

---

# Ofcom review of proposed BBC Scotland television channel

---

**INVITATION TO COMMENT:**

Publication Date: 30 November 2017

Closing Date for Responses: 14 December 2017

## About this document

---

The BBC has published proposals to launch a new television channel for audiences in Scotland next year.

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.

Ofcom is now carrying out an initial assessment of the BBC's proposals for its new Scottish channel to decide if they are justified in the context of their potential public value and impact on competition.

We will do this by analysing the case put forward by the BBC, and by conducting market research of audiences in Scotland.

In this document, we are also seeking views of stakeholders, which must be submitted by 14 December 2017.

We will conclude our initial assessment within six weeks, and decide whether a more detailed, second-stage review is warranted.

# Contents

---

## Section

1. Introduction	1
2. Questions	7

# 1. Introduction

- 1.1 In order to protect fair and effective competition, Ofcom must examine significant changes which the BBC wishes to make to its TV, radio and online public services.
- 1.2 This 'Invitation to comment' is the start of our assessment of the BBC's proposal to launch a new channel for Scottish audiences. We must decide whether any possible adverse effects on competition which result from the proposal are justified by the public value which the new channel may deliver.

## Background

- 1.3 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. To ensure it continues to deliver programmes which fulfil its mission, the BBC may look to make changes to its existing activities or seek to develop new services to meet the needs of audiences.
- 1.4 Some changes can be considered minor; for example, day-to-day editorial decisions about individual programmes, or their scheduling. However, as a large, publicly-funded organisation, other changes the BBC might wish to make could have a significant impact on competition in the wider media market.
- 1.5 Some of that impact may be positive. The BBC may enhance public value and encourage competition by offering more choice, stimulating demand, or promoting innovation to the benefit of UK citizens and consumers.
- 1.6 However, some changes 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 BBC Charter and Framework 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.<sup>1</sup>
- 1.7 The BBC published its own assessment on 30 November 2017 of its proposal to launch a new channel for Scottish audiences.<sup>2</sup> As part of this assessment, the BBC Board concluded that the proposal passes the public interest test. Ofcom will now carry out our own assessment of the BBC's proposals, to decide if they are justified in the light of their potential public value and impact on competition.

---

<sup>1</sup> The "Charter" is used in the rest of this document to refer to the Royal Charter for the continuance of the British Broadcasting Corporation. The Agreement between the Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation is referred to as the "Framework Agreement". Both are available at <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>.

<sup>2</sup> [http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/scotland\\_tv](http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/scotland_tv)

## The BBC's proposal

- 1.8 The new channel, BBC Scotland, will have core broadcast hours every day from 7pm until midnight. The channel will broadcast from 12pm to allow broadcasting of live political and sporting events as well as other special events when required. A BBC Two simulcast will fill the schedule between and around these events and 7pm. BBC Scotland would be available on the main terrestrial, satellite and cable platforms in Scotland as well as via satellite and iPlayer in the rest of the UK.
- 1.9 The BBC's plan for the channel proposes:
- a) A programme budget just over £32 million per full year;
  - b) A news programme (shown at 9pm on weekdays) covering "international, UK and Scottish stories, told from a Scottish perspective", with shorter bulletins on weekends;
  - c) Some programming previously shown on BBC Two Scotland;
  - d) New programmes that reflect Scottish life including the opportunity to premiere some new comedy and drama; and
  - e) Repeats and archive programmes. The BBC states that around 50% of shows on the channel will be repeat material.
- 1.10 As part of its proposal, the BBC has also said that:
- a) BBC Scotland would take the place currently occupied by BBC Four on electronic programme guides in Scotland. BBC Four would move to a different slot in Scotland, while services in the rest of the UK would be unaffected.
  - b) The practice of showing separate programmes on BBC Two only in Scotland would end. BBC Two viewers in Scotland would instead see the same programmes as viewers in England.
  - c) Eighty new journalism posts would be created to support BBC Scotland's news operation, also resulting in a new Gaelic weekend news bulletin on BBC ALBA.

## The BBC's analysis

- 1.11 Under the terms of the Framework Agreement, the BBC must assess whether any proposed change to its public service is 'material'.<sup>3</sup> 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.

---

<sup>3</sup> A material change is defined as one where the BBC is proposing either to carry out "a new UK public service" or to make a change which "may have a significant adverse impact on fair and effective competition". In paragraph 4:33 of our BCA Guidance (see footnote 6 below) we provided a preliminary list of factors which could help to determine the materiality of a proposal. These included whether fair and effective competition would be adversely impacted rapidly or irreversibly if the proposal were introduced, the incremental costs of the proposed change, and whether the BBC is entering a new market.

- 1.12 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 BBC's mission and at least one of the public purposes;
  - b) reasonable steps have been taken to ensure the proposal will have no unnecessary adverse impacts on fair and effective competition; and,
  - c) the public value of the proposed change justifies any adverse impact on fair and effective competition which it may have.
- 1.13 In the event that the BBC Board is satisfied, the PIT is then submitted to Ofcom for our review.
- 1.14 In this case, the BBC concluded that its proposal to launch a BBC Scotland channel would constitute a material change to its services and conducted a PIT over summer 2017. The BBC has today published the results of its public interest test, explaining why it considers that the PIT is satisfied in this case. It is now Ofcom's role to undertake its own assessment.

## Ofcom's role

- 1.15 Ofcom has a role to protect fair and effective competition when the BBC proposes changes to its public service activities. To fulfil this role, we must establish whether the public value of a proposed change justifies any adverse effects on fair and effective competition.
- 1.16 We will now review the BBC's PIT and carry out our own assessment of the BBC's plan for a new television channel in Scotland, to decide if it should be allowed to proceed in the form which the BBC has proposed.
- 1.17 The Framework Agreement divides this work into two phases. During the initial phase, which we must complete by 14 December 2017,<sup>4</sup> we are required:
- a) to confirm whether we agree with the BBC that its proposal is 'material' within the definition set out in the Framework Agreement; and, if we agree
  - b) to decide what form our detailed assessment during the second phase should take.
- 1.18 Our second phase work will either take the form of a BBC Competition Assessment (BCA) or a Shorter Assessment. In our guidance document *Assessing the impact of proposed changes to the BBC's public service activities* ('the BCA Guidance')<sup>5</sup>, 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

---

<sup>4</sup> 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 - BCA Guidance, para 4.26.

<sup>5</sup> The BCA Guidance is available at: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0028/99415/bbc-public-service-activities-proposed.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0028/99415/bbc-public-service-activities-proposed.pdf).

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”.

1.19 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.

1.20 At the end of the process, we will reach one of four<sup>6</sup> 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.

1.21 We will always look to complete our work as promptly and efficiently as possible. Ofcom must complete a BCA within six months<sup>7</sup>. In contrast, a Shorter Assessment, because it involves a more targeted set of issues, must be completed in under six months.

1.22 In either case, we will consult with stakeholders before reaching a decision as to whether the public value of the proposal justifies any adverse impact it may have on fair and effective competition.

---

<sup>6</sup> In the case of a Shorter Assessment, the Framework Agreement does not permit us to determine that the BBC may not carry out the change or require it to make modifications. However, if we identify issues in the course of a Shorter Assessment that such means appear likely to be appropriate to resolve the issues identified, we may extend the procedure from a Shorter Assessment to a BCA.

<sup>7</sup> Unless exceptional circumstances apply. See paragraph 2.6 of our Guidance.

## Our initial assessment of the BBC Scotland proposal and this invitation to comment

- 1.23 The Framework Agreement explicitly states that the introduction of a new public service will always be ‘material’. Provided we are satisfied that the BBC Scotland proposal is a new public service, further analysis to determine the materiality of the BBC’s proposal to launch a new channel in Scotland is not required.
- 1.24 In this initial assessment, we therefore intend to concentrate on deciding:
- a) 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) whether it is appropriate to undertake a full BCA or a Shorter Assessment.
- 1.25 If possible, we will also use this period to begin gathering evidence, and to review the procedures the BBC followed during its consultation on the public interest test.
- 1.26 To help us both to address the specific issues in paragraph 1.24 above, and to understand how stakeholders consider the launch of a new BBC channel for Scotland could affect them if it goes ahead, we would welcome responses to the questions set out in Section 2 below. Respondents are also welcome to provide any other evidence – for example, market research – which may inform our work.
- 1.27 We must complete this first phase by 11 January 2018. In order to enable us to take account of the responses we receive, the deadline for submissions is 14 December 2017.
- 1.28 Potential respondents should also note that we will treat all comments as non-confidential and may refer to them in the work we publish, unless respondents state otherwise. Please place any confidential parts of your response in a separate annex, explaining why you consider them to be confidential. We will publish non-confidential submissions following the conclusion of our initial assessment.
- 1.29 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.

## Next steps

- 1.30 We will publish our conclusions, on or before 11 January 2018, as to whether the BBC’s public interest test contains sufficient information to enable us to complete a more detailed competition assessment.
- 1.31 We will also outline, at that point, the type of further assessment we plan to conduct.
- 1.32 If we conclude further assessment is necessary, we will then begin a BCA or Shorter Assessment. We will consult with stakeholders during our BCA or Shorter Assessment before reaching a decision.

- 1.33 Additional details about the processes we may undertake are set out in our BCA Guidance. An indicative timeline, outlining when we intend to complete our work, is available on our website.

### **Deadline for response**

- 1.34 The deadline for responses to the questions in Section 2 is 14 December 2017.
- 1.35 Responses should be sent to [BBCScotland.Assessment@ofcom.org.uk](mailto:BBCScotland.Assessment@ofcom.org.uk).

## 2. Questions

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

**Question 1:** 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 2:** Did the BBC's consultation process provide a suitable opportunity for you to set out your views fully? If not, please provide details.

**Question 3:** 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 4:** Please explain whether you consider Ofcom should undertake a BCA or a Shorter Assessment of the BBC's proposal.<sup>8</sup>

**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 a new BBC channel for Scotland could affect you if it goes ahead.

---

<sup>8</sup> See paragraph 1.18 above. Additional details about the BCA and Shorter Assessment processes are set out in paragraphs 4.35 to 4.37 of the BCA Guidance.