

**Channel 4 response to BBC iPlayer Competition Assessment -
Consultation on Ofcom's provisional determination**



Executive Summary

- Channel 4 believes it is vitally important that the UK maintains a strong and vibrant PSB ecology. The BBC is a cornerstone of that PSB ecology and Channel 4 supports a strong BBC that can continue to deliver its public service purposes for UK audiences. However, we believe it is essential that the BBC does not operate in isolation, and should be mindful of the impact and limits its operations can put on the market and in particular the health of the wider PSB ecology. In this context, we are disappointed in Ofcom's provisional conclusions to allow the BBC to go ahead, despite acknowledging that the proposals "do represent an adverse impact on fair and effective competition" with respect to the impact on BVOD services.
- As noted in our submission to Ofcom's first consultation on this issue, we believe that there were significant weaknesses in the methodologies used in the evidence submitted by the BBC, which resulted in their analysis significantly underestimating the impact of these proposals on the other PSB VOD services, particularly All 4. Unfortunately we are also concerned about Ofcom's own analysis which informed their provisional conclusions. In particular, Ofcom's analysis of the financial impact on All 4 is based materially inaccurate assumptions about All 4's current and forecast revenues, and we also believe it underestimates the potential impact on All 4 viewing. This has led to significantly lower estimates of the impact on All 4 than Channel 4's own analysis.
- Channel 4's estimates of the impact of the BBC's proposals on All 4 have concluded that the proposals will result in a x% reduction in All 4 viewing. We therefore take a different view to Ofcom who have concluded that "the impact on revenues and therefore investment is likely to be relatively small."
- We are concerned that this impact on All 4 will exacerbate the pressure on Channel 4, as well as the other commercial public service broadcasters, in what is Ofcom acknowledge is a highly competitive market. Ofcom suggest that the BBC's changes are minimal in the context of wider market trends and therefore should be permissible – however we believe that in line with their duty to maintain and strengthen public service broadcasting, Ofcom should be seeking ways to improve this context for the public service broadcasters as a whole, rather than making the competitive market worse for the commercial PSBs.
- We also believe that despite stating that the impact of the BBC's proposals on the wider BVOD market will be material, the mitigations they propose are minimal. The request that the BBC reports on how the iPlayer has regard to competition does not provide any mechanism or incentive for the BBC to alter their behaviour if competition issues are identified in that report.
- Finally, we believe that Ofcom must make more precise requirements in terms of what the iPlayer is allowed to offer beyond the 12 month catch-up window in terms of archive material. The BBC have outlined in general terms their plans (for example they would like to include archive at a general level), but these are far too broad in scope at present and we believe Ofcom should impose more specific parameters about what this looks like in practice.

Summary of Channel 4's previous position

- As we have previously stated to both the BBC and Ofcom, while Channel 4 understands the rationale for the BBC's proposals, we are concerned that in reality they are likely to have a disproportionate negative impact on the other public service broadcasters. This could impact on the ability of those PSBs both to reach audiences and generate revenues, therefore having the longer-term impact of undermining the overall health and plurality of the PSB ecology.
- We believe the BBC underestimated the impact of their proposals in three main areas: the calculation of the uplift in iPlayer viewing; the calculation of the impact on All 4's viewing; and the calculation of the impact on All 4's revenues. As a result, we believed the analysis significantly underestimated the impact of these proposals on the other PSB VOD services, particularly All 4.

Importance of All 4 to Channel 4

- Channel 4 notes that both the BBC and Ofcom have stated that VoD/streaming platforms will become of even greater importance to the PSBs than they have been historically. The continued success and growth of All 4 is therefore critical to our future, which is why accelerating our digital capability is a central priority for Channel 4.
- We also welcome Ofcom's acknowledgement of Channel 4's particular model, which is likely to mean that *"a fall in revenue for Channel 4 is more likely to have a direct impact on investment (compared with ITV and Viacom), given that it operates on a not-for-profit basis, so any net revenues are generally returned back into content production. This means in the medium to long-term, any loss of revenues would result in lower overall budget available for content and functionality investment"*. Ofcom concludes that there are specific risks for Channel 4 as a result of the BBC's proposals.
- However, having acknowledged that there are particular risks for Channel 4 of the BBC's proposals, we are disappointed with Ofcom's conclusions that these risks are considered to be worth taking because of the potential public value generated to BBC viewers as a result. We do not believe that Ofcom have fully factored in the potential loss in public value to UK viewers as a result of a weakening of the overall PSB ecology, including declining investment by Channel 4.
- We also note that Ofcom state that despite these proposals 'representing an adverse impact on fair and effective competition' in the BVOD market, *'they are unlikely to result in as significant an impact on incentives to invest and innovate as the potential effects of wider industry trends (e.g. the challenge from prospective new SVOD services that may launch)'*. Channel 4 does not agree with the logic of this argument – that because there is a potentially bigger threat to the UK commercial PSBs, that a smaller additional threat should be allowed. In contrast, Channel 4 believes that in line with their duty to maintain and strengthen public service broadcasting, Ofcom should be seeking ways to improve this context for the public service broadcasters as a whole, rather than exacerbating the pressures and making the competitive market worse for the commercial PSBs.

Ofcom's assessment of impact on All 4

- Channel 4 does not agree either with Ofcom's estimate of the likely increase in BBC iPlayer viewing as a result of the proposals, nor with Ofcom's estimate of how the viewing of other services is likely to be affected – particularly viewing of All 4. In both cases, we believe that Ofcom have significantly underestimated the impact of the BBC's proposals.

- Ofcom have clearly chosen to take a divergent view to Channel 4 on the potential impact of the BBC's proposals. We recognise that market forecasts of this kind are complex and there is an inevitable element of uncertainty to them. However, we remain concerned that there is a highly credible scenario where Channel 4's forecasts are proved to be accurate, with damaging consequences for Channel 4 to the benefit of the BBC.

Ofcom's proposed mitigating conditions

- In their provisional determination statement, Ofcom state that their approval of the BBC's plans is "subject to conditions and guidance to ensure that the BBC delivers this public value and mitigates risks to fair and effective competition". Ofcom go on to state that they will be imposing conditions on the BBC, which will include a requirement for the BBC to show how they "*have had regard to the effects of iPlayer on competition in the market*". However, whilst Channel 4 welcomes Ofcom's objective to ensure the BBC considers its competitive impact, we do not believe that imposing merely a reporting requirement of this kind is sufficient, as it lacks any teeth to ensure the BBC change their behaviour based on their market impact findings. We believe that Ofcom must impose more stringent and detailed requirements to ensure that if the BBC respond to concerns around competitive impact, and that Ofcom also play a proactive role in monitoring this.
- We also believe that Ofcom should set some clearer parameters about the BBC's activities in making programmes available beyond the 12 month window, particularly in relation to archive content. Ofcom state that the current proposed changes that they are approving should act as a baseline and any further changes would need to be requested. However, we believe that the current proposed changes are far too broad in scope to be allowed without any parameters (for example, they propose being allowed to show a "a variable volume of predominantly non-commercial archive titles". This means that theoretically every episode of long running series could be available going back multiple years – for example all episodes of Doctor Who (157 eps), or all episodes of EastEnders. This could be a vast volume of material. Similarly it is unclear what the definition of 'non-commercial' titles is or who would have responsibility for assessing what qualifies under this definition. Channel 4 is concerned that within the current proposals the BBC could make available every episode of every archive programme they have the rights to up on the iPlayer for an undefined amount of time, with potentially significant market impact. We therefore believe Ofcom need to be much more specific in the parameters of what the BBC can do here – potentially, for example by setting caps in terms of volume (for example no more than 500 hours of archive material at any one time).
- As per our original response to Ofcom, we think that in terms of mitigations Ofcom should also be encouraging the BBC to to amplify its efforts through collaboration with other PSBs to benefit all parties, from broadcasters to UK production companies, and the wider UK creative economy.