
Ofcom review of proposed BBC Three television channel

[Ofcom review of proposed BBC Three television channel](#) – Welsh overview

INVITATION TO COMMENT:

Publication date: 24 June 2021

Closing date for responses: 8 July 2021

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1. Overview

What we are consulting on – in brief

The BBC published a proposal to launch BBC Three as a television channel in January 2022. It has undertaken a public interest test (“PIT”), and the BBC Board has concluded that the proposal passes the public interest test.

In order to protect fair and effective competition, Ofcom must examine any significant changes which the BBC wishes to make to its TV, radio and online public services. This ‘invitation to comment’ is the start of our assessment of the BBC’s proposal to relaunch BBC Three as a television channel.

We carry out an initial assessment of the BBC’s proposal to decide if a further assessment of it is needed to determine if the proposal is justified in the context of its potential public value and impact on competition.

The Charter and Agreement explicitly states that the introduction of a new public service will always be “material”. In this case, we consider launching BBC Three as a television channel would involve a new public service, and we therefore propose to find this change to be material.

We are minded to proceed with a more detailed second-phase competition assessment (“BCA”) as the BBC’s proposal involves several interested parties who have raised a range of issues in the BBC’s PIT consultation for further assessment. We are giving stakeholders in this document an opportunity to comment on this and seek initial views to understand how stakeholders consider the launch of BBC Three could affect them if it goes ahead.

We welcome responses to our questions in Annex 4. These must be submitted by 8 July 2021.

We will conclude our initial assessment within six weeks, by 5 August 2021, and decide whether a more detailed second-phase competition review is warranted.

2. BBC Three television channel

Background

- 2.1 The BBC's mission is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain.¹ The BBC may look to make changes to its existing activities or seek to develop new services to better meet the needs of audiences in fulfilling its mission.
- 2.2 Some changes may be minor; for example, day-to-day editorial decisions about individual programmes, or their scheduling. However, as a large, publicly-funded organisation, some changes that the BBC might wish to make could have a significant impact on competition in the wider media market.
- 2.3 The impact may be positive in enhancing public value and encouraging competition by offering more choice, stimulating demand, or promoting innovation to the benefit of UK citizens and consumers. However, some changes that the BBC proposes may harm competition; for example, by crowding out investment from third parties, with ultimately negative consequences for audiences. Because of this, the Charter and Agreement, which set the BBC's mission and duties, provides for first the BBC, and then Ofcom, to consider the effects on competition of significant changes to the BBC's TV, radio and online public services.
- 2.4 The BBC published a public interest test ("PIT") of its proposal to launch BBC Three as a television channel on 24 June 2021. Ofcom will now carry out our own assessment of the BBC's proposals, to decide if further assessment is needed to determine if the proposal is justified in the light of its potential public value and impact on competition.

The BBC's proposal

- 2.5 The BBC is proposing to relaunch BBC Three as a television channel in January 2022 to better meet the needs of 16-34 year old audiences who watch broadcast TV on a regular basis but are light users of BBC TV.² The BBC's proposal sets out that these viewers tend to be from C2DE socio-economic backgrounds, living outside London and the south-east as well as those with less access to on-demand services.³
- 2.6 The BBC intends for BBC Three to broadcast from 7pm until 4am every day. The channel would be available on the main terrestrial, satellite and cable platforms in all nations across the UK.
- 2.7 The BBC's plan for the channel proposes:

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

² BBC Three was a television channel between February 2003 and February 2016 when it closed its broadcasting operation and offered its content on-demand only.

³ [A new BBC Three channel: Public Interest Test](#), 24 June 2021.

- a) An annual content budget of £72.5m. This is the same content budget for BBC Three as it would be without launching a broadcast channel.
 - b) A mix of genres, including factual entertainment, drama, UK and International current affairs, comedy, sport, music, films and acquisitions.
 - c) A nightly news bulletin.
 - d) Original BBC productions (i.e. programmes commissioned by the BBC but including first-run and repeats) will make up 70% of broadcast hours. It also proposes there will be over 300 hours of first-run programmes broadcast each year, making up 24% of broadcast hours between 7pm to midnight.
- 2.8 As part of the proposal, the BBC has also said that:
- a) BBC Three will broadcast pre-watershed programming that will appeal to both 13-15 year olds and 16-34 year olds.
 - b) Two-thirds of the expanded BBC Three's programme spend will be outside of London.
 - c) As a new public service channel, the BBC's proposal is that Ofcom should mandate prominence for the new BBC Three channel within the top 24 slots of electronic programme guides. See paragraph 2.24 below.
- 2.9 The BBC is planning to launch the channel in both SD and HD except in Scotland where capacity is used for the BBC Scotland channel and in Wales where allocation of the HD capacity is subject to discussion with S4C HD.
- 2.10 To accommodate BBC Three within current distribution capacity the BBC is proposing reducing the operating hours of CBBC so that broadcast ends at 7pm instead of 9pm. The proposal does not impact our Operating Licence conditions for CBBC.⁴

The BBC's analysis

- 2.11 Under the terms of the Agreement, the BBC must assess whether any proposed change to its public service is 'material'.⁵ 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' (PIT), to be reviewed by the BBC Board.⁶
- 2.12 In order to approve a proposal, the BBC Board must be satisfied that the PIT successfully demonstrates that:
- a) the proposed change contributes to the fulfilment of BBC's mission and the promotion of at least one of the public purposes;

⁴ [Operating Licence on the BBC's UK Public Services](#).

⁵ The Agreement, Clause 7.

⁶ The Agreement, Clause 8.

- b) reasonable steps have been taken to ensure the proposal will have no adverse impacts on fair and effective competition which are not necessary for the effective fulfilment of the BBC's mission and public purposes; and
 - c) the public value of the proposed change justifies any adverse impact on fair and effective competition which it may have.
- 2.13 In the event that the BBC Board is satisfied, the PIT is then submitted to Ofcom for our review. The BBC concluded in its PIT that the launch of BBC Three as a television channel is material because it involves the launch of a new UK Public Service.⁷ The [BBC Board concluded](#) that the PIT has been satisfied.
- 2.14 It is now Ofcom's role to undertake our own assessment.

Ofcom's role

- 2.15 Ofcom has a role to protect fair and effective competition when the BBC proposes changes to its public service activities.⁸ To fulfil this role, we must establish whether the public value of a proposed change justifies any adverse effects on fair and effective competition.
- 2.16 The Agreement divides this work into two phases.⁹ During the initial phase, which we must complete by 5 August 2021,¹⁰ we are required:
- a) to confirm whether we agree with the BBC that its proposal is 'material' within the definition set out in the Agreement; and, if we agree
 - b) to decide what form our detailed assessment during the second phase should take.
- 2.17 Our second phase work will either take the form of a BBC Competition Assessment (BCA) or a shorter assessment considering elements of the BCA (Shorter Assessment). In our guidance document [Assessing the impact of proposed changes to the BBC's public service activities](#) ('the BCA Guidance'), we explain that:
- a) a BCA is more likely to be appropriate "where a proposal raises large, complex and/or particularly contentious issues, potentially involving a number of interested parties and ways in which there may be an adverse impact on fair and effective competition"; whereas,
 - b) a Shorter Assessment is likely if "there is a narrower range of issues to consider," for example where we consider the BBC's public interest test "adequately addresses all (or most) issues".¹¹

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

⁸ Article 46(5)(a) of the Charter.

⁹ The Agreement, Clauses 9-11.

¹⁰ If during the initial phase we decide either we do not have sufficient information about the proposal to enable us to complete our work, or because it appears to us that the BBC's proposal requires further substantive work, we may direct the BBC to withdraw its publication and to republish and resubmit it only when that work has been completed.

¹¹ See paragraph 4.35.

- 2.18 In either a BCA or a Shorter Assessment, our work will include:
- a) a review of the procedures the BBC has followed in carrying out its PIT;
 - b) a review of the BBC's assessment of public value, testing the BBC's analysis and the range of evidence relied upon to demonstrate the additional public value the proposal will deliver over and above its existing services;
 - c) our own assessment of whether the changes that would result from the BBC's proposal would have an adverse impact on fair and effective competition, gathering additional evidence and considering matters raised by other stakeholders as appropriate; and
 - d) a concluding assessment of whether, based on the specific facts of the case and taking into account all of our relevant duties and obligations, the public value of the proposal justifies any adverse impact it may have on fair and effective competition.
- 2.19 At the end of the process, we will reach one of four possible decisions:
- a) that the BBC may carry out the proposal in the form submitted to us;
 - b) that the BBC may not carry out the proposal;
 - c) that the proposal may go ahead, subject to any conditions or modifications that we require; or
 - d) that the BBC must reconsider elements of its public interest test, or follow any further procedures that we consider appropriate.
- 2.20 We will always look to complete our work as promptly and efficiently as possible. Ofcom must complete a BCA within six months. In contrast, a Shorter Assessment, because it involves a more targeted set of issues, must be completed in under six months.
- 2.21 In either case, we will consult with stakeholders before reaching a final decision as to whether the public value of the proposal justifies any adverse impact it may have on fair and effective competition.
- 2.22 The Agreement creates obligations on Ofcom to set certain [Operating Licence](#) conditions for the BBC,¹² and confers a discretion for us to impose such further regulatory conditions as we consider appropriate for requiring the BBC, in carrying out the UK Public Services, to fulfil the Mission and promote the Public Purposes, and to secure that the audiences in the UK's nations are well served.
- 2.23 If the proposal is approved, as a new broadcast television channel, we will consider what changes will be required to the Operating Licence alongside our second-phase assessment of the BBC's proposal. We would consult with stakeholders as part of this.
- 2.24 In launching a new channel the BBC will require a slot on the television electronic programme guide ("EPG") in order to broadcast. Ofcom's [EPG code](#) sets rules in relation to EPGs including where certain channels ("Designated Channels") must appear in these guides. Designated Channels are channels entitled to prominence in EPGs under the

¹² [The Agreement](#), clause 13.

Communications Act 2003 (“the Act”).¹³ If a new broadcast channel is launched by the BBC it would be a Designated Channel and entitled to prominence under the Act.¹⁴

- 2.25 We will consult on any changes we propose to the EPG code to include BBC Three alongside our BCA or Shorter Assessment consultation should we proceed to a second phase assessment.

Our initial assessment of the BBC’s proposal and this invitation to comment

- 2.26 The Agreement explicitly states that the introduction of a new UK public service will always be ‘material’.¹⁵ Provided we are satisfied that the BBC Three television channel proposal is a new public service, further analysis to determine the materiality of the BBC’s proposal to launch of BBC Three as a television channel is not required. We consider that the launch of BBC Three as a broadcast television channel, does involve a new UK public service (given that presently BBC Three content is made available to BBC audiences only on-demand through BBC iPlayer) and therefore propose to find the change to be material, we are asking for stakeholder views on this conclusion. We do not consider the change to CBBC to be material in and of themselves, but we also welcome stakeholder input on that. As they form part of the BBC’s PIT, we will consider the impact as part of our overall analysis.
- 2.27 In this initial assessment, we therefore intend to concentrate on:
- a) deciding whether the BBC’s public interest test contains sufficient information about its proposal to enable us to complete a more detailed competition assessment in phase two; and if so
 - b) deciding whether it is appropriate to undertake a full BCA or a Shorter Assessment. As the proposal involves several interested parties who have raised a range of potential competition issues in relation to the BBC’s PIT, we are minded to undertake a full BCA.
 - c) gathering from stakeholders how the BBC’s proposal may affect them if it goes ahead. We would welcome responses to the questions set out in Annex 4 below. Respondents are also welcome to provide any other evidence – for example, market research – which may inform our work.
- 2.28 If we decide to conduct a subsequent BCA or a Shorter Assessment process, we will take into account all the submissions we receive. We will also take into account the findings of our initial assessment, our analysis of the BBC’s proposal and any market research we decide to undertake.

¹³ Section 310(2) of the Communications Act 2003.

¹⁴ Section 310(4) of the Communications Act 2003.

¹⁵ Clause 7(7)(a) of the Agreement.

Next steps

- 2.29 We will publish our conclusions, on or before 5 August 2021, as to materiality, and whether further assessment is therefore necessary, and whether the BBC's public interest test contains sufficient information to enable us to complete a more detailed competition assessment.
- 2.30 We will also outline, at that point, the type of further assessment we plan to conduct, either a BCA or a Shorter Assessment, and commence that assessment at that point. We will consult again with stakeholders during our BCA or Shorter Assessment before reaching a decision.
- 2.31 Additional details about the processes we may undertake are set out in our [BCA Guidance](#).

Responses

- 2.32 The questions for this consultation are in Annex 4. The deadline for responses is 8 July 2021.
- 2.33 Responses should be sent to BBCThree.Assessment@ofcom.org.uk.

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 8 July 2021.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/review-bbc-three-television-channel>. You can return this by email to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to BBCThree.Assessment@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A1.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.7 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.8 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.9 If you want to discuss the issues and questions raised in this consultation, please contact by email BBCThree.Assessment@ofcom.org.uk.

Confidentiality

- A1.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A1.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.14 Following this consultation period, we will publish our conclusions, as to whether the BBC's public interest test contains sufficient information to enable us to complete a more detailed competition assessment.
- A1.15 We will also outline, at that point, the type of further assessment we plan to conduct. If we conclude further assessment is necessary, we will then begin a BCA or Shorter Assessment. We will consult with stakeholders during our BCA before reaching a decision.¹⁶
- A1.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 4.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary: corporationsecretary@ofcom.org.uk.

¹⁶ Additional details about the processes we may undertake and indicative timeline are set out in our [BCA Guidance](#).

A2. Ofcom's consultation principles

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

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

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

DECLARATION

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

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A4. Questions

A4.1 Ofcom invites third parties to respond to the questions set out below. Please provide Ofcom with available supporting evidence where possible.

Question 1: Because the BBC's proposal involves the introduction of a new public service channel, we do not consider that further analysis is required to determine materiality. If you disagree, please explain why you consider the BBC's published proposals are not material.

Question 2: Do you consider that the BBC's published proposals are clear in relation to their scale (both in terms of financial resource and in terms of reach and type of content) and the timescales for implementation? If not, please provide details of the areas where you feel more clarity is required.

Question 3: Did the BBC's consultation process provide a suitable opportunity for you to set out your views fully? If not, please provide details.

Question 4: Please explain whether you consider Ofcom should undertake a BCA or a Shorter Assessment of the BBC's proposal.

Question 5: Do you agree with the BBC's assessment in its public interest test about the potential public value and/or market impact of the proposal? Please provide any additional information you may have to explain your view.

Question 6: Does this proposal highlight any significant market impact concerns which might affect your products and services? Please provide any additional information you may have to explain how you consider the launch of BBC Three television channel could affect you if it goes ahead.