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

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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 box sets 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

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, free of charge 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, free of charge and free from advertising, commercial video-on-demand services – both advertiser funded or subscription models – may be squeezed and find it harder to

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

make money from their own content. For example, this might particularly be the 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 BBC Three and some "From the Archive" content).