
Review of the BBC's Materiality Assessment of Proposed Changes to the BBC iPlayer

Non-confidential version

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1. Summary

Background

- 1.1 **The UK television industry has seen a significant competitive shift over the last decade, driven by the changing habits and preferences of audiences, and the rise of the major global internet companies.** Audiences, and younger viewers in particular, are watching less live, scheduled television and instead are increasingly viewing on-demand and online content on different devices. Global online players such as Netflix and Amazon are investing in high-budget, high-quality, original programming with broad appeal to UK viewers. So, UK broadcasters are competing for viewers in an increasingly fragmented landscape.
- 1.2 **Earlier this year, Ofcom set out the need for UK broadcasters to respond to these challenges and adapt to the digital age.**¹ We said that UK broadcasters should find new ways to distribute programmes; capture younger audiences; and to make world class content that tells UK stories. We also set out our expectation that forging new partnerships would help UK players respond to this increasing global competition. There has already been movement in this direction with, for example, BBC Studios and ITV² launching Britbox in the US and Canada, and Sky and Channel 4's cross platform content deal.³
- 1.3 **UK broadcasters have also continued their ongoing investment in new content, and experimenting with different online platform and delivery models, to keep pace with audience expectations.**⁴ We are encouraged that the BBC is also seeking to evolve and adapt its services as others have been doing. In this context, it has been experimenting with ways of delivering on-demand content on the BBC iPlayer, for example making content available for different time periods. Last year, it made 20 series available for an extended period, and added more than 300 programmes for a month over Christmas 2017. The "re-invention" of the BBC iPlayer was outlined as a strategic priority in the BBC's Annual Plan 2018/19, to allow it to compete with the developments of other video-on-demand services.⁵ More recently, it has indicated that the roll-out of its iPlayer strategy

¹ Ofcom, *Public service broadcasting in a digital age: Supporting PSB for the next decade and beyond*.

https://www.ofcom.org.uk/__data/assets/pdf_file/0026/111896/Public-service-broadcasting-in-the-digital-age.pdf

² ITV refers to ITV plc throughout this document

³ <https://www.itvplc.com/~media/Files/I/ITV-PLC/Press%20Releases/BritBox%20Canada%20Press%20Release%20-%20141217.pdf>; and

<https://www.channel4.com/info/press/news/sky-c4-to-bring-formula-1-tin-star-no-offence-to-more-viewers>

⁴ For example, ITV plc recently announced that a key component of its strategy is 'investing in the (ITV) Hub to make it a destination for viewers rather than just a catch up service': <https://www.itvplc.com/~media/Files/I/ITV-PLC/documents/reports-and-results/interim-results-statement-2018-v1.pdf>;

Channel Five has been reported as having signed new content partnerships for its streaming service My5:

<https://www.broadbandtvnews.com/2018/07/04/channel-5-signs-new-streaming-deals/>

⁵ BBC 2018/19 Annual Plan Page 5: *Reinventing the way we deliver our content*.

https://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_annual_plan_2018.pdf

needs to be more ambitious⁶ and that it will accelerate and invest more in iPlayer development in 2019.⁷

1.4 **We support the BBC's ambition to evolve and renew its content and services to ensure it continues to have broad appeal and relevance for UK audiences, particularly younger viewers and listeners.**⁸ We understand the BBC must continually look to adapt to successfully fulfil its mission and public purposes throughout the duration of the present 11-year Charter period.⁹

1.5 **But we are also mindful that when the BBC wishes to make changes, this could significantly affect competition in the wider UK media market.** While the BBC faces increasing competition from the likes of Netflix and Amazon Prime, in the UK it remains a large organisation with a unique funding mechanism. This allows it to offer content to UK audiences, licence-fee funded and free from advertising, in a way that others cannot. Changes it makes will have positive effects: the BBC may enhance public value and may encourage competition by offering more choice, stimulating demand, or promoting innovation, which benefits UK audiences. However, some changes the BBC proposes may also harm competition and UK broadcasters; for example, by crowding out investment in UK content and services from other companies, which could ultimately reduce choice for viewers and listeners.

1.6 **The BBC Charter and Framework Agreement, set by Parliament, take account of these factors.** They require the BBC Board to consider the BBC's impact on the wider market and initially, and then Ofcom, to consider the effects on UK competition of 'material' changes – that is, changes to the BBC's public services that may have a significant adverse impact on fair and effective competition. This process is designed to ensure that any material changes to the BBC's TV, radio and online public service activities are subject to rigorous and proper scrutiny, in a transparent and open manner, enabling everyone to have a say in how it is best for the BBC to develop.

The BBC's proposed changes to iPlayer

1.7 **The BBC has proposed a number of changes to the BBC iPlayer for implementation in 2018/19.** These include:

- A substantial number of additional Box Sets, which would be available on the iPlayer for an extended time period;

⁶ BBC Board Minutes June 2018 9: Operational Plan http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/managementstructure/seniormanagement/ebmins/ebmins_jun18.pdf

⁷ In a recent RTS speech (18 September 2018) Tony Hall indicated "We need to move faster on our plans for iPlayer, for BBC Sounds and for young audiences. I have challenged the organisation to find £100 million a year from our current budgets to invest in these priorities from next April." <https://www.bbc.co.uk/mediacentre/speeches/2018/tony-hall-rtts>

⁸ BBC 2018/19 Annual Plan Page 6: *Reinventing the way we deliver our content.*

https://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_annual_plan_2018.pdf

⁹ The current BBC Charter runs until 31st December 2027: [Royal Charter for the continuance of the British Broadcasting Corporation \(December 2016\).](#)

- changes to features, such as enhancements to the user experience and personalisation; and
 - increased marketing spend.
- 1.8 **The BBC estimates that its proposals could increase iPlayer's share of video-on-demand viewing.** As a result of its proposals, the BBC forecasts that total minutes of iPlayer viewing could increase substantially in 2018/19 relative to 2017/18 levels.
- 1.9 **Under the terms of the Framework Agreement, the BBC Board must first assess whether any proposed change to its public service is 'material'.** If it decides that a change is material, the BBC is then obliged to carry out a further assessment, known as a 'public interest test' or 'PIT', which is reviewed by the BBC Board. A PIT provides an opportunity for the BBC to engage with stakeholders on their proposals in a transparent way, through public consultation. It compels the BBC to consider how the proposed changes will contribute to the BBC's Mission and Public Purposes, and show that it has taken steps to reduce any unnecessary potential adverse effects on fair and effective competition. It needs to be able to demonstrate that the public value of the proposed change justifies any such effects.
- 1.10 **The BBC Board concluded that the proposed changes to iPlayer did not constitute a material change, and did not therefore warrant a PIT.** The BBC submitted its materiality assessment on its proposals to Ofcom for consideration on 8 June 2018.

Ofcom's assessment

- 1.11 **Having carefully assessed the BBC's plans, Ofcom disagrees with the BBC Board's conclusions.** We consider its proposed changes to iPlayer do represent a material change. In reaching our decision, we have considered the relevant factors set out in Ofcom's guidance on proposed changes to the BBC's public service activities.¹⁰
- 1.12 **The BBC's own analysis showed its proposals could substantially increase its share of video-on-demand viewing.** Having reviewed the BBC's figures, we consider that if its proposals were fully implemented, the impact on share of video-on-demand viewing may be towards the upper end of its projected range. Notwithstanding that projected figures are inevitably uncertain, our assessment relies on the information the BBC has provided to us.
- 1.13 **We consider there is a risk that this increase in viewing to BBC iPlayer could come at the expense of its competitors – particularly other UK video-on-demand services such as ITV Hub, All 4, My5 and Now TV.** As a result of the BBC offering substantial amounts of extra content, licence-fee funded and free from advertising, commercial video-on-demand services – both advertiser funded or subscription models – may be squeezed and find it harder to make money from their own content. For example, this might particularly be the

¹⁰ *Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance:* https://www.ofcom.org.uk/_data/assets/pdf_file/0028/99415/bbc-public-service-activities-proposed.pdf

case for services such as the new subscription proposals ITV announced for its Hub service.¹¹

- 1.14 **This may harm competition by reducing competitors' incentives to invest in and develop their services.** For instance, competitors might be less able to add exclusive content, or improve features on their own on-demand platforms – resulting in a less varied, vibrant video-on-demand market. In that scenario, audiences could lose out.

Our directions

- 1.15 **Given our materiality finding, we are directing the BBC to conduct a PIT.** This open and transparent process will ensure that any legitimate competition concerns and potential market impacts are fully considered by the BBC, alongside the public value benefits. We understand the BBC is considering how the iPlayer should further develop after 2018/19. We therefore require the BBC to also consider whether to incorporate those plans into the PIT by 31 December 2018. By undertaking a PIT on its longer-term plans, there is the potential for the BBC to reduce the risk of future intervention by Ofcom.
- 1.16 **Our findings and direction to undertake a PIT do not mean that the BBC will ultimately be prevented from making changes to the iPlayer.** They do mean that, in developing its plans, the BBC needs to consider more transparently the public value benefits and likely effect it may have on competition.¹² We consider there are significant benefits to engaging openly with UK stakeholders, to provide insights that would enable the BBC to adapt its proposals, if necessary, while it considers its longer-term strategy.

Interim measures

- 1.17 **Under normal circumstances, given our materiality finding, we would expect to direct the BBC to cease making changes to the iPlayer until after the completion of the PIT, and only once Ofcom's final approval had been given.**
- 1.18 **However, in this case, we believe it is appropriate to allow the BBC to make limited changes to the iPlayer.** We understand the need for the iPlayer to continue to develop, and for the BBC to retain audiences. We also consider it appropriate to allow the BBC to use the programme rights it has already acquired, to enable licence fee payers to benefit from the BBC's investment. Our draft directions will therefore permit the BBC to proceed with parts of its proposals in 2018/19. The BBC would be able to:

¹¹ <https://www.itvplc.com/~media/Files/I/ITV-PLC/documents/reports-and-results/interim-results-statement-2018-v1.pdf>
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¹² The BBC must satisfy itself that the proposed change contributes to the fulfilment of the BBC's Mission and promotion of its Public Purposes; (ii) it has taken reasonable steps to eliminate adverse impacts on fair and effective competition which are not necessary for that purpose; and (iii) the public value associated with the change justifies any remaining adverse impact, clause 8, BBC Agreement: <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>

- retain any series it has already added to the iPlayer since the start of 2018/19 under its proposals; and
- add to the iPlayer any series to which it acquired rights before the date of this decision, and to make them available on the iPlayer until those rights expire.

1.19 **For subsequent years, and in line with its proposals on number of series, the BBC could make available a limited number of new or latest Box Set series, and a limited number of archive series.** However, these may only be made available for a shorter time period than the BBC outlined in its proposals. We consider permitting the BBC to provide some additional Box Set content for longer than the standard 30-day catch-up window¹³ would strike a balance between enabling audiences to benefit from more content availability and minimising the risks of any adverse impacts on competition arising.

1.20 **We also plan to monitor performance of the BBC iPlayer to determine whether the interim measures remain appropriate, or whether changes are required.** We will keep the content of these measures under review and require the BBC to provide us with monthly information on the series it has made available on the iPlayer.

1.21 We are giving the BBC an opportunity to raise any practical concerns regarding our interim directions, which it must submit to Ofcom by **16 November 2018**.

¹³ We note that the iPlayer typically provides a standard 30-day catch-up window for most programming (excluding specific categories of programmes, e.g. BBC Three content).

2. The BBC's Proposed Change to the iPlayer in 2018/19

- 2.1 In its 2018/19 Annual Plan¹⁴ the BBC outlined an ambition to “reinvent” the iPlayer to compete with the “new normal”¹⁵ of other VoD¹⁶ services and on 8 June 2018, the BBC submitted to Ofcom the BBC's Materiality Assessment (the “Materiality Assessment”) on its plans for proposed changes to the iPlayer in 2018/19.
- 2.2 More recently, Tony Hall indicated the BBC will accelerate and invest more in iPlayer development in 2019¹⁷ and in recent discussions with Ofcom, the BBC has articulated wider objectives in relation to the availability of content on the iPlayer over the medium term.
- 2.3 This document is focused on the changes the BBC submitted to us in June this year; the “Proposed Change”. The Proposed Change comprises:
- a) proposals in relation to the availability of content on the iPlayer in 2018/19¹⁸ (“the Content Proposals”); and
 - b) proposals in relation to functionality, and other changes in 2018/19¹⁹ (“the Functionality Proposals”).
- 2.4 Under its Content Proposals, the BBC plans to add:
- a) [redacted] new and latest series of BBC-produced titles (e.g. series 4 of *Our Girl*) and [redacted] previous series of returning BBC-produced titles²⁰ (e.g. series 1-3 of *Our Girl*) available on iPlayer for viewing for [redacted];
 - b) [redacted] new and latest series of independently-produced titles [redacted] and [redacted] previous series of returning independently-produced series [redacted] available for viewing on iPlayer for [redacted]; and
 - c) [redacted] standalone archive series [redacted] available on iPlayer for viewing for [redacted].
- 2.5 The BBC says the final outcome of its plans depends on commercial negotiations with rights holders to agree terms for extended availability where relevant (the Proposed

¹⁴ BBC 2018/19 Annual Plan:

https://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_annual_plan_2018.pdf

¹⁵ BBC 2018/19 Annual Plan Page 5: *Reinventing the way we deliver our content.*

https://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_annual_plan_2018.pdf

¹⁶ VoD (video-on-demand) services include catch-up TV services; online streaming services; services providing a library of archive content; and online video content from services such as YouTube and Facebook (excluding short-form video clips).

¹⁷ In a recent RTS speech (18 September 2018) Tony Hall indicated: “We need to move faster on our plans for iPlayer, for BBC Sounds and for young audiences. I have challenged the organisation to find £100 million a year from our current budgets to invest in these priorities from next April.” <https://www.bbc.co.uk/mediacentre/speeches/2018/tony-hall-rt>

¹⁸ Section 2.2 of the BBC's Materiality Assessment.

¹⁹ Section 2.3 of the BBC's Materiality Assessment.

²⁰ Previous series of a returning series: are series which were previously broadcast, e.g. there may be a fourth series being broadcast now and the previous series of this returning series would be those series 1-3 previously broadcast, referred to as a ‘previous series’ or ‘returning series’ throughout this document.

Change involves [X] series, with some scope for growth of up to [X]). The BBC has already begun adding BBC-produced titles to iPlayer²¹ and is currently negotiating with external producers and other rights holders. The Materiality Assessment indicates that the BBC has allocated additional budget to facilitate its proposals for iPlayer in 2018/19 – it has set aside a maximum of £[X] to pay for additional producer and underlying contributor rights.

- 2.6 In its Materiality Assessment the BBC considers that, while the Content Proposals represent a step up in the BBC's content offer to audiences in response to changing expectations, the changes are in line with market norms. In particular, it notes that many other VoD providers, including All 4, Amazon Prime and Netflix offer extended availability of content.²² It expects that, absent the Content Proposals, the iPlayer would fall behind comparable VoD services in terms of volume and length of availability of boxsets, and that the gap between time spent with the iPlayer and SVoD services²³ (such as Netflix and Amazon) would continue to increase. In particular, the BBC assumes that, absent the Content Proposals, the iPlayer's share of VoD viewing would decline from 12% in 2017 to [X]% in 2018.
- 2.7 Under its Functionality Proposals, the BBC has stated that it is "planning enhancements to the user experience, more personalisation and more live content".²⁴ In addition, the BBC plans more investment in marketing – it has set aside £[X] for marketing in 2018/19. The BBC considers that these proposals are 'business as usual' developments which would not have a significant adverse impact on fair and effective competition.
- 2.8 The BBC Board has considered a Materiality Assessment submitted by the Executive and has concluded that the Proposed Change is not material.²⁵

²¹ For example, since April 2018, the BBC has announced it was adding: (i) all 10 previous series and specials of *Doctor Who* since 2005 on iPlayer, as well as 3 previous series of *Our Girl* and 3 previous series of *The Bridge*; and (ii) all previous series of 5 classic comedy titles (representing about 23 previous series and specials) on iPlayer.

²² As discussed, we note that the iPlayer, unlike some other VoD services (which make content available for different time periods), typically provides a standard 30-day catch-up window for most programming (excluding specific categories of programmes, e.g. BBC Three content).

²³ SVoD (subscription video-on-demand): subscription-funded VoD services (e.g. Netflix, Amazon Prime, Now TV, ITV Hub+). While these services offer more than just VoD (e.g. streaming, linear pay-TV channels, as well as content to own or rent) they are referred to as SVoD in this document for ease of reference.

²⁴ Section 2.3 of the BBC's Materiality Assessment.

²⁵ BBC Board minutes May 2018 meeting:

http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/managementstructure/seniormanagement/ebmins/ebmins_may18.pdf

3. Legal framework

The Communications Act

- 3.1 The Communications Act 2003 provides Ofcom with such powers and duties as may be conferred on us by or under the Charter and Agreement for the purposes of carrying out regulation of the BBC.²⁶

Royal Charter for the BBC

- 3.2 The Charter²⁷ provides that we must have regard, in carrying out our functions, to such of the following as appear to us to be relevant in the circumstances:
- a) the object of the BBC to fulfil its Mission and to promote the Public Purposes;
 - b) the desirability of protecting fair and effective competition in the United Kingdom;
 - c) the requirement for the BBC to comply with its duties under the Charter, including its general duties.²⁸
- 3.3 We must also 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 its public service activities.²⁹ Those requirements are contained within the Agreement between the Secretary of State and the BBC.³⁰

Agreement between the Secretary of State and the BBC

- 3.4 The Agreement defines a material change as:
- a) the carrying out of any activity as a new UK Public Service; and
 - b) any change to a UK Public Service which may have a significant adverse impact on fair and effective competition.³¹
- 3.5 The BBC may only make a material change to UK Public Services where:
- a) the BBC carries out a public interest test³² and determines that test is satisfied; and

²⁶ Section 198. Our general duties under section 3 of the Communications Act therefore apply to the exercise of our functions in relation to the BBC.

²⁷ *Royal Charter for the continuance of the British Broadcasting Corporation (December 2016)*.

²⁸ Article 45(2).

²⁹ Article 46.

³⁰ *An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation (December 2016)*.

³¹ Clause 7(7) of the Agreement.

³² Public Interest Test (PIT).

- b) we determine that the BBC may carry out the proposed change.³³
- 3.6 The BBC must therefore initially assess whether a proposed change is material. In reaching this view, we expect the BBC to have regard to the factors specified in our guidance (“the Ofcom BCA guidance”).³⁴
- 3.7 If the BBC considers that the proposed change is not material, it may proceed to carry out the change, subject to Ofcom disagreeing with the BBC on materiality. If we consider that the proposed change is material, we may direct the BBC to:
- a) carry out a public interest test and, if the test is satisfied, publish the change; or
 - b) stop carrying out the change in accordance with such directions as Ofcom consider appropriate.³⁵
- 3.8 Finally, there are a number of specified requirements³⁶ (the “Relevant Specified Requirements”) imposed under the Ofcom BCA guidance which form part of the Operating Framework including:
- a) The BBC must comply with any directions made by Ofcom where Ofcom considers that the BBC may have made a decision to make a material change to a UK Public Service and the BBC has:
 - i) failed to carry out a public interest test as required by the Agreement;
 - ii) failed to publish the information enabling Ofcom to make the assessment required of it under the Agreement; or
 - iii) implemented or begun to implement the change contrary to the BBC’s obligations under the Agreement.
 - b) The BBC must promptly provide such information and explanation as Ofcom requests for the purposes of Ofcom carrying out its functions under the Charter and Agreement in relation to proposed changes to public service activities.
 - c) The BBC must not implement a proposed change to a UK Public Service while Ofcom is considering whether or not it is material or carrying out an assessment of a material change under the Operating Framework, and must comply with any directions made by Ofcom in that regard.³⁷

³³ Clause 7(6) of the Agreement. The BBC must also publish the proposed change and send a copy to Ofcom (Clause 8(3) of the Agreement).

³⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0028/99415/bbc-public-service-activities-proposed.pdf

³⁵ Clause 9(6).

³⁶ As defined by clause 59(a) of the Agreement.

³⁷ Paragraph 4.68 of Ofcom’s BCA guidance https://www.ofcom.org.uk/data/assets/pdf_file/0028/99415/bbc-public-service-activities-proposed.pdf. Specified requirements are subject to Ofcom enforcement powers under Article 49 of the Charter.

4. Our assessment of materiality

Our approach

- 4.1 At this initial stage, we have carried out an assessment of materiality using the limited information available and in particular relying on the BBC's analysis and modelling as a starting point.³⁸ We have also assumed, for the purposes of this assessment, that the BBC implements the proposal in its entirety as set out in the BBC's Materiality Assessment of the Proposed Change. As discussed in Section 3 above, our role at this stage of the process – to assess materiality – is a narrow competition role; we are required to consider whether the Proposed Change is material, that is, whether it may have a significant adverse impact on fair and effective competition. However, at the same time, we are still mindful of our broader duties.
- 4.2 In relation to its Content Proposals, we agree with the BBC's conclusion that these proposals do not constitute a new UK Public Service, and that they would entail a change to an existing UK Public Service. For the purposes of this assessment, we assume that these changes are permanent. This means that the BBC will maintain an additional [X] boxsets per annum on iPlayer going forward, rather than removing them all and not replacing them at the end of their proposed availability period ([X] months or [X] months depending on the type of series).
- 4.3 In determining whether these proposals may have a significant adverse impact on fair and effective competition, we have considered the factors set out in both paragraphs 4.9 and 4.33 of the Ofcom BCA guidance as follows:
- **Indication of a possible adverse impact on fair and effective competition.** We have considered the factors set out in section 5 of the Ofcom BCA guidance, namely: take-up (i.e. how usage of the iPlayer would change as a result of the BBC's proposals and the extent of any audience substitution);³⁹ impact on commercial revenues and profitability; and adverse impacts on fair and effective competition. Overall, we consider that the Content Proposals may have a significant adverse impact on fair and effective competition.⁴⁰ We provide more detail on our consideration of these factors in Annex 1.⁴¹
 - **Similarity to commercial offerings.** We consider that there may be significant audience substitution from existing services to the iPlayer as a result of the Content Proposals.

³⁸ Under the Operating Framework we are required to undertake a further assessment (including a public consultation) of whether the proposed change is material at such time as the BBC has carried out a PIT on the proposed change and published it. This assessment is therefore without prejudice to any future assessment made following a PIT.

³⁹ This also goes to the usage of the BBC services under the proposals, see paragraph 4.9 of the Ofcom BCA guidance.

⁴⁰ Our conclusion on materiality would remain unchanged whether we assume the changes under the Content Proposals are permanent or are for one year only.

⁴¹ See paragraphs A1.6 to A1.25 for take-up; and paragraphs A1.44 to A1.52 for impact on commercial revenues and profitability and adverse impacts on fair and effective competition.

We identified that the closest competitors to iPlayer are likely to be ITV Hub, All 4 and My5, although there are also other UK VoD competitors that could be affected, such as Now TV.

- **Significant impact on UK competitors.** Our analysis indicates that the Content Proposals could result in a significant increase in the iPlayer's share of VoD viewing in 2018/19 (to between [X] % and [X] % compared to [X] % without the Content Proposals)⁴² at the expense of its UK competitors, and that this could have a detrimental impact on those competitors.
- **Cost of the proposals.**⁴³ The costs of a proposal can indicate the magnitude of the impact on competition. In this case, we have placed little weight on this factor given the evidence on potential changes to viewing is likely to provide a better guide to these impacts.⁴⁴
- **Entry into a new or embryonic market area.**⁴⁵ The BBC said that its Content Proposals are not novel. We agree; the proposals are reflective of wider market developments. This factor is thus of little relevance to this assessment.
- **Rapid and irreversible impacts.** We have not seen evidence in either direction on this factor and therefore have not taken a view on it for the purposes of this assessment.
- **Duration.** Where the BBC proposes a change that is only temporary, it may be less likely to be material. However, as explained in paragraph 4.2, in this case, we have assumed the Content Proposals are a permanent change.

4.4 The Content Proposals would result in a substantial amount of content being added to the iPlayer. As a publicly funded organisation, the BBC does not need to make a profit from the addition of that content. Unlike its commercial rivals, the BBC does not charge iPlayer audiences for content⁴⁶ or require them to watch adverts. It is in this context that we consider whether the Content Proposals may have a significant adverse impact on fair and effective competition.

4.5 We set out below, for each stage of our assessment, the conclusions we have reached on the potential market impact of the Content Proposals. A more detailed assessment explaining how we have reached our views is set out in Annex 1.

⁴² In its Materiality Assessment, the BBC presented the results of its modelling of viewing impacts for the calendar year 2018. The BBC's Content Proposals cover the financial year 2018/19. For consistency we have analysed the impact of the Content Proposals for 2018/19.

⁴³ This also goes to the scale of the proposals, see paragraph 4.9 of the Ofcom BCA guidance.

⁴⁴ In any event, we consider that the £[X] for additional producer and underlying contributor rights understates the potential scale of the Content Proposals, given that no explicit cost is included for rights to BBC-produced and archive series.

⁴⁵ This also goes to the novelty of the proposals, see paragraph 4.9 of the Ofcom BCA guidance.

⁴⁶ BBC services are offered without charge at the point of use although they are funded by the licence fee. While many subscription services are free at the point of use, there is a more direct relation between subscription and use of service compared to payment of the licence fee and use of the iPlayer.

Counterfactual

4.6 The counterfactual acts as a baseline for our assessment and sets out what would happen in the absence of the BBC's proposals. In this case, we consider that the appropriate counterfactual is the iPlayer's VoD viewing minutes in 2018/19 absent the Content Proposals.⁴⁷

Scale of potential increase in iPlayer viewing

4.7 Overall, the BBC's modelling suggests that its Content Proposals could increase the BBC's share of VoD viewing minutes from 12% in 2017, and [X]% in the 2018/19 counterfactual, to between [X]% and [X]% (in lower and higher scenarios) under the proposals in 2018/19.

4.8 A number of factors⁴⁸ are not reflected in the BBC's modelling, which means the increase in the share of VoD viewing resulting from the proposals could be higher or lower than the estimates above. However, we have identified several problems with the modelling assumptions the BBC used to forecast the impact of additional iPlayer boxsets, which mean that its modelling may understate the increase in iPlayer viewing, in particular under the lower scenario.⁴⁹

4.9 We recognise that an increase in the BBC's share of VoD viewing in line with the lower end of the BBC's estimated range would mean that the iPlayer's viewing share would be [X]. However, given the issues described in paragraph 4.8 above (and paragraphs A1.17 and A1.18 of Annex 1), our analysis focuses on the upper end scenario of an increase in the BBC's share to [X]% of VoD viewing minutes. We therefore consider that there may be a substantial increase in iPlayer viewing compared to the counterfactual as a result of the Content Proposals.⁵⁰

Services most likely to be affected by the BBC's Content Proposals

4.10 We have undertaken analysis to identify the closest competitors to the iPlayer's expanded offering. Our review of audience demographics, reach data, content and pricing (set out in paragraphs A1.26 to A1.33 in Annex 1) suggests that:

- the VoD services of other UK broadcasters (BVoD)⁵¹ ITV Hub, All 4 and My5 are likely to be the closest competitors;

⁴⁷ See paragraphs A1.3 to A1.5.

⁴⁸ These are outlined in paragraph A1.12

⁴⁹ As described in paragraphs A1.13 to A1.22.

⁵⁰ For the avoidance of doubt, we are not suggesting that the iPlayer *will* achieve a viewing share of [X]%. Rather, given the analytical concerns set out in paragraphs A1.13 to A1.22, we have de-emphasised the lower end of the range calculated by the BBC. Further, given the definition of materiality set out in the Agreement, it is appropriate to focus on outcomes that pose a risk to competition and "may" occur.

⁵¹ BVoD (broadcast video-on-demand): VoD services from the major UK broadcasters, including BBC iPlayer, ITV Hub, All 4 and My5. With the exception of BBC iPlayer, these are primarily advertising funded.

- the next closest competitors are likely to be the SVoD providers (Netflix, Amazon Prime and Now TV);
- linear TV is different to VoD in terms of how it is consumed and when in the day it is typically viewed and is therefore less likely to be a close competitor;⁵² and
- other online video services (e.g. YouTube, VEVO) are even less likely to be close competitors for iPlayer because much of the VoD content available from these providers is a different type of content and/or is short-form video.⁵³

Potential impact on competitors' viewing

4.11 We modelled the impact of the Content Proposals on commercial VoD providers under the lower and higher scenarios for incremental iPlayer viewing, and under two assumptions about how other VoD providers would be affected by the increase in iPlayer viewing. If the higher end of the impact of the BBC's Content Proposals on iPlayer viewing were to be realised, then viewing of ITV Hub, All 4 and My5 might be [X]% to [X]% lower – and viewing of other VoD services⁵⁴ might be [X]% to [X]% lower – compared to the counterfactual of no change to the iPlayer.

Potential impacts on competitors' revenue and investment

4.12 We identified that the closest competitors to iPlayer are likely to be ITV Hub, All 4 and My5, although there are also other UK VoD competitors that could be affected, such as Now TV. As discussed in paragraph 4.11 above, based on our scenario analysis, we found that the proposals may have a substantial impact on the viewing of the iPlayer's competitors. We recognise that there is uncertainty about how the BBC's proposals will affect iPlayer viewing. However, impacts approaching this magnitude may significantly impact on the revenues of affected competitors' VoD businesses. This may affect the incentives of rival VoD providers to invest in improving the content and functionality of their services relative to the counterfactual, and therefore may result in potential detriment to consumers.

Overall conclusion on materiality

4.13 In reaching a conclusion on whether the BBC's Content Proposals are material we have considered a range of factors as set out in paragraph 4.3. We have carried out an analysis of the potential market impact of the proposals as set out in Annex 1. We recognise that the conclusions we reach at this point must be qualified, given the limited information we have available at this stage of the process. Taken overall, we have concluded that the

⁵² Furthermore, any impact on linear viewing would be relatively small, as it makes up a far larger share of viewing compared to VoD and any impact is likely to be spread across numerous channels.

⁵³ We note that the BBC makes some content available on YouTube e.g. short form music content under its BBC Radio brands, and content for children from CBBC and CBeebies

⁵⁴ Including Netflix, Amazon Prime and Now TV.

Content Proposals are a material change because they may have a significant adverse impact on fair and effective competition. We have therefore concluded that the Proposed Change is material.

- 4.14 In relation to its Functionality Proposals, the BBC has concluded that these are 'business as usual' developments and that they are therefore not expected to have a significant adverse impact on fair and effective competition. At this stage we have limited information on these proposals. However, as set out above, we consider that the BBC's Content Proposals are themselves material. It follows that the Proposed Change as a whole is material, including the Functionality Proposals. We therefore expect the BBC to include its Functionality Proposals in the PIT that we are directing it must carry out on the Proposed Change.

5. Directions and guidance

- 5.1 We have considered what directions it is appropriate to give to the BBC in accordance with clause 9(6) of the Agreement and the Relevant Specified Requirements. In doing so we have considered Ofcom's duties under section 3 of the Communications Act 2003 and Article 45(2) of the Charter.
- 5.2 As set out at paragraph 4.13, we have concluded that the Proposed Change is material in accordance with clause 7(7) of the Agreement. We therefore direct that the BBC should carry out a PIT on the Proposed Change. As set out above, the PIT will need to include an assessment of the Functionality Proposals.
- 5.3 As discussed in paragraphs 2.1 and 2.2, the BBC is considering longer term plans for the iPlayer. We consider that it is likely to be beneficial for everyone concerned for the BBC to set out for public consideration these proposals over and above the Proposed Change. A PIT conducted on its longer-term proposals is likely to provide greater clarity for competitors and consumers as to the potential benefits and risks of changes to the iPlayer, as well as providing an opportunity to establish a position that enables the iPlayer to develop over time. We are therefore directing the BBC to conduct a PIT on the Proposed Change, but our directions allow the BBC to incorporate its longer-term plans into the PIT.
- 5.4 We noted above⁵⁵ that the crowding out of commercial activity, in particular of other UK BVOD providers, is the most likely way in which the proposals may have a significant adverse impact on fair and effective competition. This effect thus needs to be carefully considered in the PIT. As part of a wider PIT, we would also expect the BBC to seek stakeholder views on whether the proposal creates a risk to fair and effective competition by diminishing rival VoD providers' access to content. In particular, we would expect the BBC to consider whether the proposal would limit the availability of rights to other VoD providers, including (for example) future entrants such as a UK equivalent to the BritBox SVoD service available in the US and Canada and the plans of other providers such as ITV's planned subscription VoD service.⁵⁶ We would also expect the BBC to assess the potential for impacts on the supply chain (vertical impacts) and wider and cumulative impacts (as it has done in its current Materiality Assessment), although if third parties do not raise concerns about these issues then little further analysis may be necessary.
- 5.5 We note that although we are directing the BBC to conduct a PIT, this does not mean the BBC will ultimately be prevented from making changes to the iPlayer. We consider the BBC needs to assess the public value benefits and potential competition impacts of its plans more transparently through a PIT. The PIT may then be followed by a competition assessment or shorter assessment if appropriate.

⁵⁵ Paragraphs 4.10 to 4.12.

⁵⁶ Broadcast, ITV ready to go solo with domestic SVoD, 26 September 2018

Directions

- 5.6 We therefore make the following directions in accordance with Clause 9(6) of the Agreement and the Relevant Specified Requirements:
1. The BBC shall conduct a public interest test on the Proposed Change in accordance with Clause 8 of the Agreement.
 2. That public interest test may incorporate any further changes that the BBC proposes to make to the iPlayer.
 3. The BBC must notify Ofcom as to whether the public interest test will incorporate any further changes by **31 December 2018**.
 4. The BBC must stop carrying out the Proposed Change, subject to any further directions made by Ofcom.

Interim changes

5.7 We would ordinarily expect the BBC to stop implementation of a proposed change entirely while the BBC and Ofcom are assessing that change.⁵⁷ However, we consider that in this instance there are reasons which justify allowing the BBC to proceed with the Proposed Change in certain limited respects. In particular:

- We recognise that the TV industry is evolving: as we have set out, viewing of broadcast TV is declining while viewing of non-broadcast content (such as SVoD services and YouTube) is increasing; and the iPlayer's competitors are developing their VoD offerings by making available more boxsets and extending their availability. In the absence of any development of the iPlayer, the BBC is therefore likely to lose audience share. It will also not be able to benefit from experimenting with ways in which it makes its content available in support of the delivery of its Mission and Public Purposes.
- We consider that allowing the BBC to make available a limited volume of extra series for longer than the standard 30-day catch-up window would be likely to generate benefits to audiences (in terms of greater availability of selected series on the iPlayer) that would be lost if we were to direct the BBC to stop carrying out all aspects of its proposals pending the outcome of the assessment procedure.
- We understand from the BBC in its letter to Ofcom dated 21 September 2018 that, as of that date, it had already secured the rights to increase the availability of 46% of the series in its proposal.⁵⁸ In particular, the BBC has already added a number of

⁵⁷ See paragraph 4.45 to 4.48, and paragraph 4.68, of the Ofcom BCA guidance.

⁵⁸ This is in large part driven by BBC-owned IP series. The BBC has secured a range of extended windows on some independently-produced titles [§], but in many cases it has not been able to achieve its full ambition (e.g. where it has secured series stacking + 30 days). As of 21 September 2018, the BBC had secured the rights to [§] series under the BBC's proposal.

new, returning and archive series to the iPlayer since the start of 2018/19.⁵⁹ We consider it would be appropriate to allow the BBC to use the extended availability rights that it has already acquired and so enable audiences and licence fee payers to benefit fully from the BBC's investment. Accordingly, we consider it would not be appropriate to require the BBC to cut short the planned availability of series that it has already added to the iPlayer under its proposals.

- In this case, given our concerns about the reliability of the BBC's modelling (set out at paragraphs A1.13 to A1.22 in Annex 1), we consider that allowing the BBC to make available a limited volume of extra series for longer than the standard 30-day catch-up window would generate actual iPlayer viewing data. This would enable the BBC and Ofcom to better understand the scale of the impact of the Proposed Change.

5.8 We therefore consider that it would be appropriate for the BBC to make available a limited amount of extra content to be viewed for a limited period. This would strike a balance between enabling the benefits set out in the previous paragraph, whilst mitigating the risks of any adverse impact on fair and effective competition arising from the interim changes, pending the completion of the PIT and any further competition assessment. This is without prejudice to the outcome of a PIT and any subsequent competition assessment by Ofcom.⁶⁰

5.9 We set in more detail below the extent to which we consider it appropriate to allow the BBC to carry out the Proposed Change while the assessment process is ongoing. We have accordingly drafted directions on interim changes. These can be found at Annex A2. We seek the BBC's comments on the drafting of these directions. We will monitor the performance of the BBC iPlayer to determine whether the interim measures remain appropriate, or whether changes are required. We will therefore keep the content of these interim measures under review and require the BBC to provide us with monthly information on the series it has made available on the iPlayer.

First year (to 31 March 2019)

5.10 The starting point is that the BBC must not make available a programme on the iPlayer for longer than 30 days, which is the standard length of time catch-up content is currently made available on the iPlayer.

5.11 However, as noted in paragraph 5.7 above, we consider that the BBC should be allowed to make use of the extended availability rights that it has already acquired using licence fee funds. We have therefore decided that it is appropriate to allow the BBC until 31 March 2019 to make available a series on the iPlayer for a period exceeding 30 days in respect of:

- a) any series it has already added to the iPlayer since the start of 2018/19 under its Content Proposals – the BBC should be able to make these series available for such period as they were first advertised as being available on the iPlayer; and

⁵⁹ See paragraph 2.5 and footnote 21.

⁶⁰ We may conclude that the BBC may not carry out the proposed change.

- b) any series which it has acquired the rights to make available on the iPlayer before the date of this decision – the BBC should be able to make these series available until such time as those rights expire.

5.12 The BBC may also make available on the iPlayer content which has been solely made available on BBC Three for whatever period it considers fit. This does not represent a change from its current approach to such content. This also applies to subsequent years.

For subsequent years (from 1 April 2019)

5.13 For subsequent years, the starting point continues to be that the BBC may only make a series available on the iPlayer for up to 30 days. However, we are allowing the BBC to make available for a period of up to [redacted] the following content:

- a) Up to [redacted] new series (which we define as a series which was first broadcast or made available on or after the date of this decision); and
- b) Up to [redacted] archive series (which we define as a series which was first broadcast or made available before 1 November 2013).

5.14 Based on the BBC's modelling, the availability of a returning series on the iPlayer appears to give rise to a higher risk of a potential adverse impact on fair and effective competition than other types of series.⁶¹ To mitigate this risk, the effect of our directions is that a returning series could only be made available if it was broadcast before 1 November 2013 (i.e. if it is an archive series).

5.15 The BBC's modelling suggests that new and archive series are likely to attract less incremental viewing than returning series. We are thus permitting the BBC to make a certain number of new and archive series available for a period exceeding 30 days in line with the Content Proposals as set out in paragraph 5.13 above. We consider that permitting the BBC to make those series available for [redacted]⁶² represents a modest increase over the current 30 day viewing window and mitigates the risk of any adverse impact arising pending the completion of the assessment process.

5.16 These arrangements would stay in place until the BBC's PIT and any further assessments required by Ofcom are concluded.

Functionality Proposals

5.17 Our direction of **2 November 2018** that the BBC must stop carrying out the Proposed Change includes its Functionality Proposals. We will however review this direction as we obtain further information from the BBC as to the nature and implementation of these proposals.

⁶¹ To illustrate, in the BBC's high impact scenario a returning series adds more than [redacted] as much additional viewing as extending the availability of a new series or adding an archive series.

⁶² The Proposed Change involved making these series available for [redacted].

Reporting requirements

- 5.18 We intend to direct that the BBC provide Ofcom with a monthly report. In broad terms, we envisage that report will contain information on: (i) what content the BBC has added for a period exceeding 30 days; (ii) how much viewing that content has attracted; and (iii) overall iPlayer viewing (to put the impact of the extra content in context). We consider that this information is necessary for us to monitor compliance with the interim directions and to help us understand the consequential impact on iPlayer viewing and whether the interim directions remain appropriate. We therefore propose to put in place a direction concerning the provision of a report by the BBC.
- 5.19 We envisage requiring that report to contain the following information on each series made available on the iPlayer during the preceding month, which has been available for a period exceeding 30 days:
- a) the type of series, i.e. whether it is (i) BBC-produced or independently-produced; and (ii) a new or latest series, or a returning series, or an archive series;
 - b) the date that the first and last episode of the series was made available on the iPlayer, the planned period of availability of the series on the iPlayer and the date the series was removed from the iPlayer;
 - c) whether the series is of the kind to which paragraphs A2.2 (2, 3, 4, 5(a) or 5(b)) of the interim directions applies; and
 - d) the total VoD viewing minutes of the series for each day of availability on the iPlayer and the total VoD viewing minutes for the iPlayer as a whole each month.
- 5.20 We expect that the first report would contain: (a) the information set out at paragraph 5.19 a)-d) in respect of any series the BBC had made available under the Content Proposals since the date those proposals were submitted to Ofcom (8 June 2018); and (b) a list of the series in relation to which the BBC had acquired rights pursuant to the Content Proposals as at **2 November 2018**.
- 5.21 In addition to providing the information set out above, the BBC must also explain how the series made available on the iPlayer in that month achieves compliance with the applicable restrictions. The BBC is best placed to explain the detail of the content made available on the iPlayer from time to time.

A1. Annex 1 - Content Proposals: Assessment of potential market impact

A1.1 In assessing the potential impact of its Content Proposals on fair and effective competition, the BBC considered whether the proposals could affect competition by: crowding out horizontal competitors to the iPlayer such as BVoD and SVoD providers (horizontal impacts); or affecting the supply chain (upstream and downstream impacts); as well as through wider impacts on competition (complementarities⁶³, spillovers⁶⁴ and cumulative impact on sectors and individual suppliers⁶⁵). In our assessment we have focused on the risk that the Content Proposals crowd out commercial activity, in particular rival UK VoD providers, because we consider that this is the most likely way in which the proposals may have a significant adverse impact on fair and effective competition. Having concluded that a such an adverse impact may occur, it is not necessary at this stage for us to decide whether the BBC's Content Proposals risk harming fair and effective competition in other ways.

A1.2 In this Annex, we set out our assessment of the potential for crowding out of commercial VoD providers resulting from the Content Proposals using the limited information we have available at this stage. We have used the BBC's Materiality Assessment and modelling as a starting point, making adjustments as and where relevant. This section is structured as follows:

- 1) First, we describe the counterfactual (i.e. the situation if the Content Proposals did not go ahead);
- 2) Second, we estimate the potential increase in iPlayer viewing share as a result of the Content Proposals;
- 3) Third, we identify which commercial rivals are most likely to be affected by the Content Proposals;
- 4) Fourth, we consider the potential impact on rivals' viewing; and
- 5) Fifth, we consider the potential impact on rivals' revenues and incentives to invest, and in turn the potential impact on audiences;
- 6) Finally, we conclude on the potential impact of the Content Proposals on fair and effective competition.

⁶³ The BBC considered whether increased content on iPlayer could lead to increases in the amount of time viewers spend watching BBC TV channels and the BBC website (i.e. complementarities between the iPlayer proposals and other BBC services).

⁶⁴ The BBC considered whether there were any potential spillovers between the iPlayer proposals and other BBC services (e.g. the success of *Taboo* on iPlayer influenced the BBC's decision to commission a second series, which will increase the content available on BBC channels in future and could improve their audiences).

⁶⁵ The BBC considered whether the proposals could have a cumulative impact on individual sectors (e.g. other TV channel providers could be affected by the increased content on iPlayer and any changes to the quality of content on BBC channels) and/or on competitors that operate in multiple sectors (e.g. competitors operating both TV channels and BVoD services).

In each section, we set out what the BBC has said in its Materiality Assessment, our assessment of this and our conclusion.

Counterfactual

- A1.3 The BBC assumes that, under the counterfactual, it would still commission and broadcast latest and new series on its linear channels and would make these available on iPlayer in 2018/19 for the standard 30-day catch-up window. The BBC assumes it would not offer previous series of returning series or standalone archive series on iPlayer in the counterfactual.
- A1.4 The BBC estimated iPlayer's potential share of VoD viewing minutes as a result of its proposals in 2018/19 and compared it to its share of VoD viewing in 2017. We consider that a more appropriate comparator would be the iPlayer's share of VoD viewing in 2018/19 in the counterfactual (i.e. without the BBC's Content Proposals).
- A1.5 In line with historic trends, the BBC assumes that total VoD viewing in the UK will increase by 29% in 2018/19 relative to 2017. In the counterfactual, the BBC assumes that other VoD providers will continue to improve their services. It assumes that the number of iPlayer VoD viewing minutes remains flat in 2018/19 (i.e. at its 2017 level), implying iPlayer's share of VoD viewing minutes in the 2018/19 counterfactual falls to [X]%, compared to 12% in 2017. To estimate how the remaining [X]% share is split between other VoD providers in the counterfactual, we have used the proportionate shares of non-iPlayer services in 2017 (weeks 18-25) from the BBC's CMI (Cross Media Insight) survey. Table 1 and Table 2 later in this Annex show estimated shares of VoD viewing in the counterfactual.

The scale of the potential increase in iPlayer viewing

- A1.6 Before describing our views on the BBC's methodology for estimating the scale of the increase in iPlayer viewing resulting from the Content Proposals, we provide a brief summary of how the BBC arrives at its estimates.
- A1.7 The BBC models the incremental increase in viewing on the iPlayer by making assumptions about how many additional minutes of viewing per day the BBC expects to gain for each type of series.⁶⁶
- A1.8 Incremental viewing begins after day 31 for 'latest and new' series (as the BBC assumes it would show these series on iPlayer for the standard 30-day catch-up window in the counterfactual), and from day 1⁶⁷ for 'previous series of returning series' and 'standalone archive series' (as the BBC assumes it would not show these series on iPlayer in the

⁶⁶ There are five types of series: (i) BBC-produced latest and new series; (ii) BBC-produced previous series of returning series; (iii) independently-produced latest and new series; (iv) independently-produced previous series of returning series; and (v) standalone archive series.

⁶⁷ Day 1 is the day they were made available; the standard catch-up window ends 30 days later (i.e. at the end of day 31).

counterfactual). The BBC also models lower and upper scenarios for incremental viewing of each type of series (described below).

A1.9 In terms of incremental minutes of viewing, the BBC assumes:

- a constant incremental amount of viewing for each additional boxset, which varies by type of series⁶⁸ – this part of its methodology may overstate the impact of the proposals (see paragraph A1.12 below); and
- a diminishing incremental amount of viewing for each day a boxset is available – by contrast, this part of its methodology may understate the impact of the proposals (see paragraphs A1.16-A1.19 and A1.24 below).

A1.10 The BBC estimates the impact on iPlayer viewing of:

- **latest and new series**, by analysing the relationship between the total hours of viewing per day for the 20 boxsets released between January and October 2017⁶⁹ and the number of days of availability – this is the lower scenario. The upper scenario assumes the incremental viewing after day 31 would be [X] that of the lower scenario for BBC-produced titles and [X] times the lower scenario for independently-produced titles.
- **previous series of returning series**, by making an adjustment to reflect the assumption that previous series are likely to be less attractive than new programmes over the whole period of the window of availability.⁷⁰ The lower scenario assumes previous series will attract [X]% of the daily viewing that the 20 boxsets (released in 2017) received on average on iPlayer. This assumption is based on the performance on second release of BBC Three titles which were included in the BBC's Christmas 2017 extra content offer⁷¹ relative to their performance on first release over the first full 30 days of availability. The upper

⁶⁸ [X]

⁶⁹ The BBC made 20 boxsets (primarily drama and comedy series) available on BBC iPlayer between January-October 2017 either on a 'series stacked +30 days' or 'day 1 drop' basis. Series stacked titles included *Dr Who*, *Our Girl*, and *W1A*. Series made available under the day 1 drop model included *Car Share*, *Top of the Lake* and *White Gold*.

Day 1 Drop boxsets are released in full on iPlayer at the same time as the linear transmission of the first episode and then remain available as a full boxset for 30 days after the linear transmission of the final episode.

Series Stacked boxsets build up over time, usually week by week. Early episodes are kept available on iPlayer until 30 days after the final episode's linear transmission, making the full boxset available for 30 days after the final episode's linear transmission. Later episodes are available for a shorter period of time than earlier episodes.

⁷⁰ To inform this assumption, the BBC considered evidence on: (i) the performance of boxsets, included in the BBC's Christmas 2017 extra content offer on iPlayer, on second release compared with their performance on first release; (ii) the performance of previous series which were repeated on linear TV and given a second release on iPlayer compared with their performance on first release; and (iii) the viewing of historic seasons of BBC-produced series on Netflix following the linear transmission of new seasons of these series on BBC channels.

⁷¹ The BBC released more than 300 programmes for viewing on iPlayer between 16 December 2017 and 16 January 2018, promoted as a special Christmas offer. The programmes comprised a mix of 'catch-up' titles (i.e. programmes recently broadcast on BBC TV services), some boxsets (multiple series), some single series, some one-off Christmas specials from previous years, some children's films and some BBC Three programmes. The genres covered were mainly drama, comedy, and children's programmes.

scenario assumes previous series will attract [X] % of the daily viewing received on average by the 20 boxsets on iPlayer.

- **standalone archive series**, based on a subset of 30 series from the boxsets included in the BBC's Christmas 2017 extra content offer which are representative of the type of archive content the BBC envisages adding to the iPlayer. The BBC calculates a lower scenario where the relationship between hours of viewing per day and days of availability [X].

A1.11 Taking all types of series together (and scaling to reflect the number of new/latest series, previous series and archive series proposed on iPlayer for 2018/19), the BBC's modelling predicts an increase in the iPlayer's share of all viewing of VoD services to [X] % in the lower scenario and [X] % in the upper scenario in 2018/19, net of cannibalisation of existing iPlayer viewing (see paragraph A1.14 below). This compares to a share of 12% in 2017 and [X] % in the 2018/19 counterfactual.

A1.12 The scale of the increase in iPlayer viewing is uncertain and any modelling exercise inevitably omits or simplifies some issues. For example, extending the period during which content is available may change how swiftly viewers watch that content.⁷² Also, the BBC's ability to use its public services (e.g. its linear TV channels) to cross-promote its other public services (including the iPlayer) could potentially increase the impact on iPlayer viewing.⁷³ We recognise the BBC's assumption of a constant incremental amount of viewing per boxset may overstate the increase in viewing.⁷⁴ In practice, there may be diminishing gains from adding more boxsets, implying that the increase in the BBC's share of VoD viewing could be lower than the estimates above. On the other hand, an increased critical mass of content on iPlayer may make it a more attractive destination for audiences that wish to watch VoD content.

A1.13 Notwithstanding these uncertainties, we consider that the impact of the Content Proposals is likely to be towards the upper end of the BBC's range. In particular, we have concerns about the following key assumptions:

- the extent of cannibalisation from existing iPlayer viewing;
- the rate at which daily viewing declines the longer a boxset is available on iPlayer; and
- the level of viewing attracted by previous series of returning series.

⁷² Some viewing occurring after day 31 may have occurred earlier if viewers knew content would only be available for 30 days.

⁷³ The BBC's viewing data for the 20 boxsets released in 2017 and the Christmas 2017 extra content offer is likely to reflect any cross-promotion activity that occurred at the time. However, any increase in the level of cross-promotion activity to support the proposals may potentially lead to greater incremental iPlayer viewing than the estimates above. Further, as set out in section 4, the Proposed Change involves an increase in marketing spend.

⁷⁴ The BBC also acknowledges this factor in its Materiality Assessment.

Cannibalisation

- A1.14 The BBC assumes that 33% of viewing of the boxsets it makes available under its Content Proposals will be “cannibalised” from existing iPlayer viewing, i.e. one third of additional viewing of boxsets occurs at the expense of existing iPlayer viewing. The BBC bases this cannibalisation assumption on an online survey that it carried out.⁷⁵
- A1.15 We consider that the BBC's assumption about the extent of cannibalisation from existing iPlayer viewing may be too high, and that as a result it may understate the scale of the potential increase in overall iPlayer viewing (net of cannibalisation) and the potential impact on competitors resulting from the Content Proposals. This is because the BBC's survey included a disproportionate number of frequent iPlayer users.⁷⁶ A reduction in the cannibalisation assumption will tend to increase the impact of the BBC's proposals on overall iPlayer viewing.

Viewing over time

- A1.16 Generally, the time spent viewing a given boxset declines after each day of availability. The BBC models this rate of decline as follows:
- i) for latest/new series and previous series of returning series, actual data on total hours of viewing per day for the 20 boxsets it released in 2017 for the 108 days that content from those boxsets was available.⁷⁷ It extrapolates to estimate daily viewing if these boxsets had been available from day 109 onwards; and
 - ii) for archive series, actual data on total hours of viewing per day for the selection of 30 series from its Christmas 2017 extra content offer for the 31 days that content from those boxsets was available. It extrapolates to estimate daily viewing if these boxsets had been available from day 32 onwards.
- A1.17 Our review of the data provided by the BBC on the daily viewing of the 20 boxsets suggests that it did not account for differences in the length of availability across boxsets. Its calculations thus do not accurately reflect what viewing of these 20 boxsets would have been had all this content been available for 108 days.⁷⁸ This means it overstated the rate of

⁷⁵ In November 2017, the BBC carried out an online survey of iPlayer users, asking what they would have done if the TV programme they had just played in iPlayer had not been available. 2,581 responded. 33% of frequent iPlayer users, i.e. at least once p/w (2,026 respondents), said they would have watched a different programme on iPlayer instead.

⁷⁶ The BBC notes that those who watch iPlayer at least once a week are likely to be over-represented in its survey sample. 78% of respondents to the BBC's online survey carried out in November 2017 stated that they watched iPlayer once per week. The BBC notes that this contrasts with the results of other surveys conducted by the BBC, for example a National Pulse survey of iPlayer users carried out from 25th September to 1st October 2017 showed that 43% of iPlayer users had used iPlayer in the last week. For less frequent users of iPlayer (i.e. respondents who use it less than once per week), the rate of cannibalisation implied by the BBC's survey would be less than 15%, compared to 33% for respondents who use iPlayer at least once a week.

⁷⁷ The availability of these 20 boxsets varied in length from 45 days to 108 days.

⁷⁸ To illustrate, *Our Girl* was available for 52 days. Actual viewing from day 53 onwards is thus zero. This will understate the amount of viewing that would have occurred in days 53-108 had this series been available for longer. These data gaps affect most of the viewing data provided by the BBC: 65% of the boxsets were available for less than 72 days, and only one boxset was available for more than 100 days (series 10 of *Doctor Who*).

decline in viewing for each additional day a boxset was available. In addition, the overall rate of decline is further overstated due to the varying lengths of availability of different episodes within stacked series, which (as with the varying lengths of series availability) are not accounted for in the BBC's calculations.⁷⁹

- A1.18 Further, the formula that the BBC derives for the relationship between total hours of viewing per day for the 20 boxsets and the number of days of availability leads to its estimates of the viewing of boxsets becoming implausibly low over time. This is a particular issue with the estimated additional viewing gained by BBC-produced series from being available for [X] months. To illustrate, using the BBC's formula, extending viewing from the 108 days covered by its actual data to [X] months ([X]) increases total viewing by only [X]%. Extending from 108 days to [X] months also only increases total viewing by [X].
- A1.19 Given the data issues above, we consider the lower scenario is likely to understate the likely increase in iPlayer viewing. The upper scenario addresses this to some extent by assuming that [X] for BBC-produced and independently-produced titles respectively. However, given uncertainties about likely viewing, it is possible that this adjustment in the upper scenario may not be sufficient to correct for the data issues.

Viewing of previous series of returning series

- A1.20 The BBC also assumed that the incremental viewing of a boxset would be reduced if it has already been on iPlayer previously (i.e. a second release of a previous series). The BBC assumed that previous series of returning series would only attract between [X]% and [X]% (lower and upper scenarios) of the viewing a new/latest series attracts on the iPlayer. We consider that these assumptions are not supported by the BBC's viewing data from its Christmas 2017 extra content offer, which suggests instead that viewing of previous series of returning series as a share of their first release viewing on iPlayer could be higher.⁸⁰
- A1.21 The BBC recognises that the percentage in the upper scenario is lower than suggested by the evidence it analysed, but considers that this lower percentage of [X]% is likely to be more appropriate as the higher percentages observed for earlier series (e.g. series 1 of [X]) partly reflected the fact that iPlayer viewing for earlier series was generally lower due to less access to broadband, fewer connected devices and less familiarity with on-demand viewing.

⁷⁹ In the case of stacked series (as opposed to day 1 drops), episode 1 will be available a lot longer than later episodes. For example, with a 12 episode series available on iPlayer for 108 days, episode 1 would be available for 108 days, while episode 12 could be available for only 30 days. As a result, the viewing data for day 100 will only relate to episodes 1 and 2, whereas viewing data for days 1-30 will cover all episodes.

⁸⁰ On slide 14 of the BBC's 26 June 2018 overview of its modelling, a selection of returning series had an average of [X]% of initial viewing. This list excluded several returning series which had higher viewing as a share of initial viewing, namely [X] ([X]) and [X] ([X]%). This list was based on non-BBC Three programmes comprising multiple series included in the Christmas 2017 extra content offer that were most comparable to those programmes the BBC were planning to make available in 2018/19.

A1.22 The two examples of series provided by the BBC in its Materiality Assessment suggest that the amount of viewing minutes on the second release of those series was around [X]% to [X]% (and sometimes more) of their first release viewing. Whilst we recognise that some downward adjustment should be made to account for the increase in broadband take-up, device take-up and awareness of VoD, we consider that a downward adjustment to [X]% as a maximum may be too large and the BBC has not presented sufficient evidence to justify [X]% as an upper bound on this adjustment.

Conclusion

A1.23 Overall, the BBC's modelling suggests that its Content Proposals could increase the BBC's share of VoD viewing minutes from 12% in 2017 and [X]% in the 2018/19 counterfactual to between [X]% and [X]% under the proposals in 2018/19.

A1.24 As explained in paragraph A1.12 above, there are a number of factors that are not reflected in the modelling, which mean the increase in the share of VoD viewing resulting from the proposals could be higher or lower than the estimates above. However, as described in paragraphs A1.13 to A1.22 above, we have identified several problems with the raw data the BBC used to forecast the impact of additional iPlayer boxsets as well as some of the BBC's assumptions, which mean that its modelling may understate the increase in iPlayer viewing, in particular under the lower scenario.

A1.25 We recognise that an increase in the BBC's share of VoD viewing in line with the lower end of the BBC's estimated range would mean that the iPlayer's share would be [X]. However, given the issues described above in paragraphs A1.17 to A1.19, our analysis focuses on the upper end scenario of an increase in the BBC's share to [X]% of VoD viewing minutes in 2018/19. We therefore consider that there may be a substantial increase in iPlayer viewing compared to the counterfactual as a result of the Content Proposals.

Services most likely to be affected by the BBC's Content Proposals

A1.26 We consider that linear free-to-air channels (e.g. BBC One, ITV, Channel 4) and pay TV channels (e.g. Sky Atlantic, BT Sport) are different products from VoD services, in terms of how they are consumed (they are not 'on-demand') and when in the day they are typically viewed, and are therefore likely to be more distant substitutes.

A1.27 We carried out an assessment in relation to VoD services, to identify which of the other VoD providers would be likely to compete most closely with the iPlayer's expanded offering and would therefore be most likely affected by the BBC's Content Proposals. We considered the following dimensions of competition: audience demographics, content offering, reach and pricing. We chose these dimensions as they seemed likely to affect the degree of substitutability between services.

Audience demographics

A1.28 Among BVoD catch-up services, the demographic profile of iPlayer users is closest to that of ITV Hub and My5, with these VoD services catering to a 50/50 split of male and female

viewers and a relatively older audience.⁸¹ All 4's audience demographic profile is much younger (47% of viewers are aged 16-34 compared to 32% for BBC iPlayer and comparable figures for the other BVoDs) and more male-orientated (55% of viewers are male). SVoD services also typically cater to a younger audience, comparable to that of All 4. Netflix and Amazon Prime achieve a fairly even gender split, although Now TV is more female orientated (57% of viewers are female).

Content offering

- A1.29 As the BBC is still negotiating the rights to a number of the boxsets it plans to include on the iPlayer under its Content Proposals, it is not clear what the particular content of its expanded offering will be. Nonetheless, the BBC has indicated broadly that its expanded offering will cover a range of genres, with a particular focus on drama and comedy series.
- A1.30 Netflix, Amazon Prime and Now TV all offer a substantial amount of boxset content covering a broad range of genres and are likely to be in close competition with iPlayer's expanded offering. Alongside the SVoD services, All 4 also appears to be a close competitor to iPlayer – it gives prominence on its website to a specific 'boxset' page and also has a particular focus on British drama and comedy series. ITV Hub is currently less orientated towards boxsets and focuses more on entertainment, factual and children's programming. However, ITV recently announced that it would expand its content offering on ITV Hub.⁸² In addition, ITV has indicated it is also considering launching a separate UK SVoD service which would initially focus on UK archive series, before evolving to include original content.⁸³ Currently, My5's content library consists mostly of recently broadcast factual and entertainment series, which do not appear to compete as closely with the iPlayer's expanded offering at this time. However, this position may change in the future – Channel 5 recently announced that it had signed four new content partnership deals (with PBS America, Together channel, Little Dot Studios and BET) to add 1,500 hours of third party content to My5 over the next year, in addition to further content from an existing deal with A+E Networks. Much of this additional third party content may compete with the iPlayer's expanded offering.⁸⁴
- A1.31 As noted by the BBC in its Materiality Assessment, "*Many other VoD services including All 4, Amazon Prime and Netflix offer extended availability*" of their content already. This suggests they are likely to compete closely with the iPlayer's new extended availability offering.

⁸¹ Ofcom Nations & Regions Technology Tracker, H1 2018, Table 158.

⁸² ITV plc, [Interim results statement](#) for the six months to 30 June 2018, page 5; and ITV plc, [Interim results report](#) for the six months to 30 June 2018, page 14.

⁸³ [Broadcast](#), ITV ready to go solo with domestic SVoD, 26 September 2018.

⁸⁴ Broadband TV News, [Channel 5 signs new streaming deals](#), 4 July 2018.

Reach and viewing overlap

A1.32 The viewing overlap between iPlayer and BVoD services is significantly higher than the overlap between iPlayer and SVoD services. Ofcom research shows that 76%, 82% and 86% of respondents who had used All 4, ITV Hub and My5 (respectively) in the past week stated they had used iPlayer in the last week. This compares to the relatively lower figures of 41%, 42% and 51% of respondents for Now TV, Netflix and Amazon Prime users (respectively).⁸⁵ Given that such a high proportion of BVoD users already also use iPlayer, this evidence suggests that BVoD services are likely to be closer substitutes to iPlayer than SVoD services and that substitution to the iPlayer is likely to be highest from BVoD services.

Pricing

A1.33 The BBC's public services, including the iPlayer, are licence-fee funded and without any advertising. The BVoD services carry advertising but are available for free.⁸⁶ The SVoD services typically have standard tiers of subscription available for £7.99 a month, with some flexibility in the type and quality of content available at different price points.⁸⁷

Conclusion

A1.34 We have undertaken an analysis to identify the closest competitors to the iPlayer's expanded offering. Our review of audience demographics, reach data, content and pricing above suggests that:

- the BVoD services ITV Hub, All 4 and My5 are likely to be the closest competitors, particularly based on reach and viewing overlap;
- the next closest competitors are likely to be the SVoD providers (Netflix, Amazon Prime and Now TV);
- linear TV is different to VoD in terms of how it is consumed and when in the day it is typically viewed, and is therefore less likely to be a close competitor;⁸⁸ and
- other online video services (e.g. YouTube, VEVO) are even less likely to be close competitors for iPlayer because much of the VoD content available from these providers is a different type of content and/or is short-form video.

A1.35 There is inevitably some uncertainty with the above ranking. The information available to us at this stage on the exact nature of the iPlayer's planned boxset releases makes it difficult to identify precisely which VoD services are likely to be closest competitors to

⁸⁵ Ofcom Nations & Regions Technology Tracker, H1 2018, QH15 (Table 158) and QH16 (Table 159). The overlap between iPlayer was calculated using the [respondent level survey data](#) from the Ofcom Technology Tracker.

⁸⁶ With the exception of ITV's subscription VOD service ITV Hub+, which is advert-free and has a subscription.

⁸⁷ Now TV content is separated into [five categories](#) (accessed on 24 August 2018), each a unique subscription: entertainment, cinema, kids, sport and reality. These are priced at £7.99 (entertainment), £9.99 (cinema), £33.99 (sport) and £3.99 (kids and reality) per month respectively. Alternatively, an entertainment, cinema and kids pass is available as a bundle for £21.97 a month.

⁸⁸ Furthermore, any impact on linear viewing would be relatively small, as it makes up a far larger share of viewing compared to VOD and any impact is likely to be spread across numerous channels.

iPlayer's expanded offering. We also recognise that, looking further into the future, VoD providers might seek to reposition themselves.

Potential impact on competitors' viewing

A1.36 In this section, we describe our scenario modelling of the potential impact of the Content Proposals on the viewing of iPlayer's competitors. In its assessment, the BBC assumes that all of the increase in iPlayer viewing minutes resulting from the proposals will be substitutional, i.e. as a result of cannibalisation of existing iPlayer viewing and substitution from commercial VoD providers, with none of the additional iPlayer viewing minutes resulting from market growth. We have made the same assumption.

A1.37 We modelled the impact of the increase in iPlayer viewing on commercial VoD providers under the BBC's low and high scenarios for incremental iPlayer viewing and under two different scenarios about how other VoD providers would be affected by the increase in iPlayer viewing.

- **Equal percentage impact scenario.** First, we assumed that any increase in iPlayer's share of VoD viewing would affect the share of all other VoD providers equally (i.e. the percentage decline in share is the same for each VoD provider) in the low and high scenarios.
- **Double percentage impact scenario.** Second, we assumed that any increase in iPlayer's share of VoD viewing would disproportionately affect ITV Hub, All 4 and My5 (i.e. the percentage decline in the share of ITV Hub, All 4 and My5 is double that for other VoD providers) in the low and high scenarios, reflecting that we consider they are likely to be the closest competitors to iPlayer.

A1.38 In all four scenarios, we assumed that any increase in the iPlayer's share of VoD viewing would be at the expense of existing viewing of other VoD services (and we also applied the BBC's cannibalisation assumption of 33.3%).⁸⁹ The four scenarios use the BBC's own assumptions and estimates and the 2018/19 counterfactual as a comparator (see paragraph A1.5 above). The impact under each of the four scenarios relative to the 2018/19 counterfactual is set out in Table 1 and Table 2 below.

⁸⁹ In practice, the BBC's proposals may result in some growth in overall VoD viewing (over and above the counterfactual). However, we have not seen evidence that suggests this is substantial and likely enough to significantly alter our conclusions about the impact on rivals' viewing.

Table 1: Equal percentage impact on rivals' share of VoD viewing minutes in the low and high scenarios

	Shares in counterfactual	Shares in low scenario	pp change in low scenario	% change in low scenario	Shares in high scenario	pp change in high scenario	% change in high scenario
ITV Hub	[X]	[X]	[X]	[X]	[X]	[X]	[X]
All 4	[X]	[X]	[X]	[X]	[X]	[X]	[X]
My5	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Netflix	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Amazon	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Now TV	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Sky Go	[X]	[X]	[X]	[X]	[X]	[X]	[X]
iPlayer	[X]	[X]	[X]	[X]	[X]	[X]	[X]

Notes: Figures may not sum due to rounding.

Table 2: Double percentage impact on ITV Hub's, All 4's and My5's share of VoD viewing minutes (relative to other VoD rivals) in the low and high scenarios

	Shares in counterfactual	Shares in low scenario	pp change in low scenario	% change in low scenario	Shares in high scenario	pp change in high scenario	% change in high scenario
ITV Hub	[X]	[X]	[X]	[X]	[X]	[X]	[X]
All 4	[X]	[X]	[X]	[X]	[X]	[X]	[X]
My5	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Netflix	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Amazon	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Now TV	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Sky Go	[X]	[X]	[X]	[X]	[X]	[X]	[X]
iPlayer	[X]	[X]	[X]	[X]	[X]	[X]	[X]

Notes: Figures may not sum due to rounding.

A1.39 If the higher end estimates of the impact of the BBC's Content Proposals were to be realised then viewing of ITV Hub, All 4 and My5 might be [X]% to [X]% lower compared to the counterfactual. Viewing of other VoD services (Netflix, Amazon Prime, Now TV) might be [X]% to [X]% lower. We consider this may amount to a significant reduction in viewing for competing VoD providers compared to the counterfactual.

A1.40 Given the BBC's assumption about the expected growth in overall VoD viewing between 2017 and 2018/19 (see paragraph A1.5 above), the viewing impacts described in the previous paragraph may reflect other VoD suppliers experiencing significantly slower growth in viewing minutes (or even a decline) relative to 2017. Table 3 below shows the change in minutes of viewing for the different VoD services in 2018/19 compared to 2017 under the 2018/19 counterfactual, the equal percentage impact scenario and the double percentage impact scenario.

Table 3: Change in viewing minutes per person per day under the counterfactual, equal percentage impact and double percentage impact scenarios

	Growth in viewing minutes between 2017 and 2018 in counterfactual	Growth in viewing minutes between 2017 and 2018 in equal impact scenario	Growth in viewing minutes between 2017 and 2018 in the scenario where the impact on ITV Hub, All 4 and My5 is double that on other rivals
ITV Hub	[X]	[X]	[X]
All 4	[X]	[X]	[X]
My5	[X]	[X]	[X]
Netflix	[X]	[X]	[X]
Amazon	[X]	[X]	[X]
Now TV	[X]	[X]	[X]
Sky Go	[X]	[X]	[X]
iPlayer	[X]	[X]	[X]

Notes: Figures may not sum due to rounding.

A1.41 If the higher end estimates of the scale of the increase were to be realised, then our scenario modelling suggests that ITV Hub, All 4 and My5 could perhaps experience somewhere between a gain of [X]% and a loss of [X]% of their VoD viewing minutes relative to 2017. The other VoD services (Netflix, Amazon Prime, Now TV) could increase their viewing by [X]% to [X]% compared to 2017. These growth rates are sharply lower than in the counterfactual.

A1.42 The BBC does not expect the proposals will have a significant impact on the viewing (and therefore revenues) of the iPlayer's competitors for the following reasons:

- the BBC's share of all hours of viewing of VoD services resulting from the proposals would still be "relatively small" in both the lower and upper scenarios (i.e. between [X]% and [X]%)
- BBC consumer survey evidence suggests that extra time spent watching series with extended availability on iPlayer would be drawn from a large range of different activities (including reductions in time spent watching other content on iPlayer and non-TV or video activities); and
- even if all the increase in iPlayer viewing were at the expense of commercial VoD providers, the impact would be spread widely across different providers, with at least half of the extra iPlayer viewing coming from SVoD providers (Netflix and Amazon Prime) and up to a quarter coming from BVoD providers.⁹⁰

A1.43 Taking these points in turn:

⁹⁰ These estimates are based on the BBC's range of estimates of the potential uplift in iPlayer viewing in 2018/19 and assume that any increase in iPlayer viewing would occur at the expense of non-BBC VoD providers in line with other VoD providers' share of viewing. The other approach the BBC takes is to assume that the increase in iPlayer viewing in 2018/19 resulted in less viewing of commercial VoD services in line with iPlayer users' pattern of viewing of non-BBC VoD services.

- We consider that the BBC's *absolute* share of VoD viewing is not the main issue here. As explained above, the BBC's proposals may lead to a substantial *change* in its viewing share at the expense of commercial rivals.
- We note that cannibalisation from existing iPlayer viewing has already been accounted for in the above estimates of iPlayer take-up and cannot be used to dismiss potential viewing impacts on rival VoD providers. In addition, consumers may overestimate the extent to which they may switch to certain other activities (there is an "inertia factor"), which may overstate the extent to which extra viewing of iPlayer would be drawn from a large range of activities. In addition, there is some ambiguity between some of the response categories in the survey which may affect the interpretation of the results.⁹¹ In sum, we do not consider the survey to be a robust indicator of the extent of substitutability from a range of different activities to iPlayer.
- Finally, given the potential magnitude of the overall loss in viewing by commercial VoD providers, it may raise competition concerns even if it is widely spread across competitors. For example, if the impact is evenly spread, then (as shown in Table 1 above) each commercial rival would lose [X]% of its viewing in the high scenario. In any event, as noted in paragraph A1.34 above, evidence suggests that BVoD providers may compete more closely with iPlayer than SVoD providers. There is thus a risk that BVoD providers are more heavily affected.

Potential impacts on competitors' revenue and investment

A1.44 Given its view that the Content Proposals are unlikely to result in significant reductions in viewing of commercial VoD services, the BBC considers that commercial VoD providers' revenues are also unlikely to be significantly reduced.

- The BBC argues that the extra iPlayer viewing would be unlikely to be of sufficient scale to convince SVoD subscribers to cancel their subscriptions and would thus be unlikely to have an impact on the financial performance of SVoD services.
- It also argues that the revenues of BVoD providers would be unlikely to be significantly adversely affected by any increased iPlayer viewing. This is because it argues its high-level analysis of the historic relationship between changes in ITV's online advertising revenues and changes in ITV's VoD viewing suggests that, if the BBC assumes a reduction in ITV's VoD viewing of between [X]% and [X]%,⁹² ITV's digital revenues would potentially reduce by between [X]% and [X]%. Furthermore, given that ITV's digital revenues only accounted for approximately

⁹¹ For instance, "try to watch the same programme elsewhere" could overlap with "Watch SVoD" and "Watch AVoD". There may also have been some confusion on the part of respondents, as "Watch other online video" may overlap with "Watch SVoD" and "Watch AVoD". Much of "Don't know" could potentially be "Watch AVoD" and "Watch SVoD".

⁹² This assumption about the reduction in ITV's VoD viewing is based on the BBC's range of estimates of the potential uplift in iPlayer viewing in 2018/19 resulting from the proposals.

12% of all its broadcast and online revenues in 2017, the BBC does not expect that its proposals would have a significant adverse impact on ITV.⁹³

- A1.45 Given its view that the static impact of the Content Proposals is likely to be limited, the BBC does not expect its proposals to have a significant impact on the investment decisions of other VoD providers and concludes therefore that its proposals are not expected to have a significant adverse impact on fair and effective competition. We consider the BBC's arguments on the impact on BVoD and SVoD providers below.
- A1.46 We consider that reduced viewing of BVoD and SVoD services resulting from the BBC's proposals is likely to lead to some reduction in their revenues and profitability and may, in turn, potentially affect their incentives to invest and innovate. This, in turn, may harm audiences.
- A1.47 It is difficult to establish the harm to audiences that potentially arises from the effects discussed above. In particular, there has not been a consultation process that would allow other VoD suppliers to provide evidence on how their investment plans may be affected by the BBC's proposals. Thus, reflecting the nature of our assessment at this stage, evidence of harm to audiences is necessarily more tentative.

BVoD services

- A1.48 The scale of the impact of a loss of share of VoD viewing minutes on BVoD advertising revenues is uncertain, for example because BVoD business models are developing. However, our view is that the reduction in revenues of BVoD services could potentially be large. ITV⁹⁴ Channel 4⁹⁵ and Channel 5's⁹⁶ VoD revenue is comprised primarily of advertising revenue,⁹⁷ although VoD advertising revenue makes up only a relatively small proportion of their overall revenue. If a BVoD provider's viewing reduces by [X]% to [X]% compared to the counterfactual, the impact on its VoD advertising revenues will depend on the relationship between minutes of viewing and advertising revenues. This relationship is unknown, but if it were, for example a 1-to-1 relationship, then there would clearly be a substantial reduction in its VoD advertising revenues.
- A1.49 We do not consider that the BBC's estimates of the potential impact on ITV's online advertising revenues are reliable. They are based on two data points for digital revenues and two data points for VoD viewing in 2016 and 2017 and this historic relationship is likely to be confounded by other factors. We recognise the BBC will only have access to publicly

⁹³ The BBC expects that the impact on Channel 4 would be similar to that on ITV.

⁹⁴ 8% of ITV's group external revenue is from 'online, pay & interactive revenue' (most of which we assume to be VoD advertising revenue). This is derived from ITV's 2017 Annual Report (see pages 23 and 24), where ITV's online, pay and interactive revenue is £248m, compared to £3,132m of group external revenue.

⁹⁵ 13% of Channel Four Corporation's revenue is from digital revenues (which include digital advertising and platform carriage fee income). This is derived from Channel 4's 2017 annual report (see pages 102-103, 107 and 173), where its digital revenues is £124m, compared to its corporation revenue of £960m.

⁹⁶ Channel 5 does not produce an annual report. Its parent company, Viacom Inc., does not break down its revenues in sufficient detail to allow us to calculate the proportion of Channel 5's revenue that comes from its digital and online business.

⁹⁷ ITV generates a small but increasing amount of subscription revenue from its ITV Hub+ subscription VoD service.

available data on ITV's performance. However, we do not consider that this evidence is sufficient to rule out a larger financial impact on ITV Hub. In addition, although the impact on ITV as a whole would be relatively limited, if ITV Hub were to lose incremental revenue, then ITV's willingness to invest in ITV Hub might fall.

- A1.50 It follows that, in response to a potentially large reduction in their VoD revenues, the commercially-funded BVoD providers may draw back from improving the boxset offerings on their VoD services (e.g. adding exclusive content, such as All 4's 'Walter Presents'), as well as the functionality and curation of their services, relative to the counterfactual. For example, this might particularly be the case for services such as the subscription proposals ITV recently announced for its Hub service.⁹⁸ Instead, commercial VoD providers may choose to invest in other areas (including, in ITV's case, its TV production business).

SVoD services

- A1.51 For SVoD services, there is unlikely to be a one-to-one relationship between VoD viewing minutes and subscription revenues. Many subscribers may retain their subscriptions despite reduced viewing. Nonetheless, a reduction in viewing minutes (compared to the counterfactual) of the magnitude discussed above potentially would reduce prospective subscriber numbers. We thus consider that the BBC's Content Proposals could have an impact on the financial performance of SVoD services.
- A1.52 The impact on investment by Netflix and Amazon Prime may be limited. While there is the potential for them to reduce their investment in UK-focused content in response to the BBC's proposals, they have substantial international businesses and thus decisions to invest in content and in developing their services will not solely be affected by the performance of their UK operations. However, there is the potential for UK-focused SVoD providers (e.g. Sky's Now TV) to face a reduced incentive to invest in their services compared to the counterfactual. For example, a UK provider such as Sky may choose to move away from competing directly with iPlayer (a licence-fee funded and advertising free service with an increased boxset offering) by scaling back its investment in its Now TV service and instead investing more in other areas, relative to the counterfactual.

Conclusions on potential market impact of the Content Proposals

- A1.53 Unlike a normal commercial operator, the BBC does not need to make a profit and can offer its services free at the point of use (subject to a licence fee payment) and free from advertising. As a result, there is a risk that fair and effective competition can be distorted by the expansion of its services. Our analysis suggests that there may be a substantial increase in iPlayer viewing as a result of the Content Proposals.
- A1.54 We identified that the closest competitors to iPlayer are likely to be ITV Hub, All 4 and My5, although there are also other VoD competitors that could be affected, such as Now TV. Based on our scenario analysis, we found that the proposals may have a substantial

⁹⁸ ITV plc, [Interim Results 2018 Presentation](#), page 24; ITV plc, [Interim Results 2018 Report](#), page 14

impact on iPlayer's competitors. For instance, under certain assumptions, ITV Hub, All 4 and My5 could lose around [X]% to [X]% of their viewing, relative to the counterfactual, while Now TV could also lose [X]% to [X]%. We recognise that there is uncertainty about how the BBC's proposals will affect iPlayer viewing and the viewing to its competitors. However, impacts approaching this magnitude may significantly impact on the revenues of affected competitors' VoD businesses. This may lead to less investment and therefore potential harm to audiences.

A2. Annex 2 - Interim direction

A2.1 As explained at Section 5, we consider it appropriate to direct that the BBC may only carry out the Proposed Change in accordance with an interim direction. We set out below the proposed wording for an interim direction. Before making the interim direction we are seeking the BBC's views on the drafting of these provisions in order to identify any practical issues which may arise in relation to its implementation.

A2.2 Our proposed direction is as follows:

1. The BBC must not make a programme available on the iPlayer for a period exceeding 30 days unless at least one of paragraph 2 to 5 apply.
2. If a programme has solely been made available as part of the BBC Three service, the BBC may make that programme available on the iPlayer for such period as it considers fit.
3. If a programme is available on the iPlayer on **2 November 2018** the BBC may continue to make that programme available on the iPlayer until the date on which the programme was first advertised as being available.
4. In the period beginning with **2 November 2018** and ending with **31 March 2019**, the BBC may make a programme available on the iPlayer for a period exceeding 30 days where, before the date of the decision, the BBC has acquired the right to make that programme available on the iPlayer.
5. In a Relevant Period, the BBC may make the following content available on the iPlayer:
 - (a) a maximum of [X] New Series for a period not exceeding [X] months from the date the last episode of the New Series was made available on the iPlayer; and
 - (b) a maximum of [X] Archive Series for a period not exceeding [X] months from the date the last episode of the Archive Series was made available on the iPlayer.
6. On [X], and on the 1st day of each subsequent month (or the first working day after the 1st), the BBC must provide to Ofcom, such information as Ofcom may request.
7. On [X], and on the 1st day of each subsequent month (or the first working day after the 1st), the BBC must provide to Ofcom an explanation of how the content that was available on the iPlayer in the previous month was consistent with the obligations set out at 1 to 5 above.

Definitions:

"New Series" means a series of programmes which are broadcast or made available for the first time in the Relevant Period.

"Archive Series" means a series of programmes which were broadcast or last made available before 1 November 2013.

“Functionality Proposals” means the changes set out in section 2.3 of the BBC Materiality Assessment.

A “Relevant Period” means:

- the period of 12 months beginning with 1 April 2019; and
- each subsequent period of twelve months.