

Chris Rowsell

Controller of Regulation
New Broadcasting House
Portland Place
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Kevin Bakhurst
Group Director, Broadcast and
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20 July 2021

Dear Chris,

Conclusion of initial assessment of proposed BBC Three television channel

On 24 June 2021, the BBC published its [proposal](#) to relaunch BBC Three as a television channel. At the same time, we began our own review to decide if the BBC's plans are material and if they should be allowed to proceed.

This letter is to notify you that we have completed the first stage of our review and concluded that the proposal represents a material change that warrants further assessment by Ofcom. Today we are launching a full competition assessment ('BCA') and explain our decision below.

Background

The BBC's mission is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain. To ensure it continues to deliver programmes which fulfil its mission, the BBC may look to make changes to its existing activities or seek to develop new services to meet the needs of audiences.

Some changes can be considered minor; for example, day-to-day editorial decisions about individual programmes, or their scheduling. However, as a large, publicly-funded organisation, other changes the BBC might wish to make, such as the introduction of new UK Public Services could have a significant impact on competition in the wider media market.

Under the terms of the Agreement,¹ the BBC may only make a 'material change' to its UK Public Services if the BBC concludes that any such proposal satisfies a Public Interest Test ('PIT'). The PIT is then only satisfied if the BBC Board decides:

- a) the proposed change contributes to the fulfilment of the BBC's mission and the promotion of at least one of the public purposes;
- b) reasonable steps have been taken to ensure the proposal will have no unnecessary adverse impacts on fair and effective competition; and

¹ [BBC Royal Charter and Agreement Framework](#). Referred to as 'Charter' and 'Agreement'.

- c) the public value of the proposed change justifies any adverse impact on fair and effective competition.

The BBC determined that its proposal to relaunch BBC Three as a television channel would constitute a material change to its services as it will be a new UK public Service.² It conducted a PIT over Spring 2021 and published its findings, along with supporting evidence, on 24 June 2021, stating that the BBC Board believed the PIT had been satisfied.³

The BBC's proposal

The BBC is proposing to relaunch BBC Three as a television channel in January 2022 to meet better the needs of 16-34 year old audiences who watch broadcast TV on a regular basis but are light users of BBC TV. The BBC's proposal sets out that these viewers tend to be from C2DE socio-economic backgrounds, living outside London and the south-east as well as those with less access to on-demand services.

The BBC intends for BBC Three to broadcast from 7pm until 4am every day. The channel would be available on the main terrestrial, satellite, and cable platforms in all nations across the UK.

The BBC's plan for the channel proposes:

- An annual content budget of £72.5m. This is the same content budget for BBC Three as it would be without launching a broadcast channel.
- A mix of genres, including factual entertainment, drama, UK and International current affairs, comedy, sport, music, films and acquisitions.
- A nightly news bulletin.
- Original BBC productions (i.e. programmes commissioned by the BBC but including first-run and repeats) will make up 70% of broadcast hours. It also proposes there will be over 300 hours of first-run programmes broadcast each year, making up 24% of broadcast hours between 7pm to midnight.

As part of the proposal, the BBC has also said that:

- BBC Three will broadcast pre-watershed programming that will appeal to both 13-15 year olds and 16-34 year olds.
- Two-thirds of the expanded BBC Three's programme spend will be outside of London.
- As a new public service channel, Ofcom should mandate prominence for the new BBC Three channel within the top 24 slots of electronic programme guides ('EPGs').

The BBC is planning to launch the channel in both SD and HD on Freeview, except in Scotland where the HD capacity is used for the BBC Scotland channel, and in Wales where the HD capacity is used by S4C. On all other platforms, the channel would launch in SD and HD. To accommodate BBC Three within current distribution capacity, the BBC is proposing reducing the operating hours of CBBC so

² [A new BBC Three channel: Public Interest Test consultation](#), 5 March 2021, section 5.1.1

³ [A new BBC Three channel: Public Interest Test consultation](#), 5 March 2021.

that broadcast ends at 7pm instead of 9pm. The proposal does not impact our Operating Licence conditions for CBBC.

Ofcom's role

If the BBC Board concludes that a PIT has been satisfied, Ofcom must carry out its own assessment of the proposal before a change can be implemented. The Agreement divides Ofcom's work into two phases. During the initial phase, which must be completed in six weeks, Ofcom is required to:

- a) confirm whether the BBC proposal is material; and, if so
- b) decide what form our detailed assessment during the second phase should take.

To help us to do this, on 24 June 2021 we published an [Invitation to Comment](#) stating that we proposed to find that the BBC's proposal was material. We also said that we would consider, during this initial period, whether the BBC's PIT contained sufficient information to enable us to complete a more detailed assessment in phase two, and whether our assessment should take the form of either a Competition Assessment (BCA) or a Shorter Assessment. We explained, in this context, that we were minded to undertake a full BCA as the proposal involves several interested parties who had raised a range of potential competition issues. We invited comments on our proposals and asked stakeholders and interested parties to provide us with further information explaining how the launch of a new BBC Three channel could affect them.

What stakeholders told us

In response to our Invitation to Comment, we received responses from 14 stakeholders.⁴

Many of the respondents welcomed or had no objections to the BBC's proposal to relaunch BBC Three as a channel. However, respondents raised issues including:

- concerns that the BBC's proposal could have a negative impact on other broadcasters if BBC Three took their viewing share;
- concerns over the public value impact of the proposal given the trends in viewing habits of young people and availability of other similar commercial channels;
- whether the public value benefits of the channel justified the disruption they anticipated from accommodating BBC Three within the EPG;
- that the proposed proportion of UK originations and first-run UK originations broadcast should be higher; and
- questioning how the benefits to the production sector would be realised.

While no substantial concerns were raised with us on how the BBC had conducted its PIT, some respondents pointed out that during the BBC's consultation they did not have access to the evidence that was in its final published PIT, and members of the public who responded to our consultation thought that the BBC could have publicised its consultation more widely.

All respondents agreed that the proposal was material and that further assessment was required. While most agreed a BCA was appropriate, three respondents suggested conducting a shorter

⁴ Responses to our Invitation to Comment are [published on our website](#).

assessment. One suggested focusing a shorter assessment on the published concerns raised by stakeholders to the BBC's consultation.

Materiality of the proposal

Ofcom must undertake a competition assessment if we consider that the BBC's proposal is a material change to the UK Public Services. The Agreement makes clear that the carrying out of any activity as a new UK Public Service is a material change.⁵

Following our review of the BBC's proposal as set out in the PIT, along with the input we received from stakeholders, we are satisfied that the BBC's proposal comprises a new UK Public Service, as reintroduction of BBC Three as a new broadcast television channel would not fit within the existing services in the Agreement.⁶ Currently BBC Three content is part of the BBC's online public service; available to audiences through BBC iPlayer.⁷ We have therefore concluded that this is a material change to the UK Public Services.

Scope for further assessment

Under the terms of the Agreement, our assessment must take the form of either a BCA or a Shorter Assessment. In our guidance document, [*Assessing the impact of proposed changes to the BBC's public service activities*](#), we explain that:

- a) a BCA is more likely to be appropriate "where a proposal raises large, complex and/or particularly contentious issues, potentially involving a number of interested parties and ways in which there may be an adverse impact on fair and effective competition"; whereas,
- b) a Shorter Assessment is likely if "there is a narrower range of issues to consider," for example where we consider the BBC's public interest test "adequately addresses all (or most) issues".

In this guidance we set out factors we expected to take into account in deciding which assessment was most appropriate, including:

- the thoroughness, quality and balance of the BBC's PIT;
- the likelihood of an outcome other than unconditional clearance;
- whether there is a separable element of the proposal giving rise to concern, while other elements give rise to few concerns; and
- the proportionality of the resources required.

We recognise that the BBC's proposal may result in positive outcomes for audiences by making BBC Three content more widely available to younger audiences who the BBC has struggled to attract and retain. However, our initial assessment of the BBC's proposal has also highlighted some potential market impacts and areas we think it is appropriate now to consider further in a full BCA. These include, but are not limited to:

⁵ The Agreement defines a material change as including the carrying out of any activity as a new UK Public Service – Clause 7(7)(a).

⁶ The Agreement, Schedule 1, paragraph 2(1).

⁷ The Agreement, Schedule 1, paragraph 2(4).

- the risk of the new service impacting other broadcaster's revenue and profitability, potentially harming their willingness to invest and innovate if audiences switch to the new BBC Three channel;
- the potential for increased viewing of the BBC iPlayer if the new BBC Three channel drives greater usage of BBC iPlayer;
- the potential impact on other broadcasters of needing to move down the EPG dependent on the level of appropriate prominence that we consider that the BBC Three channel requires (see below); and
- consideration of the additional public value generated by the BBC's proposal to the overall public value of audiences, and in particular 16-34 year olds.

We are satisfied that potentially impacted parties were given a suitable opportunity to comment on the BBC's PIT, albeit we consider that there was only limited information set out in some areas of the BBC's consultation. We are also satisfied that the BBC has carried out extensive qualitative and quantitative market research and economic analysis to support its assessment of its proposals.

Review of the EPG Code

Ofcom's [Code of practice on electronic programme guides](#) (the 'EPG code') sets rules in relation to EPGs, including where certain channels ('Designated Channels') must appear in these guides. Designated Channels are channels entitled to prominence in EPGs under the Communications Act 2003 ('the Act').⁸ If a new broadcast channel is launched by the BBC it would be a Designated Channel and entitled to prominence under the Act.⁹ Therefore, if we provisionally determine that the BBC should be permitted to proceed to launch BBC Three as a television channel, Ofcom will need to consider what level of appropriate prominence should be given to BBC Three. We would aim to consult on any changes needed to the EPG code at the same time as consulting on our BCA's provisional determination.

The BBC's Operating Licence

The Agreement creates obligations on Ofcom to set certain [Operating Licence](#) conditions for the BBC's UK Public Services,¹⁰ and confers a discretion for us to impose such further regulatory conditions as we consider appropriate for requiring the BBC, in carrying out the UK Public Services, to fulfil its Mission and promote the Public Purposes, and to secure that the audiences in the UK's nations are well served. If we provisionally determine that the BBC should be permitted to launch BBC Three as a television channel, we will also consider whether any changes to the Operating Licence are appropriate, and consult on our proposals relating to the Operating Licence at the same time as consulting on our provisional determination.

⁸ Section 310(2) of the Communications Act 2003.


⁹ Section 310(4) of the Communications Act 2003.

¹⁰ [The Agreement](#), clause 13 and Schedule 2.

Next steps

Under the Agreement, Ofcom now has six months in which to conduct a BCA into the proposed BBC Three television channel. We will undertake analysis of the BBC's proposal and consult on a provisional determination. At the end of the process we will issue a final determination.

Yours sincerely,

A handwritten signature in black ink that reads "Kevin Bakhurst". The signature is written in a cursive style and is positioned above a faint, dotted rectangular box.

Kevin Bakhurst