

# **Distribution of BBC Public Services: a consultation on Ofcom's proposed requirements and guidance**

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# **Distribution of BBC Public Services: a consultation on Ofcom's proposed requirements and guidance**

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# I Executive summary

- I.1 The BBC welcomes Ofcom's consultation on the requirements and guidance proposed to protect fair and effective competition in relation to the distribution of BBC public services.
- I.2 As the consultation rightly recognises,<sup>1</sup> the BBC is incentivised to ensure its public services are available to as many people as possible via a wide range of platforms. It is in the interests of the BBC to ensure the UK public can access the services they pay for, and it is a Framework Agreement requirement<sup>2</sup> to make the UK public services widely available in a range of convenient and cost effective ways.
- I.3 The BBC is also driven by its Charter-defined public mission (as the consultation recognises)<sup>3</sup>. The BBC is required to set reasonable conditions in supplying third parties, such as securing appropriate prominence, attribution, quality and value for money, in order to fulfil that mission. The BBC will achieve this through the distribution policy the Board is required to set, following consultation with the public and Ofcom. This will replace, in due course, the BBC Trust Distribution Framework and the BBC's Distribution Guidelines.
- I.4 Typically, the BBC makes its content available in the form of a standard service product. In the case of its online channels and on-demand TV content, the primary BBC product is BBC iPlayer.
- I.5 The evidence to date has shown standard BBC iPlayer to be the best way of securing the public interest principles which guide BBC distribution.
- I.6 It offers a very good consumer experience and high-quality playout. It is a product that is available over-the-top (OTT) and relies on open standards. This allows it to be deployed (and whenever necessary updated) consistently across a wide range of platforms and devices with minimal incremental cost,

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<sup>1</sup> Paragraph 3.10, *Distribution of BBC public services* (Ofcom, December 2016)

<sup>2</sup> Clause 61, Framework Agreement.

<sup>3</sup> Paragraph 3.11, *Distribution of BBC public services* (Ofcom, December 2016)

while also guaranteeing appropriate attribution for BBC programmes and the ability to ensure public service curation.

- I.7 BBC iPlayer offers unrivalled availability and is now on more than 10,000 types of device (including over 2,500 types of connected TV). As Ofcom suggest, the BBC can encourage innovation and consumer take-up of new services and applications. The BBC also works flexibly with platforms to enable their ongoing innovation.
- I.8 This standard approach is also a highly-effective way of ensuring providers are treated in a fair, reasonable and non-discriminatory basis.
- I.9 Set against the public interest principles we outline above, the alternative approach – namely, non-standard implementations – can have a number of disadvantages. Among them are:
- Poor programme availability (one non-standard implementation sees an average delay of 3 hours in availability for catch up)
  - Diminished audience functionality: some service features, such as ‘live restart’, are not delivered by non-standard implementations
  - Ongoing maintenance costs and drag: non-standard implementations typically create far greater incremental costs than standard products. While responsible for fewer than 8% of iPlayer TV programme requests, non-standard implementations are responsible for over a third of operational incidents and half of high-priority incidents in relation to iPlayer delivery.
  - Attribution, appropriate prominence, editorial protections and the wider quality of consumer experience - including public service curation - are all areas that are much less easy to control in non-standard implementations.
- I.10 The BBC recognises that platforms will want to make their offers appealing to subscribers. However, the BBC’s experience in its negotiations with platforms suggests that some platforms pursue strategies which are not fully aligned with the best consumer experience or the public interest. This is a particular risk for vertically integrated platforms.

- I.11 The BBC's negotiating power and flexibility are limited by a number of factors. These include growing service-level competition and a number of obligations which impose a de facto 'must offer' as well as precluding certain arrangements such as negotiating exclusive distribution.
- I.12 These are arguably all appropriate considerations for publicly-funded services but their impact is to constrain the BBC's ability to negotiate with platforms. As a result, it is important that the BBC is able, as recognised by the Charter, to set reasonable conditions on how it distributes its services in order to secure public interest outcomes.
- I.13 The Framework Agreement enables Ofcom to include in the BBC's Operating Framework requirements in relation to the distribution of BBC public services that it considers appropriate to protect fair and effective competition.
- I.14 Ofcom has identified three potential competition concerns around BBC distribution. It notes that where there is a risk of a material impact, Ofcom may need to act to protect fair and effective competition.
- I.15 There is no evidence, as far as we are aware, of a material impact on fair and effective competition from the BBC's distribution arrangements. The BBC does not have a position (iPlayer is the number 3 VoD provider in UK) that would normally trigger competition concerns. Notwithstanding, Ofcom has followed the precautionary principle and proposes to impose two ex-ante requirements on the BBC.
- I.16 We welcome the proposal that these are 'general requirements' which are high-level and few in number. This is appropriate given the level of risk we observe, and given the volume, range and complexity of BBC distribution arrangements in a fast-moving audience and technological environment.
- I.17 With regard to the requirements Ofcom proposes, the BBC is content that they focus on the appropriate areas of risk but we are not persuaded that they are sufficiently clear about the circumstances in which they would come into play.

- I.18 The consultation document suggests that the intent is that the requirements relate only to the risk of a material adverse impact on fair and effective competition. However, this is not explicit in the wording of the requirements themselves.
- I.19 For the avoidance of doubt, we request that Ofcom considers clarifying this in the wording of the requirements as follows (text added is underlined):  
“To the extent that it is necessary to avoid a material adverse impact on fair and effective competition, Ofcom requires that:  
“1. Ofcom requires that The BBC must offer the public services to third parties in response to reasonable requests for supply, except where the BBC has an objective justification for not doing so.  
“2. In offering the public services for supply, and in supplying those services, the BBC must act on a fair, reasonable and non-discriminatory basis.”
- I.20 The BBC believes the non-exhaustive list of factors Ofcom proposes it will need to consider in the event of complaints regarding BBC distribution is a reasonable starting point. We have proposed a number of areas we suggest Ofcom consider within these categories.

## **2 Introduction**

- 2.1 The BBC welcomes Ofcom's consultation on the requirements and guidance proposed to protect fair and effective competition in relation to the distribution of BBC public services.
  
- 2.2 This response sets out the BBC's views on three main areas: the objectives and effects of BBC distribution, the incentives and constraints in distribution negotiations, and the role of competition regulation. The document provides evidence to support the BBC's views. Further evidence can be shared with Ofcom where relevant.

### 3 Objectives and effects of BBC distribution

#### BBC distribution objectives and approach

- 3.1 As the consultation rightly recognises,<sup>4</sup> the BBC is incentivised to ensure its public services are available to as many people as possible via a wide range of platforms. It is in the interests of the BBC to ensure the UK public can access the services they pay for, and it is a Framework Agreement requirement<sup>5</sup> to make the UK public services widely available in a range of convenient and cost effective ways.
- 3.2 The BBC is also driven by its Charter-defined public mission (as Ofcom notes)<sup>6</sup>. The BBC is required to set reasonable conditions in supplying third parties, such as securing appropriate prominence, attribution, quality and value for money, or order to fulfil that mission.<sup>7</sup> The BBC will achieve this through the distribution policy the Board is required to set, following consultation with the public and Ofcom.<sup>8</sup> This will, in due course, replace the BBC Trust Distribution Framework and the BBC's Distribution Guidelines.
- 3.3 The conditions on which the BBC has supplied its public services to date have been aligned with those given in the Framework Agreement. The public interest principles behind these conditions are set out in full in the BBC's Distribution Guidelines, and among other areas cover:
- Value for money: reaching audiences cost-effectively (including both the 'cost of distribution' and 'potential audience' Ofcom refers to)<sup>9</sup>.
  - The quality of consumer experience: including audio/audio-visual and streaming/download quality, the availability of experience-enhancing functionality and innovations, and the ability to ensure a public service experience. The latter includes the completeness of the range of relevant BBC services and content offered, and the ability to offer

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<sup>4</sup> Ofcom, *Distribution of BBC public services*, December 2016, paragraph 3.10

<sup>5</sup> Clause 61, Framework Agreement.

<sup>6</sup> Ofcom, *Distribution of BBC public services*, December 2016, paragraph 3.11

<sup>7</sup> As set out in the Framework Agreement (clause 62).

<sup>8</sup> Under article 20(3)(h) of the BBC Charter and clause 62(3) of the Framework Agreement.

<sup>9</sup> Discussed in paragraph 4.12 and in Ofcom, *Distribution of BBC public services*, December 2016, paragraph 3.12

editorially and data-driven public service context and recommendations.

- Attribution and editorial controls: the ability for audiences to easily find and identify the BBC content they trust and enjoy, as well as protections to ensure it is not presented in environments audiences may find unsafe or inappropriate, or which breach the BBC's legal or rights restrictions. Attribution is also critical to the ability of licence fee payers to assess value for money in relation to the licence fee.
- Fairness and reasonableness: the BBC must be fair, reasonable and non-discriminatory in how it responds to platform requests for its services.

3.4 It is worth stressing that in many ways, attributed consumption is the BBC's currency. While other content providers may be willing to trade-off the attribution they receive for their content against direct revenues they are paid by platforms, the BBC model is dependent upon audiences being able to attribute the value they get from BBC programmes to the licence fee they pay to fund it.

3.5 Typically, the BBC makes its content available in the form of a standard service product: an editorially coherent package of assets with associated metadata, functionality and branding. In the case of its online channels and on-demand TV content, this normally takes the form of BBC iPlayer.

3.6 The evidence to date has shown standard BBC iPlayer to be the best way of securing the public interest principles which guide BBC distribution.

3.7 It offers a very good consumer experience, high-quality playout, and onward journeys to other BBC public service content. It is a product that is available over-the-top (OTT) and relies on open standards. This allows it to be deployed (and whenever necessary updated) consistently across a wide range of platforms and devices with minimal incremental cost, while also guaranteeing appropriate attribution for BBC programmes and the ability to ensure public service curation.

3.8 This standard approach is also a highly-effective way of ensuring providers are treated in a fair, reasonable and non-discriminatory basis.

3.9 Set against the public interest principles we outline above, the alternative – non-standard implementations – can have a number of disadvantages. Among them are:

- Poor availability for audiences: delivery of BBC programmes and metadata to our standard products result in instant availability for end-users. However, syndicated delivery to non-standard products can introduce a delay in making our content available to audiences as it must be sent, received, ingested and reprocessed by our syndication partner for presentation in their bespoke environment. One non-standard implementation sees an average delay of 3 hours in availability, leaving a gap when audiences are often most likely to watch a programme. Audience complaints show that in some cases, it is the BBC whom audiences blame for non-availability.
- Diminished audience functionality: some service features are not delivered by non-standard implementations. One example is ‘live restart’ (where audiences can watch a programme from the start even before its transmission has finished). Thirty per cent of all browsers that watch live TV via iPlayer now make use of this feature each week.
- Ongoing maintenance costs and drag: non-standard implementations typically create far greater incremental costs than standard products. As Ofcom suggests (paragraph 4.13), these can include the direct costs of customisation, ongoing maintenance costs, management time and effort. However, non-standard implementations can also create costs that are harder to directly attribute (and potentially recoup) because they create complexity which spills into many parts of BBC iPlayer delivery from its platform application programming interfaces (APIs) to its operations. While responsible for fewer than 8% of iPlayer TV programme requests<sup>10</sup>, non-standard implementations are responsible for over a third of operational incidents and half of high-priority incidents in relation to iPlayer delivery<sup>11</sup>. Even if it were possible to recoup all direct costs and opportunity costs, non-standard implementations can still result in a drag on the agility and effectiveness of the service teams slowing the pace of innovation.

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<sup>10</sup> BBC analysis of monthly TV programme requests via iPlayer for H216.

<sup>11</sup> Based on analysis of ‘break/fix’ incidents identified by BBC iPlayer Operations team spanning H216.

- 3.10 Attribution, appropriate prominence, editorial protections and the wider quality of consumer experience - including public service curation - are all areas that are much less easy to control in non-standard implementations.
- 3.11 Beyond the consumer disadvantages presented by individual non-standard implementations, there is a wider risk related to their precedential nature. The lost consumer value and costs to the BBC described above multiply many-fold should any non-standard implementation create a precedent and generate large volumes of requests for other similar implementations.
- 3.12 This is not to say that the BBC cannot develop non-standard implementations where the audience value justifies the overall costs. It has done so for devices like Sky set-top boxes which could not technically support our standard product and offered significant audience reach. It also maintains a version of iPlayer on Virgin's Liberate platform which is a legacy from an early innovative partnership before the BBC had developed its standard product for TVs. Indeed, consistent with the Framework Agreement requirement, it will only limit distribution to standard products like BBC iPlayer where it is satisfied this is reasonable and in the public interest. Were non-standard implementations able to better meet the BBC's conditions and public mission – the BBC would be incentivised to develop them.

### **The effect of the BBC's approach**

- 3.13 The effect of the BBC's approach is pro-consumer as well as pro-public interest.
- 3.14 BBC iPlayer offers unrivalled availability and is now on:
- More than 10,000 types of device (including over 2,500 types of connected TV) ranging from premium pay TV boxes to affordable white-label TV sets, and from high-end smartphones to low-cost streaming sticks;
  - A wider range of devices than any other VoD player we have identified (as illustrated by Annex I); and

- Every major platform which has wanted to carry BBC content, without exception.<sup>12</sup>
- 3.15 The standard product is highly valued by consumers as well as highly-efficient in its ability to deliver the BBC’s public mission at scale.
- 3.16 As Ofcom suggest, the BBC can also encourage consumer take-up of new services and applications (paragraph 3.5). Over one quarter of respondents agreed that ‘BBC iPlayer helped me to feel comfortable using online TV or video services’.<sup>13</sup> The BBC was able to overcome the uncertain investment conditions and co-ordination problems associated with VoD. Its Charter duty to promote technological innovation gave it a mandate and its funding model, expertise and trusted brand, the means.<sup>14</sup>
- 3.17 This demand stimulation and role in service innovation is ongoing – for example with the BBC’s popular ‘live restart’ functionality.
- 3.18 The BBC also works flexibly with platforms to enable their ongoing innovation. Examples include:
- Flexible APIs for platforms to use our metadata as they develop pan-platform content discovery areas in their user interfaces such as ‘search’ and ‘recommended’. BBC featured content feed is used by Samsung, Vodafone, YouView, and Chromecast among others. This approach combines BBC curatorial control with much greater flexibility for platforms to present BBC content in aggregated content discovery areas, and supports innovation that enhances consumers’ access to content.
  - Working with Roku and NowTV to implement an HbbTV triggering solution for Red Button+, helping the industry in the transition from the legacy MHEG standard.
  - Deep-linking across mobile apps, from major providers like Virgin Media, to smaller providers like Sure, the Channel Islands ISP. Mobile deep-linking allows viewers to discover, search and find BBC

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<sup>12</sup> NB. BBC iPlayer is not available on several legacy devices such as Google Nexus Player and old Apple TV devices. Beyond platforms, BBC iPlayer content can even be discovered via deeplinks within apps such as Virgin TV Anywhere.

<sup>13</sup> BBC Pulse Panel survey (GFK), sample size 770, December 2016

<sup>14</sup> For further analysis, see Frontier Economics, [BBC Contribution to the Creative Economy](#) (2015).

programmes alongside content from other providers within mobile apps. However, when they select a BBC programme it links seamlessly to playout in BBC iPlayer so that the viewer can experience the guaranteed quality and onward journeys available from the BBC.

## 4 Incentives and constraints in negotiations

### Incentives of commercial platforms

- 4.1 The BBC recognises that platforms will want to make their offers appealing to subscribers. The UK has a highly successful and competitive platform market which the BBC supports, by making its services available while enabling platform innovation and flexible user journeys.
- 4.2 However, the BBC would note that this does not mean that platform operators cannot prioritise other interests in the terms they seek to negotiate with the BBC.
- 4.3 Ofcom has acknowledged the potential for such incentives in the past. For example, in its Free to View discussion document it argued that one of the benefits of free to view television was in “mitigating the potential risk associated with a small number of powerful platform gatekeepers, who could potentially restrict viewers’ access to a diverse range of viewpoints.”<sup>15</sup>
- 4.4 We also note Ofcom’s programme to track market developments in the pay TV market, and its commitment to “continue to monitor the availability and viewing of on-demand content, in particular that provided by public service broadcasters over TV platforms,” in response to concerns raised by the BBC.<sup>16</sup>
- 4.5 The BBC’s experience in its negotiations with platforms has suggested that some platforms pursue strategies which are not fully aligned with the best consumer experience or the public interest. This is a particular risk for vertically integrated platforms.
- 4.6 The fact that the incentives of the BBC, as with other service providers, and some platforms may sometimes diverge is to be expected and is not a

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<sup>15</sup> Ofcom, *The Future of Free to View TV, a discussion document*, May 2014, paragraph 2.10(d)

<sup>16</sup> Ofcom, *Strategic Review of Digital Communications*, February 2016, paragraph 9.17

problem per se. It should be left to the BBC and third parties to reach mutually satisfactory agreements through commercial negotiations.

- 4.7 We welcome Ofcom's expectation that "the majority of disagreements can and will be resolved through commercial negotiations or the BBC's complaints process".<sup>17</sup> Ofcom should only get involved as a very last resort and, critically, only where there is a risk of a material adverse impact on fair and effective competition.
- 4.8 The approaches of some platforms to prominence and user interface design are illustrative. Survey data suggests that most audiences want to see live TV channels first.<sup>18</sup> This is unsurprising as live TV makes up 83% of UK audience's viewing.<sup>19</sup> Yet the latest set-top box by the UK's leading pay provider favours access to their 'Top Picks' – the UI default – above live TV. This strategy nudges audiences away from the EPG for linear services - an area which is regulated to give public service channels prominence. Instead, subscribers are encouraged towards unregulated areas in which the platform's own content and branding are prominent.
- 4.9 A recent study by Decipher found that 77% of shows in Sky Q's 'Top Picks' were Sky-branded. No third-party content provider secured more than 6% of 'Top Picks' shelf space.<sup>20</sup>
- 4.10 A similar misalignment of objectives between platforms and the consumer can sometimes be seen around attribution. In order to make informed consumer choices - on the value they get from the licence fee and on the value they are getting from a given TV subscription - it is vital that audiences are able to identify the provider of a service or programme. But for platforms, there is clearly the incentive to blur such attribution, such that audiences perceive a service to be part of the platform's value-add. The opportunity to blur attribution is particularly evident in aggregated areas such as 'Top Picks' and in non-standard implementations of BBC services.

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<sup>17</sup> Ofcom, *Distribution of BBC public services*, December 2016, paragraph 4.3

<sup>18</sup> MTM for BBC, September 2016

<sup>19</sup> Ofcom, *The Communications Market Report 2016*, August 2016. Figure covers viewing across all TV platforms.

<sup>20</sup> Broadcast, *Sky favours own programmes in Top Picks*, 9 February 2017.

## Incentives and constraints of the BBC

- 4.11 We accept Ofcom's analysis that while the interests of the BBC and third party platforms will often be aligned, there is potential for tension. This is in part because platform interests are not always aligned with consumer interests. It is also because the BBC is driven by a Charter-defined public mission which is different to the incentives faced by commercial platform operators.
- 4.12 Of the factors already discussed in paragraph 3.3 above, public service curation is particularly illustrative. For decades, BBC content has been distributed by bundling information, education and entertainment into TV channels which could be curated. As part of this curation, the BBC has 'hammocked' content with high public service value programming scheduled between established and popular shows.
- 4.13 The BBC mission would not be fulfilled by disaggregating its linear schedule, for platform providers to pick, choose and market on their own channels, according to their own commercial priorities.
- 4.14 The same is true in the on-demand world. The BBC is in the early stages of optimising public service journeys online and offering greater personalisation via myBBC.<sup>21</sup>
- 4.15 Early digital versions of 'hammocking' are already bringing public service benefits: the BBC is consistently able to generate significant volumes of viewing to hidden gems by giving these programmes prominence in the BBC iPlayer home screen (an estimated uplift in excess of 1,000% in some instances). Such 'digital hammocking' has successfully generated online audiences many times the size of the programme's original broadcast audience.<sup>22</sup>

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<sup>21</sup> See for example <http://www.bbc.co.uk/blogs/aboutthebbc/entries/46a896ea-e587-4c63-ae7e-9781bca58dd3>

<sup>22</sup> For example, BBC News' Channel's *Life Inside Wandsworth Prison* attracted a modest 220k viewers when broadcast in August 2016 but over 1m request via our prominent promotion of it on BBC iPlayer. We achieved very similar results with *Young, Welsh and Pretty Skint*, a documentary about body image and deprivation originally shown on BBC One Wales, and with BBC Four documentary *Twin Sisters: A World Apart*.

4.16 Notwithstanding the BBC's pro-consumer and pro-public mission interests, its negotiating power and flexibility are limited by a number of factors. Among these are:

- Growing service-level competition in the online video market, with the UK public now spending more time with YouTube and Netflix than with BBC iPlayer<sup>23</sup>
- Fair trading requirements precluding exclusive distribution arrangements which are an option for other content suppliers
- The BBC Charter obligation to exercise rigorous stewardship of public money which could make paying for prominence unacceptable as a use of licence fee funds
- Framework Agreement requirements that impose a de facto 'must offer' on BBC public services.

4.17 The regulatory factors above are arguably all appropriate constraints for publicly-funded services but their impact is to constrain the BBC's ability to negotiate with platforms. As a result, it is important that the BBC is able, as recognised by the Charter, to set reasonable conditions on how it distributes its services in order to secure public interest outcomes.

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<sup>23</sup> Based on average weekly time spent. GfK for the BBC, CMI (all adults 16+, January to December 2016, weekly sample n=500)

## 5 The role of competition regulation

### General requirements

- 5.1 The Framework Agreement enables Ofcom to include in the BBC's Operating Framework requirements in relation to the distribution of BBC public services that it considers appropriate to protect fair and effective competition.
- 5.2 Ofcom has identified three potential competition concerns around BBC distribution: discriminatory behaviour, applying overly restrictive terms and declining reasonable requirements. It notes that where there is a risk of a material adverse impact, Ofcom may need to act to protect fair and effective competition.
- 5.3 There is no evidence, as far as we are aware, of a material impact on fair and effective competition from the BBC's distribution arrangements. The BBC does not have a position (iPlayer is the number 3 VoD provider in the UK<sup>24</sup>) that would normally trigger competition concerns. Notwithstanding, Ofcom has followed the precautionary principle and proposed to impose two ex-ante requirements on the BBC.
- 5.4 We welcome the proposal that these are 'general requirements' which are high-level and few in number. This is appropriate given the level of risk we observe, the volume, range and complexity of BBC distribution arrangements in a fast-moving audience and technological environment, and the ongoing and iterative process by which the BBC and platforms best align their interests and product roadmaps.
- 5.5 The fulfilment of the BBC's obligation to make its public services widely available is a responsibility for the BBC Board, which must set a distribution strategy and policy. The BBC policy must:

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<sup>24</sup> Based on average weekly time spent. GfK for the BBC, CMI (all adults 16+, January to December 2016, weekly sample n=500)

- include the reasonable conditions under which the BBC will make its output and services available;
- ensure the BBC only restricts its distribution to third parties via its own services/platforms where the BBC is satisfied it is reasonable and in the public interest; and
- ensure it acts on a fair, reasonable and non-discriminatory basis.

5.6 With regard to the requirements Ofcom proposes, the BBC is content that they focus on the appropriate areas of risk.

5.7 However, while the consultation document is clear that this is the intent of the requirements, this is not explicit in the wording of the requirements themselves.

5.8 For the first requirement in particular, this could open the possibility of misinterpretation of the requirement in such a manner that Ofcom might be asked to play a more extensive role in the negotiations between the BBC and platforms.

5.9 As noted above, setting the reasonable conditions under which the BBC makes its services available is a responsibility of the BBC Board via its policy. These conditions will be designed to fulfil the BBC's Charter-defined public mission and the interests of licence fee payers. They will be subject to the BBC's Charter duty to seek to avoid adverse impacts on competition which are not necessary for the effective fulfilment of the Mission and the promotion of the Public Purposes – and to have regard to promoting positive impacts on the wider market (article 11).

5.10 The BBC must consult Ofcom and publicly on this policy, giving platforms an opportunity to raise any concerns. Once finalised, should platforms have concerns in relation to non-compliance with the BBC's distribution policy, they will have recourse to the BBC complaints process. Ultimately, should the BBC be unable to resolve any complaints satisfactorily and they relate to Ofcom's competition requirements, parties will have the ability to take the complaint to Ofcom. This process provides an ex-post check on any risk of material impact on fair and effective competition.

5.11 Should Ofcom’s first requirement be taken out of context, it could be interpreted as determining that Ofcom is the ultimate arbiter of the overall ‘reasonableness’ of third party requests for supply and the ‘objectivity’ of the BBC’s justifications where it does not do so – absent any evidence of material adverse impact on fair and effective competition.

5.12 For the avoidance of doubt, we request Ofcom to consider clarifying this in the wording of the requirements as follows:

“To the extent that it is necessary to avoid a material adverse impact on fair and effective competition, Ofcom requires that:

~~“1. Ofcom requires that~~ The BBC must offer the public services to third parties in response to reasonable requests for supply, except where the BBC has an objective justification for not doing so.

~~“2. In offering the public services for supply, and in supplying those services, the BBC must act on a fair, reasonable and non-discriminatory basis.”~~

5.13 We also request that Ofcom clarifies that recourse for complaints regarding BBC distribution only relate to the enforcement of its requirements.

5.14 This change would make it clear that Ofcom’s interest exclusively relates to situations where the BBC’s approach to distribution risks a material adverse impact on fair and effective competition.

## **Guidance**

5.15 The BBC believes the non-exhaustive list of factors Ofcom proposes it will need to consider for complaints is a reasonable starting point. We would refer Ofcom to the set of factors the BBC currently considers necessarily to fulfil its public interest mission in its Distribution Guidelines (summarised in paragraph 3.3).

5.16 Within Ofcom’s categorisation, we would stress the following points:

- Platform compatibility: we accept Ofcom’s focus on precedents but would encourage Ofcom to consider that different types of platform and device have different capabilities and audience use cases. We would therefore suggest Ofcom looks at ‘comparable platforms’ rather than ‘other platforms’.

- Costs of distribution: as observed above, we would encourage Ofcom to observe the full extent of costs and opportunity costs, including those expected from the precedents created
- Consumer experience: we would underline the importance of prominence and attribution to the BBC given its public mission and funding model
- Editorial control: we would also consider important the BBC's ability to take down content for legal, editorial or compliance reasons, and to ensure its content is not presented in environments audiences may find unsafe or inappropriate (e.g. proximity to advertising). The BBC must also be able to comply with its rights restrictions.
- Curation of public services: we remain open to the possibility that platforms might present and promote the public services in ways likely to achieve the BBC's principles. However, we would remind Ofcom of the incentives platforms may have not to do so, and of the need to consider the precedents created. We also consider reasonable access to accurate and timely platform data to be important for the BBC to fulfil its curatorial role.
- Technical and service innovation: it is important to consider both service and platform innovation over time.
- Market norms: we would welcome consideration of the relevant market players to whom the BBC should be compared. While Ofcom refers to practice by 'other broadcasters' in discussing the BBC's comparator set, it is online content service providers such as Netflix whose positions in distribution negotiations are likely to be most comparable with those of the BBC. This is because they prioritise prominence and attribution in the same way the BBC does, although the reasons for doing so may differ.
- Openness and transparency: we fully support the focus on openness and transparency and consider one of the benefits of the BBC being responsible for its distribution strategy and policy (on which it will consult) that it can continue its effective engagement with industry.

## Annex I: Availability of BBC iPlayer and other UK VoD services on 3<sup>rd</sup> party platforms (as of Oct 2016)

	<a href="#">BBC iPlayer</a>	<a href="#">ITV Hub</a>	<a href="#">All 4</a>	<a href="#">Sky Go</a>	<a href="#">Netflix</a>	<a href="#">YouTube</a>	<a href="#">Amazon Video</a>	<a href="#">My 5</a>	<a href="#">UKTV Play</a>	<a href="#">NOW TV</a>	<a href="#">Talk Talk TV Store</a>
Sky+HD	Y	Y	Y	Y	N	N	N	Y	Y	N	N
Sky Q	Y	Y	Y	Y	N	Y	N	Y	Y	N	N
Virgin TiVo	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N
Virgin HD	Y	Y	Y	Y	N	N	N	Y	Y	N	N
YouView	Y	Y	Y	N	Y	N	N	Y	Y	Y	N
Freesat	Y	Y	Y	N	Y	Y	N	Y	N	N	N
Freeview Play	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N
BT TV	Y	Y	Y	N	Y	N	N	Y	Y	N	N
Talk Talk TV	Y	Y	Y	N	Y	N	N	Y	Y	N	Y
EE TV	Y	N	N	N	N	Y	N	Y	N	Y	N
iOS app	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Android app	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Mobile web	Y	N	N	N	N	Y	N	N	N	N	N
Amazon app	Y	Y	Y	Y	Y	N	Y	N	Y	N	N
Windows Phone app	Y	Y	Y	N	Y	N	N	N	N	N	Y
Samsung TV	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y
Sony TV	Y	N	N	N	Y	Y	Y	Y	N	N	N
Panasonic TV	Y	N	Y	N	Y	Y	Y	Y	N	N	N
LG TV	Y	N	N	N	Y	Y	Y	Y	N	Y	Y
Toshiba TV	Y	N	N	N	Y	Y	N	N	N	N	N

Sharp TV	Y	N	N	N	Y	Y	N	N	N	N	N
Phillips TV	Y	N	N	N	Y	Y	N	N	N	N	N
Xbox One	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y
PlayStation 3	Y	N	Y	Y	Y	Y	Y	Y	N	Y	N
PlayStation 4	Y	N	Y	Y	Y	Y	Y	Y	N	Y	N
Wii U	Y	N	N	N	Y	Y	Y	N	N	N	N
Xbox 360	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y
Google Chrome	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y
Mozilla Firefox	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Microsoft Edge	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y
Apple Safari	Y	Y	Y	N	Y	Y	Y	Y	Y	N	Y
NOW TV	Y	Y	Y	N	N	Y	N	Y	N	Y	N
Roku	Y	Y	Y	N	Y	Y	Y	Y	N	Y	N
Amazon Fire TV	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N
Apple TV	Y	N	N	N	Y	Y	N	N	N	Y	N
Android TV	Y	N	N	N	Y	Y	N	N	N	N	N
Google Cast	Y	N	Y	N	Y	Y	N	N	N	Y	Y
AirPlay	Y	Y	Y	N	Y	Y	Y	N	N	Y	N