

Ofcom consultation: Modernising the BBC's Operating Licence

ITV plc response

Summary

The BBC is the cornerstone of the UK PSB system which benefits the UK culturally, democratically and economically. But as Ofcom and Government acknowledge, the PSB system is facing profound challenges. Urgent reforms are needed if it is to thrive in future.

The BBC is not immune from these challenges. In this context, we therefore recognise Ofcom and the BBC's desire for a regulatory framework that is more flexible and more focused on audience outcomes than input measures (such as quotas). Ultimately, the BBC remains a world class media organisation, and Ofcom is right to believe that in general the BBC is best placed to define how it should deliver for licence fee payers.

However, the BBC is also highly competitive, defining its success as much through competition with global players like Disney and Netflix as through its public service delivery. It can often therefore be difficult for the BBC to fully appreciate the negative impact it might be having on others in the UK market. This instinct, coupled with a multi-billion-pound public funding settlement, mean it cannot be given unfettered discretion in determining its own regulatory framework and performance measures.

Whilst it is right for Ofcom to seek to minimise the impact of regulatory oversight on the BBC as far as possible, it must also acknowledge that some loss of flexibility and nimbleness for the BBC is inevitable if the BBC is to be properly held to account. We are concerned that Ofcom's proposed approach – notably the move to a more BBC-led Operating Licence regime, with fewer quantifiable obligations and clear boundaries – could risk inadvertently leading to a less distinctive BBC, and a much greater impact on the wider market.

For the Operating Licence regime to be truly effective in ensuring that the BBC is more distinctive (as so clearly envisaged by the government during the Charter review process that delivered the current framework), delivering for audiences, and minimising its market impact, Ofcom needs to enhance its proposed approach:

- **Increased transparency and more upfront clarity:** Ofcom needs to enhance its proposals to increase the upfront clarity the Operating Licence provides. This should include overarching remits, scope, budgets, aims and objectives, regulatory conditions, and a performance measurement framework.
- **Sufficient public scrutiny in advance:** we are concerned that very significant changes to the BBC's existing public services could be made with little upfront or public scrutiny via the more flexible Operating Licence approach proposed by Ofcom. The BBC's proposals need to be scrutinised more thoroughly in advance to ensure that they maximise public value and minimise market impact. Ofcom might usefully set clear triggers that would require a public review (for instance, were the BBC to propose an Operating Licence that reallocated 10%+ of the BBC's content budget).
- **Timely disclosure of changes to intended delivery:** Ofcom should require the timely disclosure of major divergence from published plans (i.e. not in year-end assessment 18 months after the initial statement of intent) to avoid the BBC abandoning high public value, low consumption content and services.

- A much more inquisitive approach to ensuring the BBC's distinctiveness: Ofcom needs to require the BBC to identify competitor services, provide comparators and benchmarks for key performance measures (to demonstrate how the requirements are more demanding than delivery by competitors), and to retain measures over time to allow for time-series data.
- A focus away from volume of viewing: Ofcom needs to ensure that the BBC is not rewarded simply for chasing volume of viewing, for instance by spending millions of pounds of licence fee payers' money on populist US content which would have found its way to UK viewers through other channels or platforms. The licence fee is surely best spent on content made for, by and about the British people. The government was clear during the Charter review process that this should not "*mean maximising audience share and ratings, meeting an overall 'reach' figure each week, or increasing the amount of BBC content consumed for its own sake.*"
- Much clearer boundaries: We understand Ofcom's desire to remove the presumption of a competition process for all new services. As we have made clear repeatedly, it is not the existence of a service in and of itself that determines market impact, but the scope and limitations of that service, its content commissioning and acquisition strategy, its scale of funding. Ofcom's proposed Operating Licence does not deliver sufficient clarity or boundaries. Binding caps should be put in place in key areas of market risk (including the scale and nature of archive and acquired content the BBC is able to deploy on iPlayer)
- A requirement for Operating Licence conditions and changes to minimise market impact: Ofcom might consider enshrining the principle that in setting Operating Licence requirements, both the BBC and Ofcom should do so in a way that keeps market impact to the minimum necessary to deliver the public value proposed.

Absent such steps, and for all Ofcom's focus on 'transparency' in its consultation, the risk is that the BBC ceases to be held to account in a meaningful way, and that the market impact of the changes that will inevitably follow will go unchecked.

Detailed response to consultation questions

Question 1: What are stakeholder views on how Ofcom should assess and measure BBC performance?

ITV supports the inclusion of the BBC's online activities within the Operating Licence

Over time, iPlayer will become the main delivery vehicle for all the BBC's content and services. Clearly in the past the BBC's main delivery vehicles, such as BBC One and BBC Two, had clear obligations to help ensure delivery of distinctive content and scheduling. Such obligations will increasingly be required for iPlayer too. If such obligations are not implemented, then there will be nothing against which to judge the BBC's delivery of a distinctive iPlayer service in return for £3.7bn pa of public money. We are therefore supportive of the inclusion of the BBC's online activities within the Operating Licence.

Ofcom should set out in advance its performance measurement framework

This will allow the BBC and others to understand how the BBC's performance will be assessed, the measures that Ofcom believe reflect positive delivery and, critically, measures it will not take into account or might view less favourably (e.g. 'reach' might be viewed as important given the universal nature of the licence fee but 'volume of viewing' should matter less given the BBC does not have to fund itself by commercialising viewing).

It is critical these measures are published in advance of the BBC delivering and then reporting on its own performance so that it cannot simply retrofit performance out of the information that best suits it. The BBC is big enough that it can plausibly argue anything has been delivered retrospectively. It is vitally important to know what success looks like in advance in order to reach a proper view.

Enhanced reporting and transparency should apply to all BBC activity and directly reference the performance measurement framework

It strikes us as odd to limit enhanced transparency requirements only to those areas of activity viewed by Ofcom as insufficiently important to merit a quantitative requirement. Quotas alone rarely give a full picture of the BBC's performance.

Ofcom must offer expertise and analysis rather than relying on the BBC

Moving from Ofcom-set quantitative requirements to broader BBC-led transparency requirements risks placing an undue burden on stakeholders to hold the BBC to account rather than Ofcom. The risk is that the BBC out-guns all potential critics in terms of the depth of data and insight at its disposal, and controls what information is released publicly.

Question 2: Do you agree with the proposals for Public Purpose 1 [news and current affairs]? If not, please explain why

The proposed objectives for news are insufficiently demanding

The proposed objectives - including making sure BBC news is of "high quality," is "relevant to audiences," and is provided "on its UK Public Television Services, UK Public Radio Services

and BBC Online” - seem impossible for the BBC to fail to meet. They offer little by way of guidance or boundaries as to what ‘good’ looks like, or things for the BBC to avoid. Coupled with the “unenforceable” nature of these objectives, they seem likely to offer little in holding the BBC to account, nor to give transparency to stakeholders.

For instance, looking at the draft Operating Licence, it is not clear to what extent the BBC should offer different news output across different services or whether it might simply use the same output across multiple outlets. It’s not clear what level of investment is required or the scale of journalism that will support. It places no boundaries around the nature of the output, so should the market anticipate more ‘entertaining’ news to drive viewing volumes? How will BBC news look distinctive to that from other providers?

Ofcom needs to take greater steps to ensure distinctive news output

Whilst ITV does not offer a rolling news channel, and so has limited views on the specific requirements proposed for the BBC News Channel, we are concerned by the wider implication of Ofcom’s statement that it does “*not think that it adds much value to assess the breadth of the BBC’s news coverage by comparing it to the news coverage of other channels, as we consider this takes too narrow a view.*”

Distinctiveness by definition requires comparison with other services available. The BBC Trust’s in-depth review found that the “*...News Channel’s international news coverage is highly valued by audiences. Participants in our audience research thought that international news got more of an airing on the BBC News Channel than on the main BBC news bulletins, and that the channel provided a broader global focus than other rolling news channels.*” We make no judgment as to whether the Trust’s conclusions still hold true today. But the rather casual dismissal of this requirement, and the thinking underpinning its introduction, without any (public) consideration of its merits reinforces concerns we have about Ofcom’s proposed approach to ensuring distinctiveness, which we set out in detail below.

Question 3: Do you agree with the proposals for Public Purpose 2 [learning]? If not, please explain why

As for Public Purpose 1, the proposed objectives seem impossible for the BBC to fail to deliver. Again, they offer little by way of guidance or boundaries as to what ‘good’ looks like, or things for the BBC to avoid. Coupled with the “unenforceable” nature of these objectives, they seem likely to offer little in holding the BBC to account.

Question 4: Do you agree with the proposals for Public Purpose 3 [distinctiveness]? If not, please explain why

The need for robust and enforceable conditions to secure distinctiveness is clear

The Government’s 2016 Charter Review White Paper, *A BBC for the future: a broadcaster of distinction*, mentioned distinctiveness 155 times in just 136 pages. Its first recommendation was that the new Charter and Agreement should:

“Enable the BBC to make even more great programmes for audiences to enjoy, by incentivising more distinctive output that informs, educates and entertains.”

The resulting Charter put distinctiveness front and centre by enshrining the BBC’s overarching mission as:

“...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.”

It doubled down on this by also making one of the BBC’s six public purpose centred on distinctiveness:

“To show the most creative, highest quality and distinctive output and services: the BBC should provide high-quality output in many different genres and across a range of services and platforms which sets the standard in the United Kingdom and internationally. Its services should be distinctive from those provided elsewhere and should take creative risks, even if not all succeed, in order to develop fresh approaches and innovative content.”

The Charter also ensured that Ofcom’s role in relation to securing a distinctive BBC was clear. It requires Ofcom to:

“set an operating licence for the UK Public Services, in accordance with the Operating Framework, which must contain regulatory conditions they consider appropriate for requiring the BBC (a) to fulfil its Mission and promote the Public Purposes; (b) to secure the provision of distinctive output and services...”

It is notable that even though distinctiveness is central to both the BBC’s mission and its public purposes, the Government viewed it as so important that Ofcom was specifically charged with securing the distinctiveness of both output and services over and above its oversight of the mission and purpose.

Ofcom’s existing approach to securing distinctiveness is insufficient

Ofcom states that it already has licence conditions in place which it says are intended to ensure distinctiveness. However, the quotas set under public purpose 3 appear to us very limited in scale and scope. There are just three measures specifically designed to deliver distinctiveness for the BBC’s entire TV operations (original productions, first run originations, and comedy). Ofcom loosely observes that requirements under other public purposes also help ensure the BBC is distinctive.

Even those limited requirements that are included often set lower expectations on the BBC than is currently delivered by ITV in key areas:

- Original productions: Ofcom has imposed an all-hour originations quota of 75% on the BBC’s flagship BBC One service. This is well below the current level of originations on ITV’s main PSB channel (over 92% in 2020) and so allows the BBC to deliver a lower rate than the only other mass-reach channel in the UK (the BBC delivered under 84% in 2020)

- First run originations: similarly, Ofcom's quota for first run hours on BBC One (4,000 hours) is set at a level significantly lower than was actually broadcast on ITV's main channel in 2021 (over 5,300 hours)

It is hard to see how expecting the BBC to deliver less original content and less first run originated content than its main commercial rival can be said to ensure the BBC's content and services are distinctive.

Ofcom argues that the "*...majority of the Regulatory Conditions in [the Operating] Licence are important in securing a more distinctive BBC. Many of these have been grouped under the other Public Purposes to which they specifically relate.*"

Taking these other requirements at face value, in important areas they again do not appear to require more of the BBC than is also delivered on competitor channels:

- News throughout the day: also delivered by other PSB services and rolling news channels
- News in peak: a quota of 280 hours versus ITV's historic delivery of around 260 hours and newly expanded offering in the evenings likely to further increase our delivery
- Current affairs in peak: a quota of 45 hours, lower than historic peak time output on ITV and Channel 4

Where these non-bespoke requirements might have been argued to ensure distinctive content - notably in relation to guaranteeing output in genres not as widely delivered on other mainstream channels (such as arts and religion) or in the form of requirements that influence broad editorial approach (e.g. to ensure the BBC's news output covered more international and local stories than other news channels) - Ofcom is actually proposing to remove even these requirements which pre-date the government's call for a more distinctive BBC in the White Paper. But more broadly, there is no articulation by either the BBC or Ofcom as to vision for a distinctive set of services along with the measures/KPIs that would help to underpin the delivery of that vision.

Given the central importance government placed on ensuring the distinctiveness of the BBC, we do not agree that attempting to secure this predominantly via quotas specifically related to the delivery of other public purposes is sufficient - distinctiveness requires bespoke measures. And measures that are more, not less, demanding of the BBC than can be observed on other services. Ensuring the BBC is genuinely distinctive will be critical if the BBC's tendency to chase volume of viewing over distinctiveness is to be held in check.

The BBC's evolution since 2017 has focussed on increasing viewer volumes

Since 2017, Ofcom has reviewed four proposals by the BBC to change its public TV services. Other than BBC Scotland which was a genuine attempt to better serve an under-served audience with distinctive content, the BBC's other proposals have been more about simply increasing the volume of viewing rather than to be distinctive:

- In 2019, the BBC proposed changing the BBC iPlayer from a predominantly 'catch up' service to a 'destination' service where programmes were available for 12 months as standard, with some available for longer.

- In 2021, the BBC proposed the relaunch of BBC Three as a linear broadcast channel targeting younger audiences.
- Now, in 2022, the BBC is again proposing to extend the availability of programmes on iPlayer, ostensibly removing all non-commercial limitations to the availability of content.

Not only have these proposals targeted viewing volume rather than distinctiveness, they have also chipped away at existing regulation carried over from the BBC Trust. This regulation, focussed around specific content quotas was easy to monitor and ensured the BBC limited the negative impacts its activities have on its competitors, principally by ensuring the BBC delivered a service that was distinctive from what was already being delivered by the market.

In its White Paper, the Government was explicit that the requirement to serve all audiences was:

“...not merely about making content available on different platforms, although this is important. Nor does it mean maximising audience share and ratings, meeting an overall ‘reach’ figure each week, or increasing the amount of BBC content consumed for its own sake. Serving all audiences means making sure that the BBC is for the diverse communities across the UK and that every demographic group is being served by the BBC to some extent. Being “served” means not just consuming content, but getting value from the BBC and so benefiting indirectly from its public mission.”

Neither Ofcom’s historic approach, nor its proposal to hand much more control to the BBC, will meet the expectations set by the government in the Charter & Agreement.

The BBC has dramatically increased its spend on acquired UK content

Much of the content acquired by UK broadcasters is made and first broadcast in the United States and is therefore generally a ‘safe bet’ as US viewing figures can indicate the likelihood of success. Simply put, acquiring US films and TV shows does not involve any of the risks associated with the creation of genuinely new content including risks connected with production (e.g. procuring talent, production delays) as well as the risk it won’t be popular with audiences.

The first issue with the BBC acquiring mainstream third-party content is that it sits uncomfortably with its mission to be distinctive and take creative risks. The BBC has guaranteed public funding and is therefore protected from the vicissitudes of market fluctuations. As a result, it can take more risks and doesn't need the cushion of mainstream acquired content to do that. As a result, it is somewhat jarring to see the extent to which acquired content drives the BBC’s content strategy. For example:

- In 2014, before it ceased broadcasting, over a quarter of viewing to BBC Three was attributed to two US animated series, *Family Guy* and *American Dad*.¹ As we discuss in more detail below, there is currently nothing to prevent the BBC committing a large part of the current BBC Three budget to US acquisitions.

¹ [Proposed Changes to BBC Three, BBC iPlayer, BBC One and CBBC: Market Impact Assessment](#), Ofcom, June 2015, para 4.26

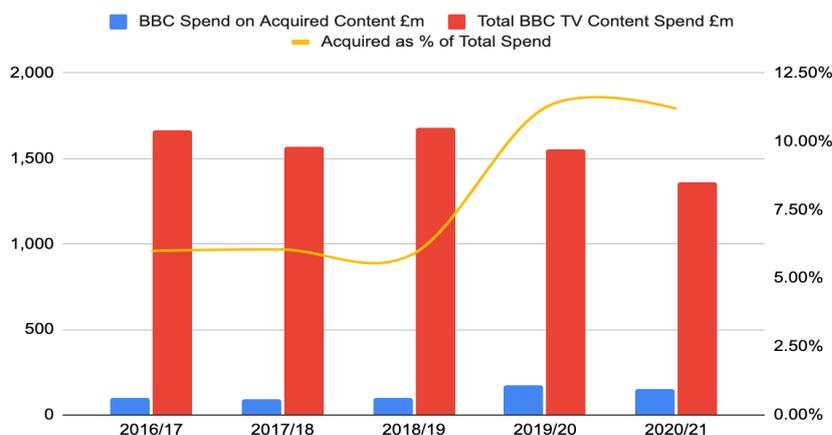
- In 2018, the BBC entered in to an output deal with US Studio FX, which gave it ‘first look’ rights to a raft of US-made TV shows including *Devs*, *The People vs OJ Simpson*, *American Crime Story*, *Trust*, *Pose*, *Mayans MC* and *What We Do In The Shadows*.
- In 2020, the BBC broadcast 19 Hollywood blockbusters including *Frozen*, *Beauty and the Beast* and *Marvel’s Avengers Assemble*, in prime time (i.e. peak/early-peak) on BBC One.

The second issue with the BBC acquiring mainstream third-party content is that the BBC competes in the market against other broadcasters, such as ITV, inflating the price at which the content is purchased. Recent examples of this include:

- ✂
- ✂
- ✂

Yet, notwithstanding these issues, and as the following chart shows, in the current Charter period, the BBC has reduced its content spend (and publicly decried significant cuts to its budget²), while dramatically *increasing* the amount of this that it spends on acquired content:

Figure 1. BBC spend on acquired content as a % of total content spend in the 2017 Charter period



We note that the BBC has challenged these figures, pointing out that their Annual Report (from which we drew these numbers) only contains information on the accounting value of the acquired content to which the BBC holds the rights in any given year, rather than its annual spend. We asked the BBC to provide us with alternative figures but so far it has not provided done so. Absent definitive figures from the BBC on its annual acquisition spend, we remain of the view that the figures provided above still illustrate that the BBC has increased its use of acquired content significantly over time. Our difficulties in understanding the BBC’s scale of activity and the lack of clear public information on acquisitions demonstrates very clearly the lack of transparency in this key area (and the BBC’s lack of inclination to provide such transparency on a voluntary basis).

² In 2018, Tony Hall said: “more cuts have been taking place - over a far longer period than at any other in the BBC’s history...While we believe the BBC’s public mission is as important as ever, we do not believe that what we currently do is sustainable with the resources we have” - [Tony Hall, RTS Speech 18 September 2018](#). It was [reported](#) that, speaking at the VLV Spring Conference in April 2022, Tim Davie talked about needing to find £285m in savings to address cuts to the BBC’s budget.

Differences on the precise figures aside, ITV accepts that there is a place for acquired content in the BBC's roster. Indeed, BBC Four has received well-deserved credit for introducing British audiences to Scandi-noir by taking a creative risk, broadcasting foreign language series *The Killing* (2011) and *Borgen* (2012). This seeded the market for foreign language titles on commercial services, paving the way for popular and critical successes such as the *Walter Presents* franchise on All4 and titles such as *Call My Agent*, *Lupin* and *Squid Game* on Netflix. While this type of acquisition clearly delivers on the government's call for the BBC to be distinctive; acquiring 189 episodes of *Pokemon*³ does not.

These precise risks were highlighted in the government's 2016 White Paper:

*"In general, the BBC should be commissioning new content rather than buying previously made content from others and it is indeed the largest investor in original UK programming... But while the government would like to see the BBC continue to ensure that UK audiences have access to quality content from abroad, it would also like to see due restraint by the BBC through a focus on buying programmes which would be unlikely to be shown by other free-to-air broadcasters in particular... If other free-to-air broadcasters are willing to pay for acquired content made overseas and make it available to UK audiences there will often be little or no public interest in the BBC becoming engaged in a battle for that content (particularly for rights other than sports) bidding up the price, or spending licence fee income on something which could be provided by others."*⁴

As a result, it is surprising and uncomfortable that Ofcom has allowed the BBC to chip away at existing regulation, leaving the BBC with very little limitation over the volume of content it can acquire and make available to audiences.

Ofcom decisional practice has supported the BBC's increasing bias towards the mainstream

Under the current Charter Framework, Ofcom has a pivotal role ensuring that the public value of material changes to the BBC's public services is proportionate to any negative adverse impact on competition.

The 2016 White Paper made clear that distinctiveness goes hand in hand with mitigating market impact. The government's market impact study (which accompanied the White Paper) concluded that:

"[G]reater distinctiveness of the BBC's mainstream services could have not just a positive impact for the commercial market providers of up to £115 million per year by the end of the next Charter, but also an overall positive net market impact... [I]f the BBC competed a little less for audiences through content which is already provided by the commercial sector and instead focused a little more on high public value programmes which people enjoy, everyone would be better off, and the BBC would

³ [\[link\]](#)

⁴ [A BBC for the future](#): a broadcaster of distinction, DCMS, May 2016, p.71

maintain levels of market share and – crucially – would remain popular across television, radio and online, serving all audiences.”⁵

This link between distinctiveness and market impact is reflected in Ofcom Guidance which states that in assessing the BBC’s market impact, in particular the risk that the BBC crowds-out commercial activity, one of factors Ofcom will consider is *“the extent to which the public service activity or aspects in question [o]perates **differently** from commercial operators”* (emphasis added).⁶

Yet, recent Ofcom decisions illustrate that Ofcom may have de-prioritised distinctiveness and has instead supported the BBC to chase greater viewer volumes through the acquisition and promotion of mainstream content, trusting that this would deliver distinctiveness and, therefore, public value.

BBC iPlayer

In 2019, the BBC sought permission to extend the length of time that some content was available on BBC iPlayer. It is informative of the BBC’s frame of mind that the proposal was initially not referred to Ofcom as the BBC took the view that it was not likely to be a *“change which may have a significant adverse impact on fair and effective competition”*.⁷ Sensibly, Ofcom rejected the BBC’s submission. It noted the impact that the proposals were likely to have on UK VoD services including ITV Hub, and asked the BBC to undertake a Public Interest Test.

Ofcom’s 2019 final assessment acknowledged that the BBC’s proposal to extend the availability of content on iPlayer could reduce viewing, revenue and investment/innovation of competing services, in particular on BVOD and new UK-focussed services such as BritBox.⁸ However, Ofcom concluded that any adverse market impact was outweighed by public value, specifically that the proposal:

“could deliver significant personal value by better meeting audience expectations and providing viewers more choice over what, how and when they can watch. We also believe that the Proposals could deliver social value through increased viewing of content which delivers the BBC’s mission and public purposes as well as safeguarding the resilience of the BBC for the future”.⁹

While Ofcom’s conclusions appear to emphasise distinctiveness as the driver of public value, the BBC was not held to account to deliver this outcome.

Firstly, no limit was placed on the volume of acquisitions the BBC could make: In its final determination, Ofcom set a number of conditions attached to approval of the proposals, namely that the volume of titles with extended availability would be capped. These conditions notably did not set any specific limit on the volume of content the BBC could acquire and make available on iPlayer. The conditions simply stated:

⁵ [A BBC for the future](#): a broadcaster of distinction, DCMS, May 2016, p.36, quoting [Oliver & Ohlbaum and Oxera, BBC television, radio and online services: An assessment of market impact and distinctiveness](#), February 2016, pp.8 and 17-22

⁶ [Assessing the impact of the BBC’s public service activities: Ofcom’s procedures and guidance](#), para 5.21

⁷ [Review of the BBC’s Materiality Assessment of Proposed Changes to the BBC iPlayer](#), Ofcom November 2019, Para 1.10

⁸ [BBC iPlayer Competition Assessment: Final determination](#), Ofcom, (para 3.92)

⁹ [BBC iPlayer Competition Assessment: Final determination](#), Ofcom, (para 3.65)

“The availability for acquired programmes will vary, as the BBC has to buy acquisitions in an open market and the terms are set by the seller. Acquired content may be available on BBC iPlayer for different periods, including longer than 12 months.”¹⁰

Secondly, Ofcom did not set any specific performance measures that would demonstrate that, as a result of extended availability, audiences were consuming content that delivered on the BBC’s Mission and Public Purposes. In its Final Determination, Ofcom called on the BBC to *“take the lead on securing the effective fulfilment of its mission and public purposes”*, requiring it to *“propose revised performance measures, and targets where appropriate, to assess the performance of BBC iPlayer and how it contributes to the mission and public purposes”*.¹¹ As a result, the BBC’s Annual Report now includes a BBC iPlayer ‘data pack’, illustrated below:

Figure 2. Audience Performance: BBC iPlayer¹²

BBC iPlayer			Source
Experience			
<i>Average weekly accounts signing into BBC iPlayer</i>			
Accounts overall	2020/21	10.7 million	AT Internet/BBC Account data
	2019/20	9.1 million	
Under 35 year olds' accounts	2020/21	3.2 million	
	2019/20	2.9 million	
BBC iPlayer streaming time			
<i>Average weekly hours played through iPlayer</i>			
	2020/21	39.7 million	AT Internet/Sky catch-up data. 2019/20 data restated following data amendments
	2019/20	32.2 million	
BBC iPlayer time per population head			
<i>Length of time UK population spends with iPlayer on average per week per population head (hours:mins)</i>			
	2020/21	00:53	Deduplicated viewer mins modelled from BARB/AT Internet
	2019/20	00:44	
<i>Length of time UK 16-34s spend with iPlayer on average per week per 16-34 population head (hours:mins)</i>			
	2020/21	00:59	Deduplicated viewer mins modelled from BARB/AT Internet
	2019/20	00:55	
% of all BBC TV viewing that is delivered by BBC iPlayer			
<i>All</i>			
	2020/21	12%	BARB/AT Internet/Sky catch-up data. 2019/20 restated based on changes to calculation method.
	2019/20	11%	
<i>16-34</i>			
	2020/21	37%	
	2019/20	35%	

This new report includes overall volume of iPlayer viewing but does not indicate how much of this was viewing of content which delivers the BBC’s mission and public purposes. It appears that, in accepting the BBC’s minimal performance measures and targets, Ofcom has accepted the BBC’s apparent proposition, that *any* content - even *Pokemon* - if viewed on the BBC delivers public value and, therefore, *any* growth in viewing volume is to be viewed as delivering on the BBC’s Mission and Public Purposes.

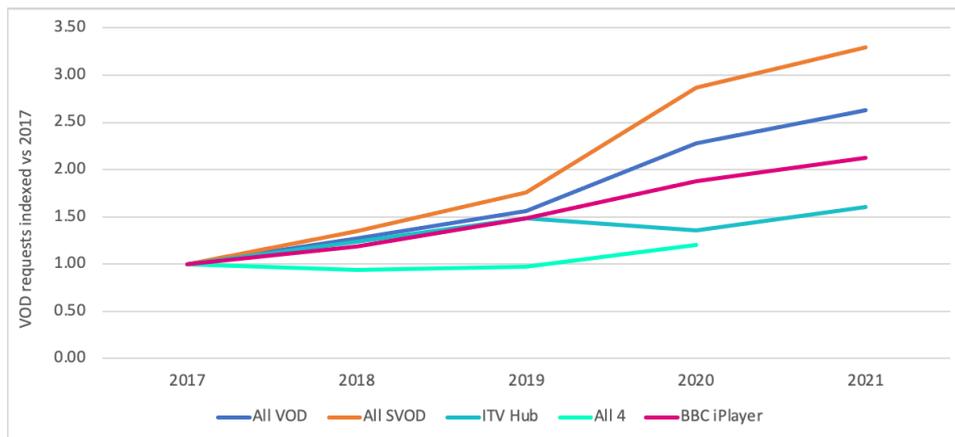
The fact is, as illustrated by **Figure 3** below, in the period since the BBC gained permission for extended iPlayer availability, iPlayer viewing has indeed grown ahead of other UK BVOD operators (ITV and Channel 4), keeping pace with the market overall.

¹⁰ [BBC iPlayer Competition Assessment: Final determination](#), Ofcom, Table A3.1

¹¹ [BBC iPlayer Competition Assessment: Final determination](#), Ofcom, (para 4.30)

¹² [BBC Annual Report and Accounts 2020/21](#), p.157

Figure 3. UK VoD Growth, indexed to 2017



This growth coincides with a period over which the BBC has significantly increased the amount it spends on acquired content (see above). The data published by the BBC only shows the total volume of viewing and not *what* audiences are consuming. As a result, it's entirely possible that growth in iPlayer viewing has been driven by the consumption of US films and TV series. Far from incentivising distinctiveness, the performance measures agreed as part of Ofcom's approval may actually incentivise the acquisition of mainstream content.

Thirdly, Ofcom stated that it expected the BBC to set out in its Annual Plan how it intended BBC iPlayer would contribute to the Mission and Public Purposes and, in doing so, have regard to the impact that its activities would have on competition in the UK.¹³ The BBC's Annual Plan 2020/21 (the first one published after Ofcom's iPlayer Final Determination), the BBC sets out its two-year plan for the BBC iPlayer, stating:

*"The pace of product development has increased over the last 12 months, there are now 36% more hours available to view and the marketing of iPlayer and curation within iPlayer have taken a step forward – the impact of these changes has been to widen its reach and, in a challenging market, to increase significantly the viewing that it generates ... Over the next two years we will pull all the levers we can to improve and grow iPlayer, including content availability and exclusivity, product developments, marketing and distribution. We will have more programmes available for longer, we will continue to develop personalisation and curation to make it even easier for each person to discover what's relevant to them, and we will continually evolve the user experience. We will release more of our series as boxsets in one go to let audiences decide how they want to watch."*¹⁴

Nowhere does the BBC explain how the iPlayer offer is distinctive, or how the curation helps "deliver social value through increased viewing of content which delivers the BBC's mission and public purposes", as Ofcom said was the key to delivering public value.

One can, therefore, only conclude that the extended iPlayer availability proposal was designed simply to increase viewing volume and not to provide distinctive content.

¹³ [BBC iPlayer Competition Assessment: Final determination](#), Ofcom, (para 4.31)

¹⁴ [BBC Annual Plan 2020/21](#), p.23

BBC Three

Ofcom's review of proposals to relaunch BBC Three follow a similar pattern. Ofcom's final determination emphasised the potential for the BBC's proposals to deliver public value - *"providing underserved younger audiences with a deeper engagement with BBC content"*.¹⁵ With Ofcom noting that distinctiveness was crucial to the delivery of public value:

"A key part of the social value delivered by the proposals was the extent to which the BBC Three broadcast channel would be genuinely distinctive from other services in the market... the BBC would need to ensure that it delivered a mix of content on BBC Three that was both distinctive from other comparable services and genuinely representative of diverse and under-represented groups of young people".¹⁶

Yet, Ofcom did not set any specific requirements to ensure the BBC actually *delivered* distinctiveness. Ofcom's final determination set out the Operating Licence conditions to be imposed on the new BBC Three broadcast services comprising obligations to:

- Broadcast a weekday news programme intended to appeal to 16-34 year olds
- Allocate at least 75% of broadcast airtime to original productions
- Provide first run originations intended to appeal to 16-34 year olds across a mix of different genres.

It's an important detail that BBC Three's obligations to allocate airtime to original production is not connected to the requirement to provide first-run content. There is, therefore, nothing to prevent the BBC meeting the vast majority of its original production quota with repeats and devoting the minimum amount of its budget/airtime for first-run content. Furthermore, Ofcom proposed no obligation as to quality (i.e. earmarked budget), volume or scheduling of first-run originations. As a result, the BBC is ostensibly free to spend most of its budget (which was more than doubled in the year prior to this proposal) on US acquired content for prime-time broadcast, leaving minimal budget for first-run UK original commissions that could languish at the edges of the schedule.

Furthermore, while Ofcom stressed the need for transparency, it did not require any additional performance indicators. Instead, it stated that it *"expected the BBC to set out more detail in its Annual Plan as to how the delivery of this public value would be ensured"*.¹⁷ Crucially, after recognising that one of the key objectives for the relaunch of BBC Three was for the service to be a 'shop window' for and to drive audiences to iPlayer Ofcom did not call for additional reporting on iPlayer viewing - e.g. what proportion of iPlayer viewing is attributed to original BBC Three content. Without this data, it is impossible for ITV to assess the impact that the relaunch of BBC Three has had on its service and whether the conclusions of Ofcom's assessment - that the public value outweighs the negative market impact - are justified.

What these examples show is that while Ofcom may note the link between distinctiveness and market impact, its decisions have fallen short of holding the BBC to account for *delivering* distinctiveness. The worry is that as budgets become tighter, more time passes and Ofcom's determinations become a distant memory, there is nothing beyond Ofcom's

¹⁵ [BBC Three TV Channel Competition Assessment: Final determination](#), Ofcom 2021, para 5.3

¹⁶ [BBC Three TV Channel Competition Assessment: Final determination](#), Ofcom 2021, para 3.20

¹⁷ [BBC Three TV Channel Competition Assessment: Final determination](#), Ofcom 2021, para 5.3

‘expectation’ to stop the BBC prioritising volume above other measures such as distinctiveness. The fact is that regulation by trust is no regulation at all.

BBC iPlayer II

This trend toward regulation by trust is all the more worrying given the BBC’s current plan to extend further the availability of content on iPlayer. The BBC has proposed that it is released from the conditions placed on it by Ofcom in 2019, the result of which would be that the BBC would have complete freedom (subject to commercial agreement) to offer whatever content it wanted to audiences on iPlayer including prior series of returning titles and unlimited box sets from the BBC archive.

The BBC notes that its proposals represent no change to the availability of acquired content on iPlayer. However, as noted above, there are currently no restrictions on the BBC’s ability to acquire content and make it available on iPlayer. As a result, this is a rather meaningless statement.

ITV will respond to the BBC’s consultation and will engage with Ofcom’s review process. But given past practice, we do not hold out much hope that the BBC’s ambitions to drive greater viewing volumes to iPlayer will be curtailed or at least tempered by firm requirements that would “*incentivise distinctiveness*”. We believe the BBC should be subject to specific controls which disincentivises chasing viewing volume at the expense of other factors including distinctiveness and stimulating the UK creative sector. This should include at a minimum:

- Placing limits on the amount that the BBC can spend on acquired content at a level appreciably lower than today
- Placing limits on the volume of content on iPlayer, set with regard to the number of hours on competing UK VoD services
- Reforms to the BBC governance framework to enable sufficient oversight and deliver greater transparency and accountability (discussed in detail below).

Issues with Ofcom’s proposed approach to ensuring distinctiveness

The requirements are broad, amorphous and easy to meet without engaging in activities that actually return value to audiences and to the wider creative industry. The ‘breadth’ requirement looks particularly problematic – e.g. it could be satisfied by using content from the archive with no obligation to produce/commission new content in ‘at risk’ genres.

Transparency alone is not enough

Ofcom’s consultation states that “*Alongside greater flexibility, however, we consider that future regulation should ensure greater transparency on how the BBC delivers distinctive output across the full range of its services.*” We agree that greater transparency is certainly necessary. But more than that, Ofcom needs to fundamentally strengthen its approach to ensure it is meeting its Charter obligation to “*secure the provision of distinctive output and services*” on the BBC.

Transparency of the BBC's plans is clearly crucial, and we are supportive of Ofcom's proposals to address the lack of transparency to date. But true transparency also requires the regulator to provide outside observers with sufficient information and expert analysis in order to judge the BBC's proposals.

As Ofcom notes, *"many aspects of distinctiveness are subjective and difficult to quantify. It can also be difficult to assess quality, creative ambition and risk-taking of the BBC's output."* Given this, it is critical that the BBC and everyone else with an interest in the BBC's performance, has a clear understanding of how Ofcom regards these concepts, how it will define and measure performance against them. From Ofcom's proposals, it is not at all clear this will be the case.

For example, Ofcom proposes to set the BBC a requirement to *"support new UK talent and creative innovation, including commissioning new titles and output from a wide range of independent producers."* On one level, with its sheer size and scope, the BBC will inevitably commission some new titles and work with a wide range of independent producers. But then so will ITV and Channel 4, so that alone cannot be enough to ensure distinctiveness. So how will the BBC's plans be judged? What is the performance measurement framework against which it will be held accountable? What level of new commissioning is acceptable? How can the BBC's plans be compared to the rest of the market in order to judge whether it is truly different?

Similarly, how will the BBC be judged against Ofcom's objective for it to *"innovate, be ambitious and take risks?"* Will this be regulation by anecdote? Or does Ofcom have in mind measure of risk-taking or innovation that it intends to test against the BBC's proposals?

The risk of allowing the BBC to define its own success is that it will always be big enough to tell an attractive story but never incentivised to (a) set this against market yardsticks or their own demanding framework for distinctiveness or (b) to give an open and comprehensive assessment of its content and services in the round. This can be seen to some extent in the way in which Channel's 4 Statement of Media Content Policy (SMCP) process has operated. In its response to Channel 4's SMCP, Ofcom this year set out concerns about Channel 4's provision for older children and young adults in 2021. This follows similar concerns being expressed by Ofcom almost every single year since 2012. Clearly Channel 4 defines its remit and success in this key area very differently to Ofcom.

This is not a new argument from ITV - as Ofcom notes, we have previously suggested that Ofcom needed to be more inquisitive about the distinctiveness of BBC content under a new Licence and that there has been insufficient scrutiny in this area to date. We are hugely disappointed therefore to see proposals for the new Operating Licence that devolve even greater responsibility for this to the BBC and nothing more from Ofcom than the somewhat vague promise that it is *"...also considering what additional metrics Ofcom could use to assess the BBC's distinctiveness."*

Assessing distinctiveness requires comparisons with others - by Ofcom, not the BBC

Ofcom states that distinctiveness *"...is not just a measure of how the BBC compares to other broadcasters, but also a measure of the unique value it offers to audiences."* But assessing 'unique value' requires a comparison of the value audiences get from the BBC with the value they get from other providers. In the end, distinctiveness can only be assessed in

comparison with other broadcasters and media providers and/or with the use of pre-determined objectives and proxies and other measures of delivery.

Ofcom appears to be proposing to delegate the task of demonstrating distinctiveness almost entirely to the BBC without making clear how this should be done or what the relevant criteria should cover. Will the BBC be expected to benchmark itself against its competitors for instance? Its track record in doing so in relation to its assessment of market impact suggests its capacity and willingness to do so is somewhat limited. Will competitors be required to provide sensitive information to the BBC to inform its view of its relative position in the market? Absent this information, the BBC will be unable to reach a fully informed view. But competition law and commercial constraints will limit the information we and others would be willing and able to provide. And the BBC has a tendency to release insufficient information to stakeholders about its proposals to enable us to provide meaningful input (see our submission to the BBC's most recent iPlayer PIT process).

It is hard to see how a full and independent assessment of the distinctiveness of the BBC can credibly be carried out by the BBC. In delegating the task of defining what distinctiveness means for the BBC to the BBC itself, Ofcom is proposing a system an order of magnitude weaker than that envisaged by Government when it put in place what it believed was a strengthened regime. This new proposed approach looks much like the old system where the BBC set and marked its own homework for which an arm's length external regulatory arrangement overseen by Ofcom was supposed to be the antidote.

Retaining and reducing existing requirements does little to drive distinctiveness

As set out above, a number of the existing requirements that Ofcom proposes to retain - such as those related to original productions and first run originations - do little to ensure the BBC is distinctive. Whilst high levels of new UK content on PSB channels ensure the system is distinctive from the wider market, they do not ensure that the BBC itself is distinctive in and of itself. Ofcom needs to set more demanding expectations of the BBC.

Ofcom appears somewhat unsure of its own approach. It suggests both that first run originations drive distinctiveness but also that making too many new programmes risks reducing quality. It therefore proposes a compromise quota set "*...at the level of the combined total of the current first-run UK originations quotas: 6,650 hours. As it is a service neutral quota, it will cover more services than those currently subject to their own first-run UK originations quota, so this would provide an additional layer of flexibility for the BBC to deliver its quota across a wider set of services, including online.*" By allowing the BBC to include previously-excluded content Ofcom has reduced the demands of the intervention.

If first run content drives BBC distinctiveness then the quota should not be diluted. If the BBC's budget means it is going to become a fundamentally smaller commissioner of UK content then that should be reflected more fully in its plans and the Operating Licence, and subject to proper consultation. In such a context, a consultation might properly consider whether there is any on-going role for acquisitions for instance, in the context of a squeezed budget. The risk here is that the slightly reduced quota is followed by similar small reductions each year, salami slicing the impact and hiding its consequences from proper scrutiny.

Removing requirements in 'at risk' genres will hasten decline

In its last assessment of the BBC's performance, Ofcom found that the BBC's spend *"on first-run programming in at-risk genres like comedy and music is declining at a faster rate than other genres."*¹⁸ Despite this, Ofcom now proposes to *"Replace quotas for arts and music, religious programmes, content for children and comedy on network TV with a condition to provide a wide breadth of output supported by transparency requirements."* There is no requirement proposed for this output to be first-run, meaning the condition could be met predominantly via use of repeats and archive. It is hard to see how such an approach will lead to anything other than rapid decline in provision, with knock-on implications for competitive impact and support for the creative economy.

Unenforceable objectives will have little impact

As set out above in relation to the other Public Purposes, unenforceable objectives - set at such a high level as to be basically unmissable - will do little to strengthen the BBC's distinctiveness.

Unduly loose requirements in relation to acquisitions

Ofcom proposed to require the BBC only to *"...set out the role that acquisitions will play in its plans to deliver distinctive output and services for audiences."* Ofcom should go further, requiring every single acquisition to be distinctive and capping the total overall.

Overall, a system of comforting generalities but little clarity

So, overall, whilst it's hard to disagree with anything Ofcom suggests the BBC should be required to deliver, it's also entirely unclear what 'good' looks like, how performance will be measured, and how the revised Operating Licence as proposed sets clear boundaries and expectations understood by all. Absent this clarity, the BBC will be free to pursue increasingly 'populist' output to deliver volume of viewing, whilst continuing to broadcast sufficient innovative content to include in its narrative Annual Report.

Question 5: Do you agree with our preliminary view on the BBC's request to change Operating Licence conditions 2.21 and 2.32 for BBC Four, including our proposal to remove BBC Four's peak original productions quota and set the 'all hours' quota at 65% instead of 60% as requested by the BBC? If not, please explain why.

ITV has no specific comments on Ofcom's initial assessment of the BBC's BBC Four proposals. We are, though, struck by two things:

- The depth and rigour that Ofcom has applied in assessing the BBC's proposals for modest changes to existing licence conditions is not applied by Ofcom to its own far more substantive proposals in relation to the BBC's Operating Licence more broadly. If Ofcom is to proceed with the wholesale removal of a significant number of

¹⁸ <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/bbc-operating-framework/performance/bbc-annual-report/fourth-bbc-annual-report-interactive-data>

regulatory conditions then it should publish and consult on corresponding analysis to a similar degree of depth as it has done for the BBC Four changes.

- Ofcom has reached a very specific view on why the BBC's use of acquired content in relation to BBC Four might be acceptable but has made no such assessment of the BBC's much more extensive use of (arguably less distinctive) acquisitions across its other services. The BBC and Ofcom should set out as a matter of urgency its comparable assessment for the use of acquired material on other services.

Question 6: Do you agree with the proposals for Public Purpose 4 [diversity, audience representation and portrayal, and nations and regions production and programming]? If not, please explain why.

The concerns we have expressed in relation to Ofcom's proposed approach for the other public purposes applies equally to Public Purpose 4.

Question 7: Taken together, do you agree with the proposals for a new Operating Licence? If not, please explain why.

Ofcom's proposed approach to holding the BBC to account seems unlikely to be effective

As we have set out in our response, there are a number of apparent issues with Ofcom's proposed approach:

An overreliance on unenforceable objectives and high level 'expectations'

A significant proportion of the proposed new Operating Licence consists of objectives that Ofcom describes as "not enforceable." Combined with the high-level nature of these objectives, this means that whilst the objectives are hard to argue against, they are also of little use in either guiding the BBC's behaviours or allowing Ofcom (or anyone else) to judge the BBC's performance against them - the BBC's scale and funding means it will inevitably deliver aspects of them - the question is whether that is sufficient (or, indeed, the most that could reasonably be expected), whether it has focused on public value or volume of viewing.

Ofcom frequently expands on the regulatory obligations it proposes by referencing things that it nonetheless 'expects' the BBC to do, even whilst not including these requirements within the BBC's operating licence. These include putting audiences at the heart of reporting (5.8), to set out and give reasons for any changes it plans to make which may significantly impact its delivery in key areas (5.17), to consider stakeholder views (5.18), to report on risk taking (8.14), that the majority of first-run content will be broadcast in daytime and peak, to be across a range of genres, including children's content (8.31), and an expectation that the proportion of the BBC's budget would be spent on new programmes (8.62).

It is unclear why these are not requirements on the BBC if they are critical to the delivery of the public purposes. If they are not critical, then why is Ofcom expecting the BBC to do things it is not required to under its regulatory framework? What is the consequence of the BBC failing to meet one of these many 'expectations'?

The result is a system that offers little clarity to either the BBC or to stakeholders with an interest in particular areas of the BBC's activities. The risk of such a BBC-led unenforceable approach can be seen in the way in which Channel 4's Statement of Media Content Policy (SMCP) process has operated. In its response to Channel 4's SMCP, Ofcom this year set out concerns about Channel 4's provision for older children and young adults in 2021. This follows similar concerns being expressed by Ofcom almost every single year since 2012.

Undemanding regulatory conditions

Even where Ofcom does propose to impose binding conditions, these often appear almost impossible for the BBC to fail to meet - for instance, the requirement to deliver "*a broad range of original UK content*" on iPlayer and BBC Sounds. It is hard to imagine any scenario where the BBC might spend c.£3.7bn and not meet this condition. As such it will not influence BBC commissioning behaviours nor guide its commissioning approach. But it will allow the BBC scope to include significant volumes of plans and reporting about how it plans to and delivers a broad range of content each year, delivering extensive paperwork but little real transparency

Insufficient transparency requirements

Whilst Ofcom's steps to improve the transparency of BBC reporting are welcome, they do not go far enough. Asking the BBC to "*explain its plans*" or to "*explain the role*" of certain content types is unlikely to deliver genuine transparency. Where requirements are more detailed, they are sometimes oddly limited - for instance, a requirement to report the volume of acquisitions is crucial, but Ofcom imposes this only in relation to 'at risk' genres - the very genres where any market impact of such acquisitions is likely to be lowest. The very specific requirement to release this information almost certainly means the BBC will choose not to report acquisitions in other key areas, such as drama or adult animation. It's also unclear why Ofcom believes that those areas deemed important enough for quantitative quotas should then not also have increased transparency requirements as well.

A lack of focus on the real drivers of distinctiveness

The BBC's impact - both in terms of public value delivery and market impact - is shaped not simply by how many hours of content it makes, but what that content is, when and where it is scheduled, and its editorial approach. Without more depth and nuance in Ofcom's requirements, Ofcom is unlikely to ensure the BBC is distinctive, as required by the Charter.

For instance, the Operating Licence says little about acquisitions. ITV accepts that there is a place for acquired content in the BBC's roster. Indeed, BBC Four has received well-deserved credit for introducing British audiences to Scandi-noir by taking a creative risk, broadcasting foreign language series *The Killing* (2011) and *Borgen* (2012). This seeded the market for foreign language titles on commercial services, paving the way for popular and critical successes such as the *Walter Presents* franchise on All4 and titles such as *Call My Agent*, *Lupin* and *Squid Game* on Netflix. While this type of acquisition clearly delivers on the government's call for the BBC to be distinctive; acquiring 189 episodes of *Pokémon* does not.

There is currently no sense of this nuance in Ofcom's proposed approach. Requirements around distinctiveness remain scattered throughout the draft Licence rather than being considered and presented as a strategic whole.

Lack of assessment of market impact

Ofcom proposes to remove many of the service-specific requirements on the BBC's linear services. As Ofcom observes, the BBC may well be best placed to judge how best to serve its audiences in terms of what type of content is commissioned and when and where it is distributed.

However, many of these conditions are intended not just to ensure delivery of the BBC's mission and purposes, but also to limit the BBC's market impact. Ofcom has not published an assessment of the likely impact of allowing the BBC such sweeping freedoms. Such changes could, in theory, be viewed as a significant change. But Ofcom has shown little appetite to view editorial decisions in this light. The risk is that the BBC uses its new-found freedom to aggressively pursue scale of viewing and that this will be unchecked by Ofcom (as set out above).

If the BBC is to make wholesale changes to its schedule then this should be subject to proper public scrutiny.

Insufficient dedicated resource

Ofcom is proposing to move to a model of oversight much more akin to the approach adopted by the BBC Trust, with the BBC Executive responsible for developing detailed plans and reporting on the BBC's services and their contribution to delivering the BBC's mission and purposes. But the BBC Trust employed around 80 people full time to understand and become expert in the BBC in order to credibly dig beneath the surface of the BBC's proposals. Absent sufficient and dedicated resource, Ofcom will struggle to hold the BBC to account given the scale of resource at the BBC's disposal to argue its case

An enhanced approach to the Operating Licence

For oversight (inc. the Operating Licence) to be truly effective in ensuring that the BBC is more distinctive (as so clearly envisaged by the government during the Charter review process that delivered the current framework), delivering for audiences, and minimising its market impact, Ofcom needs to enhance its proposed approach.

Increased transparency and more upfront clarity

The first area where Ofcom needs to enhance its proposals is the degree of upfront clarity that the Operating Licence provides, both to the BBC and to external stakeholders. It might usefully achieve this by including:

- *Overarching remits*: explaining in headline terms how each service (or collection of services) will contribute to the delivery of each public purpose (assuming Ofcom chooses to retain a Licence structured around the Purposes rather than services).

- *Scope*: providing additional clarity on the nature of the BBC provision (for instance, how services will be made available on different platforms or any interaction in delivery between different BBC services or external partnerships)
 - *Budget*: giving people visibility of the scale of the BBC's plans
 - *Aims and objectives*: likely to be predominantly qualitative indicators
 - *Regulatory conditions*: firm and quantified obligations, particularly in those areas viewed as central to PSB delivery (such as news and regional production), in those areas where the wider market is unable to sustain delivery commercially (for examples, in relation to children's content or religious content), where the BBC is increasingly pulling back despite its public funding, and where such quotas act as limitations on market impact. Make use of service-neutral volume quotas for key genres, rather than abandoning a quantitative approach in full
 - *Performance measurement framework*: setting out clearly the key performance indicators by which the BBC's success will be measured
- Sufficient public scrutiny in advance: we are concerned that very significant changes to the BBC's existing public services could be made via the more flexible Operating Licence proposed by Ofcom with little upfront or public scrutiny. Ofcom needs to set much clearer expectations about how the BBC's proposals will be scrutinised in advance to ensure that they maximise public value and minimise market impact. Ofcom might usefully set clear triggers that would require a public review (for instance, were the BBC's latest proposed Operating Licence to reallocate more than 10% of the BBC's content budget or similar), perhaps with some scope in limited circumstances for Ofcom to choose not to launch a review.
 - Timely disclosure of changes to intended delivery: Ofcom should require the timely disclosure of major shifts from published plans (i.e. not in year-end assessment 18 months after statement of intent) to avoid the BBC abandoning high public value, low consumption content and services.
 - A much more inquisitive approach to ensuring the BBC's distinctiveness: A further area where Ofcom needs to take a much firmer stance is in relation to distinctiveness. Ofcom needs to require the BBC to identify competitor services, provide comparators and benchmarks for key performance measures (to demonstrate in particular how the requirements are appreciably more demanding than delivery by competitors, particularly in terms of risk taking), and to retain measures over time to allow for time-series data.
 - A focus away from volume of viewing: Ofcom needs to ensure that the BBC is not rewarded simply for chasing volume of viewing. The government was clear during the Charter review process that this should not "*mean maximising audience share and ratings, meeting an overall 'reach' figure each week, or increasing the amount of BBC content consumed for its own sake.*"
 - Much clearer boundaries: We understand Ofcom's desire to remove the presumption of a competition process for new services. As we have made clear repeatedly, it is not the existence of a service in and of itself that determines market impact, but the scope and limitations of that service, its content commissioning and acquisition strategy, its scale

of funding. Caps should be put in place in key areas of market risk (e.g. the scale of archive and acquired content the BBC is able to deploy on iPlayer)

- A requirement for Operating Licence conditions and changes to minimise market impact: Ofcom might consider enshrining the principle that in setting Operating Licence requirements, both the BBC and Ofcom should do so in a way that keeps market impact to the minimum necessary to deliver the public value proposed.

Absent such steps, and for all Ofcom's focus on 'transparency' in its consultation, the risk with the approach as currently proposed is that the BBC ceases to be held to account in a meaningful way, and that the market impact of the changes that will inevitably follow will go unchecked.