



Regulating the BBC's impact on competition

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Background

- 1.1 On 15 December 2016, the Government published the new BBC Charter and Agreement setting out how the BBC will be governed and regulated over the next 11 years. From 3 April 2017, a new BBC Board will be responsible for the day-to-day running of the BBC, setting its strategy, and making editorial and operational decisions. Ofcom's role is to hold the BBC to account, monitoring its performance and setting regulatory requirements.
- 1.2 The BBC's role is to act in the public interest and serve all audiences with content which informs, educates and entertains. To do so, it provides impartial news and information, together with high-quality and distinctive output and services. In resetting the BBC's Mission and Public Purposes, the Government has confirmed the valuable contribution the BBC makes to the UK and to people's lives. The Government has also made clear that it expects the BBC to do more in certain areas, in order to justify its unique funding arrangements and privileged status.
- 1.3 The UK has a successful broadcasting sector, sustained by a competitive media landscape of which the BBC is a central part. The BBC's programmes and services are integral to the wide range of high-quality and varied content that UK audiences enjoy. The BBC will continue to play this key role by delivering against its new Mission and Public Purposes.
- 1.4 The Charter and Agreement recognise that the BBC needs to be able to succeed, including in new and innovative ways, such that it not only meets the Mission and Public Purposes, but also considers potential impacts on competition in the sector as a whole. Ofcom also has a role to protect fair and effective competition in the areas that the BBC operates. Therefore, both the BBC Board and Ofcom have obligations to consider the impacts of the BBC's activities on competition.
- 1.5 We believe competition is good for audiences as it can increase choice and stimulate investment and innovation. Competition can also create incentives for business to deliver services more cost effectively.
- 1.6 As a large publicly-funded organisation, the BBC inevitably has an impact on competition in the wider media market. It may have a positive effect by stimulating demand or encouraging sector wide innovation, for example. But in fulfilling its objectives, the BBC may also harm the ability of others to compete effectively.
- 1.7 Competition concerns may arise if the BBC's public service activities are considered to be crowding out competition or deterring others from investing or innovating. There is also a risk that without appropriate safeguards the BBC's public funding could be used to subsidise or benefit its commercial subsidiaries by offering services on favourable terms. This could distort competition by giving those commercial subsidiaries an unfair competitive advantage. In relation to distribution, there is a risk that competitors may not be able to develop compelling consumer offerings if they

are unable to include BBC content in their services, or are given access to it on unfair or discriminatory terms.

- 1.8 Our role is to ensure that such concerns are properly considered. We will look at market impacts alongside any public benefits, taking into account the BBC's need to fulfil its Mission and promote its Public Purposes, and the need to protect fair and effective competition.

Final requirements, procedures and guidance

- 1.9 In December 2016, we published four consultations setting out how we intended to regulate the BBC's impact on competition. On 29th March 2017, we published our final requirements, procedures and guidance (the "Guidance") and a statement covering consultation responses.¹ These documents set out the tools we will use to protect fair and effective competition in the areas that the BBC operates. The Guidance forms part of Ofcom's Operating Framework for the BBC, and we expect to add to it as our work progresses.

BBC competition assessments (BCAs)

- 1.10 BBC competition assessments will examine whether any proposed changes to BBC public service activities and proposed new UK Public Services, which may have a significant impact on competition, are justified in light of the potential public value and impacts on fair and effective competition.
- 1.11 The Guidance² sets out the procedures and timescales that will typically apply. We will, under normal circumstances, take six weeks to determine whether the BBC's proposal is material and requires a further competition assessment. If a full BCA is required, it could take up to six months to decide whether the BBC can proceed with its proposal. The Guidance also sets out a framework for our analysis of the issues raised.

BBC competition reviews (BCRs)

- 1.12 BBC competition reviews will consider whether an existing BBC public service activity is having a significant adverse impact on fair and effective competition. This would include assessing whether the public value of the service justifies adverse impacts on fair and effective competition.
- 1.13 This is not about looking at day-to-day business decisions made by the BBC, for example decisions about individual programmes or scheduling. This tool is intended to examine existing services where the BBC has made incremental changes over time or where market conditions have undergone significant change, which may raise important questions about the impact of a service on markets.
- 1.14 The Guidance³ sets out the procedures that we will typically adopt when considering whether to begin a BCR and when carrying out the review itself. Timescales for

¹ <https://www.ofcom.org.uk/consultations-and-statements/ofcom-and-the-bbc/bbc-competition-statement/>.

² https://www.ofcom.org.uk/_data/assets/pdf_file/0028/99415/bbc-public-service-activities-proposed.pdf.

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0027/99414/bbc-public-service-activities.pdf.

reviews are likely to be more case-dependent than for BCAs. We will generally set out the detailed procedures and timescales at the beginning of our review and will act expeditiously to complete our work. The Guidance also sets out a framework for our analysis, which is similar to our approach in a BBC competition assessment.

Commercial activities

- 1.15 Our role here is to address the competition concerns that could arise from the relationship between the BBC and its commercial subsidiaries.
- 1.16 The Guidance⁴ sets out requirements on the BBC to avoid this relationship distorting markets or creating an unfair competitive advantage for its subsidiaries.
- 1.17 In addition, the Guidance describes how we will assess material changes to the BBC's commercial subsidiaries, focussing on whether such changes could distort the market or create an unfair competitive advantage for the BBC's subsidiaries.

Distribution

- 1.18 Our role here is to consider specific competition complaints about the way the BBC distributes its public services, taking into account the need for the BBC to fulfil its remit set by the Government.
- 1.19 The Guidance⁵ sets out the requirements we are placing on the BBC with respect to the distribution of public services. It also contains guidance on the factors we may consider when we assess complaints about the way the BBC distributes its services.

Draft requirements and guidance

Trading activities

- 1.20 Our role here is to set requirements and procedures which we consider appropriate to protect fair and effective competition. Trading activities are transactions undertaken by the BBC Public Service which are commercial in nature and are not intended to make a profit, but may do so e.g. ticket sales to the general public, the sale of spare studio space and the licensing of rights to publish the DVD of a BBC-produced programme.
- 1.21 The consultation⁶ sets out the requirements we propose to place on the BBC to protect fair and effective competition. These requirements are designed to address similar competition concerns already set out in our commercial activities guidance.
- 1.22 Comments are welcome on our consultation. The deadline for responses is 5pm on 24 May 2017.
- 1.23 Following our review of consultation responses, we plan to issue a statement of requirements and guidance in July 2017.

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0034/99592/bbc-commerical.pdf.

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0026/99413/bbc-distribtion.pdf.

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0036/99486/condoc.pdf