonstrate how it can meet requirement B3 in line with the new requirement B5.
- 5.21 The BBC has not yet concluded any deals that require assessment using its new process, so we have been unable to review how this is working in practice. We will continue to work with the BBC to ensure that the criteria it is using and how they are implemented in practice address the issues we have identified. We will update stakeholders on the progress the BBC has made in our annual report on the BBC later this year. It is also important that the BBC applies these new criteria when considering deals with third-party distributors which are investing in programmes where the public service owns the IP.
- 5.22 The new requirement and additional guidance we have decided to put in place are:

B5. 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 each supply of content/IP for secondary exploitation is in line with the opportunity cost principle as set out in B.12.

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B16. We set out below a number of examples of different types of goods and services that we would expect to be priced using market prices or benchmarks:

- a) Supply of content / IP for secondary exploitation – the opportunity cost to the Public Service of supplying content / IP to its Commercial Subsidiaries would be the revenue the Public Service could have earned if the good or service had been sold to a third party. As part of the Public Service's decision to supply its content / IP to its Commercial Subsidiaries, we would expect it to use an objective set of criteria including a commentary on how the opportunity cost principle is being applied.

## Supply and pricing of goods and services (transfer pricing)

### The BBC's response to the findings of our Studios Review

- 5.23 The BBC said it had thoroughly reviewed its processes in the light of our concerns and taken the opportunity to make further improvements to project management processes. This included designating finance and legal leads in the BBC and BBC Studios (and other commercial subsidiaries) and an in-depth mandatory training programme for all finance teams involved in transfer pricing and other reporting for Ofcom. The Fair Trading Committee (FTC), which had considered the Review findings on behalf of the Board, commissioned the BBC's internal audit team to review the transfer pricing processes and implemented a number of recommendations based on this review. The FTC also decided to implement regular spot checks of the transfer pricing regime by the internal audit team.

### Our consultation proposals

- 5.24 We welcomed the changes the BBC had made to improve its project management procedures, training and assurance processes. The steps the FTC took in 2021, and the work undertaken by the BBC's internal audit team, were also important in addressing our concerns. We said we would 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.
- 5.25 We considered that it remained important for the BBC to continue to identify and address any weaknesses in its internal controls and accounting processes as it implements the changes discussed above. We therefore proposed 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.
- 5.26 We did not consider it appropriate to set a materiality threshold for the transfer pricing requirements (as requested by the BBC). However, we set out our expectation that the

level of detail the BBC uses in setting transfer charges should be proportionate to the relative size of those charges.

## Stakeholder views

5.27 Most stakeholders agreed with our proposal to update our rules.<sup>122</sup> However, Virgin Media O2 wanted a clear and robust process and timeframe for the reviews and for them to be carried out in conjunction with Ofcom. It also wanted the review process to be transparent rather than between the BBC and Ofcom.<sup>123</sup> PACT also noted that it would want assurances from Ofcom that the BBC's actions would be sufficient to address stakeholders' and Ofcom's concerns.<sup>124</sup>

## Our decision

5.28 We have looked in detail at the work undertaken by the BBC's internal audit team and the actions that the BBC and FTC have since carried out to strengthen the transfer pricing regime. This focused on the service level agreements (SLAs) between the public service and the commercial subsidiaries, particularly the governance framework, the process of reviewing and updating them and their operating effectiveness, to ensure they are consistent with the transfer pricing rules. In addition, the BBC looked at the operational effectiveness of the internal controls that ensure that the transfer charges are applied, accurate and in line with the SLAs. The review recommended some improvements to strengthen the relevant processes, which the BBC confirmed have now been implemented. The FTC has also directed the BBC's internal audit team to continue to carry out regular spot checks and check that action plans have been put in place to address the concerns we raised in our review.

5.29 We consider that the work undertaken by the internal audit team is a significant step towards addressing our concerns. The BBC's findings from its review are similar to the conclusions of our BBC Studios Review<sup>125</sup> and the actions the BBC has taken give us greater confidence in the accuracy and completeness of the transfer charges between the public service and the commercial subsidiaries. We will continue to engage with the BBC in its internal audit work and how it is addressing our concerns and will report on this in our annual report on the BBC.

5.30 We have also decided to put a new requirement in place to enable us to direct the BBC to undertake a review of its transfer pricing processes to ensure any further concerns are identified promptly. We would only expect to use this requirement if the BBC was not undertaking its internal reviews, or if we had specific concerns relating to how the identified issues were being addressed. For this reason we do not consider it appropriate to set out a timetable for these reviews, as suggested by Virgin Media O2.

5.31 The new requirement we are putting in place is:

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<sup>122</sup> News Broadcasting response, p.14; Audio UK response, p.5; VLV response, p.9; Pact response, pp.6-7.

<sup>123</sup> Virgin Media O2 response, p.8.

<sup>124</sup> Pact response, pp.6-7.

<sup>125</sup> [Review of the interaction between BBC Studios and the BBC public service, Findings](#) 22 June 2022, p32-33.

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.

# A1. The BBC's impact on competition in the audiovisual and audio sectors: detailed analysis

A1.1 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 as they were presented in the November consultation. This should be read alongside Section 3 of this document, which describes our approach to this analysis.

## Audiovisual services

### The BBC's position

A1.2 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).<sup>126</sup>

A1.3 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.<sup>127</sup> 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 into the long term, with the BBC,<sup>128</sup> ITV<sup>129</sup> and Channel 4<sup>130</sup> all announcing a focus on digital growth.

A1.4 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

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<sup>126</sup> We discuss the developments and trends in audiovisual services in more detail in our Media Nations report. [Ofcom, 2022. Media Nations: UK 2022.](#)

<sup>127</sup> For more information see [Media Nations: UK 2022](#), pp.56, 71.

<sup>128</sup> 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].

<sup>129</sup> ITV has made streaming one of its three critical priorities and later this year is launching ITViX, a new streaming service underpinned by a major investment in programming and improved user experience. ITViX 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.

<sup>130</sup> 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].



video-on-demand (VoD) players (increasing from 3% to 5%). Among younger audiences, the shift in viewing trends has been even more pronounced.<sup>131</sup>

A1.5 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.<sup>132</sup>

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

	Aged 4+		Aged 15-34	
	2018	2021	2018	2021
<b>Broadcast - Live + recorded playback share</b>	<b>74%</b>	<b>60%</b>	<b>45%</b>	<b>30%</b>
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%
<b>BVoD share</b>	<b>3%</b>	<b>5%</b>	<b>4%</b>	<b>6%</b>
BBC iPlayer	1%	2%	2%	2%
ITV Hub	<1%	1%	<1%	1%
All 4	<1%	1%	1%	1%
Other players	1%	1%	2%	1%
<b>SVoD share</b>	<b>10%</b>	<b>20%</b>	<b>23%</b>	<b>34%</b>
Netflix	7%	12%	18%	20%
Amazon Prime Video	2%	4%	3%	6%
Disney+		3%		5%
Other SVoD	1%	2%	2%	2%

<sup>131</sup>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%.

<sup>132</sup> 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).

<b>YouTube share via devices</b>	<b>13%</b>	<b>14%</b>	<b>28%</b>	<b>30%</b>
YouTube	13%	14%	28%	30%
<b>BBC live + recorded playback + BBC iPlayer total</b>	<b>24%</b>	<b>21%</b>	<b>11%</b>	<b>10%</b>
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Ofcom analysis modelled on BARB, Comscore and IPA TouchPoints data.<sup>133</sup>

## Impact of potential changes to BBC audiovisual services

A1.6 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.<sup>134</sup>

### Changes to BBC iPlayer

A1.7 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.<sup>135</sup> 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.<sup>136</sup> 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".<sup>137</sup>

A1.8 We think that the risk that changes specific to BBC iPlayer will crowd out commercial competitors is low, for the reasons set out below.

A1.9 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

<sup>133</sup> 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.

<sup>134</sup> 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.

<sup>135</sup> Ofcom approved changes to BBC iPlayer in 2019 [BBC iPlayer competition assessment final determination](#). August 2019

<sup>136</sup> Ofcom, 2022. Ofcom review of proposed increased amount of archive content on BBC iPlayer: Conclusion of initial assessment

<sup>137</sup> May 2022. BBC Media Centre, 26 May 2022. [Plan to deliver a digital-first BBC](#) [accessed 18/11/2022].

viewing of commercial providers' services.<sup>138</sup> Indeed, one aim of the BBC's iPlayer strategy is to capture BBC linear viewing so that audiences are retained as they move online.

A1.10 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.<sup>139</sup>
- b) **Other BVoD and SVoD services** – most people use both SVoD and BVoD services, with an average of 4.4 VoD platforms used.<sup>140</sup> 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 users also viewing content on an SVoD each week and 72% using at least one other BVoD service.<sup>141</sup> 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%).<sup>142</sup>
- 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)<sup>143</sup> and/or other activities, although these are likely to be less close substitutes for BBC iPlayer, given their different characteristics.

A1.11 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:

A1.12 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.

A1.13 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

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<sup>138</sup> 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.

<sup>139</sup> IPA TouchPoints wave 1 2022.

<sup>140</sup> Ofcom VoD Survey 2022.

<sup>141</sup> IPA TouchPoints wave 1 2022.

<sup>142</sup> Ofcom VoD Survey 2022.

<sup>143</sup> 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.

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.<sup>144</sup>

A1.14 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.

## Changes to linear services

A1.15 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.<sup>145</sup>

A1.16 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.

A1.17 First, the BBC's linear services are still relatively large in terms of viewing (broadcast linear viewing accounts for 19% of all viewing).<sup>146</sup> This suggests that changes the BBC makes to its linear services could have a greater impact on competition than changes to BBC iPlayer.

A1.18 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

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<sup>144</sup> 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.

<sup>145</sup> 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.

<sup>146</sup> Some linear viewing also occurs via BBC iPlayer.

Three linear channel, the closest competitors were expected to be linear broadcast competitors.<sup>147</sup>

- A1.19 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.

## Audio services

### The BBC's position in audio

- A1.20 How audiences access and listen to audio content is also changing.<sup>148</sup> 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.<sup>149</sup>
- A1.21 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.
- A1.22 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.
- A1.23 In this context, the BBC's share of all audio listening has been decreasing, from 43% in 2015 to 33% in 2021.<sup>150</sup> 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).

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<sup>147</sup> 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.

<sup>148</sup> We discuss these wider developments in audio services in more detail in the Radio and Audio section of our [Media Nations report](#).

<sup>149</sup> 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.

<sup>150</sup> 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.

- A1.24 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).
- A1.25 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%).<sup>151</sup>

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<sup>151</sup> 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
<b><i>Radio (not including online)</i></b>	<b>74%</b>	<b>55%</b>	<b>50%</b>	<b>29%</b>
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%
<b><i>Online radio listening (live and catchup)</i></b>	<b>5%</b>	<b>10%</b>	<b>6%</b>	<b>7%</b>
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%
<b><i>Podcasts</i></b>		<b>5%</b>		<b>7%</b>
Spotify		4%		
Apple Music		1%		
Amazon Prime		1%		
Google		<1%		
BBC Sounds		<1%		
Other		<1%		
<b><i>Streamed music</i></b>	<b>5%</b>	<b>18%</b>	<b>12%</b>	<b>39%</b>
Spotify		12%		31%
Apple Music		2%		3%
Amazon Music		3%		3%
Google		1%		2%
BBC Sounds		<1%		<1%
Other music streaming service		<1%		1%
<b><i>Other forms of audio<sup>152</sup></i></b>	<b>17%</b>	<b>12%</b>	<b>30%</b>	<b>16%</b>
<b>BBC (Radio and Sounds)</b>	<b>43%</b>	<b>33%</b>	<b>21%</b>	<b>11%</b>

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

<sup>152</sup> Personal music (CD and digital), music video sites/channels, audiobooks

## Impact of potential changes to BBC audio services

- A1.26 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.
- A1.27 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.<sup>153</sup>

### Changes that only affect BBC Sounds

- A1.28 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'<sup>154</sup> and online audio streams such as CBeebies Radio, Radio 1 Dance and Radio 1 Relax) and audiobooks.<sup>155</sup>
- A1.29 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.
- A1.30 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.<sup>156</sup>
  - 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.<sup>157</sup>
  - 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.

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<sup>153</sup> As BBC live radio broadcasting is also available online, changes will affect listening both on radio sets and on BBC Sounds.

<sup>154</sup> Curated music playlists that can be listened to on demand.

<sup>155</sup> Currently only a limited number of audiobooks are available on BBC Sounds.

<sup>156</sup> 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.

<sup>157</sup> *Ofcom Audio Survey, 2022.*



- A1.31 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.
- A1.32 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

- A1.33 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.
- A1.34 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%.<sup>158</sup> 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.<sup>159</sup> 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.<sup>160</sup>
- A1.35 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:

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<sup>158</sup> RAJAR Q3 2022

<sup>159</sup> 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.

<sup>160</sup> 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.

- a) Alternative online audio services are less readily available on radio sets, which account for 55% of all listening.<sup>161</sup> As a result, we would expect these audiences to be more likely to switch between radio stations than they are to switch to other types of audio services, such as podcasts or music streaming.<sup>162</sup>
- 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.<sup>163</sup>

A1.36 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.

A1.37 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.

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<sup>161</sup> IPA TouchPoints 2022 w1

<sup>162</sup> 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.

<sup>163</sup> 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.

## A2. Guidance for assessing the impact of proposed changes to the BBC's public service activities – with updated text

A2.1 This annex has been [published separately](#) on Ofcom's website.

## A3. The BBC's commercial and trading activities: requirements and guidance – with updated text

A3.1 This annex has been [published separately](#) on Ofcom's website.

## A4. Equality impact assessment

- A4.1 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.
- A4.2 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 Scheme<sup>1</sup> explains how we comply with our statutory duties under the 1998 Act.
- A4.3 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.
- A4.4 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 the additional specified requirement and the changes we are making 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, or consumers with protected characteristics in Northern Ireland or disabled consumers, compared to consumers in general.
- A4.5 We have not identified any potential negative impacts on any groups sharing protected characteristics that are directly linked or relevant to the specific changes we are making to our guidance, for the following reasons:
- a) The changes 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).

b) The changes to our guidance 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 we have made to our guidance 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.

A4.6 We consider that, in general, the changes we have decided to make to our guidance 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.