
Commissioning for the BBC Public Services

A consultation on Ofcom's proposed approach to
assessing the BBC's compliance with its requirements

CONSULTATION:

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About this document

The role of the BBC is to produce high quality and distinctive programmes and services which educate, inform and entertain. To do so, the BBC commissions programmes and materials from both BBC and external producers for its television, radio and online public services.

The Charter and Agreement place requirements on the BBC to increase the amount of those programmes and materials it commissions through a contestable process between producers. It is Ofcom's role to enforce those requirements, and to consider whether it is appropriate to impose additional requirements in relation to commissioning for the Public Services to protect fair and effective competition.

This document sets out our proposed approach to fulfilling our role and we now welcome comments from stakeholders.

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1. Executive Summary

- 1.1 The BBC's Mission is to serve all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain. In order to fulfil that Mission, the BBC commissions hundreds of programmes and materials for its television, radio and online Public Services each year. In 2017/18, it spent £2.24bn on content for its UK Public Services.¹
- 1.2 Until recently, programmes broadcast by the BBC were made either by the BBC's own producers in-house or external producers. However, in April 2017, the BBC established BBC Studios as a separate, commercial subsidiary which now houses the BBC's drama, comedy, factual and entertainment production and which can make programmes for both the BBC and other broadcasters. A year later, BBC Studios merged with the BBC's commercial sales and distribution arm, BBC Worldwide, to become an integrated company.
- 1.3 Under the 2016 Charter and Agreement, the BBC's obligations relating to competition for the right to make programmes were extended. By the end of the Charter on 31st December 2027, the BBC will be required to ensure that more of its programmes and materials for the Public Services for radio, television and online are made following a contestable process between different types of producer. Where the BBC offers competition between BBC in-house producers and BBC Studios (BBC producers) and both qualifying and non-qualifying independent producers (external producers) for the right to make programmes, it must do so on fair, reasonable, non-discriminatory and transparent terms (FRNDT).²
- 1.4 Ofcom's role in relation to the BBC's commissioning activity is twofold. First, Ofcom is responsible for enforcing the requirements placed on the BBC by the Agreement to make programming following a contestable process on FRNDT terms and for monitoring the BBC's compliance. Second, Ofcom is required to consider whether it is appropriate to introduce additional requirements in the Operating Framework to protect fair and effective competition in relation to commissioning.
- 1.5 In this document we set out how we propose to undertake that role. Our provisional assessment is that there are potential competition concerns in relation to how the BBC commissions content. However, while there are incentives for the BBC to favour BBC producers, there are also incentives which counteract this. We have also considered the wide-ranging regulatory obligations in relation to commissioning the BBC must already meet (in particular, the requirement to commission on FRNDT terms), as well as the measures undertaken by the BBC to establish detailed commissioning process frameworks and improve its processes to work more effectively with all types of producers.

¹This figure represents the 'total spend by service'. The BBC's Annual Report and Accounts for 2017-18, page 194, http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/reports/pdf/bbc_annualreport_201718.pdf.

²The terms 'BBC producer' and 'external producer' are defined in Schedule 3(7) of the Agreement: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584329/57965_Cm_9366_Print_1_.pdf

- 1.6 We are therefore not minded to impose additional requirements on the BBC to protect fair and effective competition in commissioning. However, we set out in this document our proposed approach to assessing whether the BBC is complying with its obligations as set out in the BBC Agreement, and how we would assess the BBC's compliance in the event of an investigation. First, we set out that the BBC should publish an annual update and submit further information to Ofcom regarding its commissioning activity. This information would allow Ofcom to measure the BBC's progress towards its requirements and assess its performance on an annual basis. Second, we set out proposed factors we are likely to consider when assessing whether the BBC has complied with the requirements in the Agreement, either in response to a complaint or as part of an Ofcom-initiated investigation.
- 1.7 We welcome stakeholders' views on this approach. We also note that Ofcom is currently consulting additionally on modifying some and introducing some new requirements relating to the BBC's commercial activities.³ These consultations will be open for comment for eight weeks and will close on 24 September 2018.

³ <https://www.ofcom.org.uk/consultations-and-statements/category-2/bbc-commercial-trading-activities>

2. Introduction

- 2.1 The BBC is required to fulfil its Mission⁴ to inform, educate and entertain audiences and to promote its Public Purposes⁵ across a range of UK public services. To enable it to show the most creative, highest quality and distinctive output, it commissions programmes and other materials from both BBC and external producers.
- 2.2 As a major commissioner, producer and broadcaster of UK content, and as recipient of the licence fee, the BBC can inevitably have an impact on competition in the wider media sector. It may have a positive effect by increasing choice, stimulating demand or encouraging wider sector innovation. But, in fulfilling its objectives, the BBC may also harm the ability of others to compete effectively.
- 2.3 Under the Charter and Agreement⁶, one of Ofcom's roles is to protect fair and effective competition when the BBC commissions content for the Public Services. We also enforce the requirements in the Agreement which require the BBC to deliver a greater proportion of commissioning opportunities that are open to competition on FRNDT terms.
- 2.4 In this document, we set out how Ofcom proposes to perform that role. In particular, we consider whether we should impose additional requirements on the BBC. Where we have discretion to impose requirements, or to determine their form, we have assessed the position in line with our statutory duties. While the focus of our assessment is the BBC's potential impact on competition, we are also mindful of its wider regulatory obligations, and specifically its Mission and Public Purposes.

Regulation of the BBC

- 2.5 Between them, the Communications Act 2003 (the Act), the Charter and the Agreement give the BBC a range of obligations relating to competition and commissioning and they give Ofcom a number of relevant powers and duties. These reflect the importance of the BBC as a commissioner of content and the potential for its commissioning activities to affect competition between BBC producers and external producers.
- 2.6 The following paragraphs summarise relevant parts of the regulatory framework. Our focus is on those provisions directly concerned with competition and commissioning, especially

⁴ The BBC's mission is defined in Article 5 of the Royal Charter for the continuance of the British Broadcasting Corporation (the Charter):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577829/57964_CM_9365_Charter_Accessible.pdf

⁵ The Public Purposes that the BBC must promote are defined in Article 6 of the Charter.

⁶ An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation (the Agreement):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584329/57965_Cm_9366_Print_1.pdf

those in Schedule 3(7) to the Agreement, although other provisions may also affect the way the BBC fulfils its competition obligations.

The BBC's obligations

- 2.7 The Charter places the BBC under several general duties. Among them, Article 11 requires it to have particular regard to the effects of its activities on competition in the UK. It must seek to avoid adverse impacts on competition which are not necessary for the effective fulfilment of its Mission and its promotion of the Public Purposes and it must have regard to promoting positive impacts on the wider market.⁷ The BBC must also comply with any competition requirements Ofcom imposes on it in the Operating Framework.⁸
- 2.8 Schedule 3(6) and (7) to the Agreement set specific quotas the BBC must meet in connection with the commissioning and production of programmes and materials for the UK Public Services. Schedule 3(6) sets an independent production quota: each year, at least 25% of the time allocated to broadcasting qualifying programmes on BBC television services must be used to broadcast a range and diversity of independent productions. Schedule 3(7) requires the BBC to increase the proportion of opportunities offered through competition in the commissioning process between BBC producers and external ones. We return to the Schedule 3(7) requirements below.
- 2.9 In addition, the Operating Licence for the BBC's UK Public Services, which Ofcom published in October 2017,⁹ includes conditions setting quotas for the amount of programmes that must be made in different parts of the UK, and requiring the BBC to ensure that it accurately represents, authentically portrays and reflects the diverse communities of the UK.¹⁰

Schedule 3(7) competition requirements

- 2.10 Schedule 3(7) to the Agreement imposes specific requirements on the BBC about both the amount and the quality of competition in commissioning. It sets specific quotas on the amount of television, radio and online commissioning opportunities which must be opened up to competition between BBC producers and external producers, and to secure that such competition is fair and effective. These provisions aim to ensure that external producers can compete on a fair footing, and that the benefits of competition - increasing choice, stimulating demand or encouraging wider sector innovation – are realised.

⁷ Article 11 (1) and (2) of the Charter.

⁸ Articles 20(8) and 46(2) of the Charter.

⁹ The BBC's Operating Licence is available here: https://www.ofcom.org.uk/_data/assets/pdf_file/0017/107072/bbc-operating-licence.pdf.

¹⁰ In March 2018 the BBC published the 'BBC Diversity Commissioning Code of Practice': <http://downloads.bbc.co.uk/diversity/pdf/diversity-code-of-practice-2018.pdf>.

- 2.11 The specific quota requirements imposed on the BBC under Schedule 3(7) of the Agreement are, firstly in relation to making relevant television programmes¹¹, that it must:
- a) secure competition for the commissioning of at least 40% of the in-house guarantee¹² for drama, comedy, entertainment and factual programmes by 31st December 2018, alongside maintaining existing levels of competition;
 - b) remove the in-house guarantee for children's, sport and non-news related current affairs programmes by 31st December 2019; and
 - c) secure competition for 100% of relevant TV programmes by 31st December 2027.
- 2.12 There are separate quotas for the radio and online Public Services. The BBC must secure competition in commissioning for at least 60%¹³ of relevant radio programmes¹⁴ by 31st December 2022, and it must secure competition for the commissioning of 100% of relevant online material¹⁵ by 31st December 2027.
- 2.13 Schedule 3(7) is clear that, in meeting the quotas, the BBC is required to ensure that there is genuine competition between BBC producers and external ones (whether independent or not) on a fair, reasonable, non-discriminatory and transparent basis.

BBC transparency and reporting obligations

- 2.14 The Charter also places an emphasis on transparency. Article 36 requires the BBC to publish an annual plan for each financial year. It must include the creative remit and work plan for that year, and provision for the United Kingdom's nations and regions.¹⁶ The BBC sets out its overall regulatory and additional commitments for each of its public services in the Plan.¹⁷
- 2.15 In addition, the BBC must publish an Annual Report. It must include an assessment of how it delivered the creative remit and work plan, and of how it complied with each of its general duties and its regulatory obligations in the Operating Framework.¹⁸

¹¹ 'Relevant television programmes' means all television programmes included in the UK Public Services except-

- (a) Programmes reserved for independent productions;
- (b) News and news-related current affair programmes;
- (c) Any programme where the BBC considers that complying with the obligation would not secure value for money.

¹² The guaranteed allocation of air time to programmes made by BBC in-house producers under clause 56 of the 2006 Agreement.

¹³ Of the total time allocated to broadcasting relevant radio programmes on the UK Public Broadcast Services.

¹⁴ 'Relevant radio programmes' means all network radio programmes included in the UK Public Services except-

- (a) News programmes; and
- (b) Repeats, continuity, simulcasts, EBU material and autoplaced music.

¹⁵ 'Relevant online material' means all online material included in the UK Public Services except-

- (a) Programmes included in the UK Public On Demand Programme Services;
- (b) News and news-related current affairs material; and
- (c) Any material where the BBC considers that complying with the obligation would not secure value for money.

¹⁶ Article 36 of the Charter.

¹⁷ The BBC Annual Plan 2018/19, March 2018:

http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_annual_plan_2018.pdf

¹⁸ Article 37 of the Charter.

Ofcom's role

- 2.16 Ofcom's role is not to tell the BBC which content to commission. Reflecting the impact its commissioning activity could have on competition in the production sector, our powers and duties are concerned with the way the BBC commissions and from whom.
- 2.17 We are required by the Charter to develop an Operating Framework setting requirements on the BBC which we judge to be appropriate to regulate its activities effectively. These must include requirements to protect fair and effective competition generally, and may include requirements relating to commissioning specifically.¹⁹ We are given powers to enforce these requirements, and other regulatory requirements including those in Schedule 3(7) of the Agreement, and to require the BBC to give us information to help us perform our regulatory functions.
- 2.18 We are also responsible for holding the BBC to account in a transparent way. Article 50 of the Charter requires us to publish an Annual Report setting out how we have carried out our main BBC regulatory functions and our assessment of the BBC's compliance with specified requirements, including those in Schedule 3(7).²⁰
- 2.19 The Charter makes clear that, in performing these functions, we have several important duties. In particular, it applies our general duties under section 3 of the Act to our regulation of the BBC.²¹ These include the duty to further the interests of citizens and consumers, where appropriate by promoting competition. In doing that, the Act requires us to have regard to the desirability of promoting competition and the principles under which our regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. The Charter also requires us, when performing our BBC functions, to take into account the desirability of protecting fair and effective competition in the UK.²²
- 2.20 A key issue therefore, given our powers to set the Operating Framework for the BBC, the existing competition requirements in Schedule 3(7) and our general duties, is the extent (if any) to which we should impose additional requirements on the BBC in relation to competition in commissioning. That is, the extent to which we judge it to be necessary and appropriate to impose further requirements to protect fair and effective competition between BBC producers and external producers. We discuss how we propose to fulfil our role in this regard in the following sections of this document.
- 2.21 We have also taken account of Ofcom's legal duty to carry out an impact assessment where our policy decisions are likely to have a significant impact on businesses or the

¹⁹ Article 46(2) and (5) of the Charter and Clause 15(4) of the Agreement.

²⁰ Article 50 of the Charter.

²¹ Article 45(1).

²² In addition, we are required to also consider the object of the BBC to fulfil its Mission and promote the Public Purposes as set out in Article 6 of the Charter, and the requirement for the BBC to comply with its duties under the Charter, including its general duties – see Article 45(2) of the Charter. The BBC's General Duties are set out in Articles 9-17 of the Charter.

public, or when there is a major change in Ofcom's activities.²³ In considering our proposed approach, we have considered the impact on the BBC, independent producers and the production industry generally and viewers and listeners. The analysis set out in this document include such an impact assessment for the purposes of the relevant duties imposed on Ofcom.

- 2.22 We are required by statute to assess the potential impact of all our functions, policies, projects and practices on people with any of the following protected characteristics: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation.²⁴ We refer to groups of people with these protected characteristics as 'equality groups'. We have conducted an equality impact assessment and have concluded that securing fair and effective competition will bring potential benefits to all consumers of BBC output including equality groups; we do not expect that our proposed approach will have any additional positive or adverse impacts on these groups.

Contents

- 2.23 This rest of this consultation document is structured as follows:
- a) Section 3 sets out the **sector context** and the BBC's role within this;
 - b) Section 4 sets out the **potential competition concerns** we have identified and **our proposed approach** to fulfilling our role in this area;
 - c) Section 5 sets out our proposed approach to **assessing the BBC's compliance with its requirements**; and
 - d) Section 6 sets out our proposed approach to **how the BBC should publish and report information** to allow Ofcom to assess the BBC's compliance with its requirements.

²³ Section 7 of the Communications Act 2003

²⁴ As defined in the Equality Act 2010.

3. Sector context

- 3.1 In this section we set out an overview of the television, radio and online production sectors in the UK and the role of the BBC within them. We set out how the BBC commissions for its television, radio and online public services and note the components in each of the BBC's frameworks and processes that are relevant for our assessment.

Television commissioning

Sector context

- 3.2 The UK benefits from a thriving broadcast industry supported by a wide range of producers and broadcasters. Audiences today have more choice of programming and services than ever before, from live television broadcasts by the UK public service broadcasters (PSBs) and commercial television broadcasters, to a range of catch-up and video on demand (VoD) services including subscription-based providers and free online services. Some providers, including the BBC, offer a wide range of these services.
- 3.3 Broadcast television supported by the PSBs is still very popular with UK audiences. According to BARB, the main five PSB channels maintained their year on year share of viewing of 50.9% among individuals in the UK in 2017²⁵; moreover, 81% of individuals have watched at least one of the main PSB channels in a typical week in 2017.²⁶ However, viewing of subscription VoD (SVoD) services such as Netflix and Amazon Prime Video and free online sources are gaining share in audience terms with UK viewers. According to the BARB Establishment Survey, 10.7 million households have at least one of either Netflix or Amazon Prime Video.²⁷ This means that the opportunities available to all types of producers to produce programmes for UK audiences are growing and diversifying.
- 3.4 Despite this, the BBC remains the largest commissioner of original television programmes in the UK and therefore plays an important part in the creative ecology of the UK. While declining overall to a record low, the UK PSBs still spent a total of £2.46bn on all first-run UK-originated content in 2017 and the BBC alone contributed close to half of this amount.²⁸ This means that the opportunities to produce programmes for the BBC are still important for the UK production sector.

²⁵ BARB, individuals (4+), network, as seen in the 'Media Nations 2018: UK' report by Ofcom, page 27:

https://www.ofcom.org.uk/_data/assets/pdf_file/0014/116006/media-nations-2018-uk.pdf. 'Main five PSB channels' includes BBC One, BBC Two, ITV, Channel 4 and Channel 5. The Broadcasters' Audience Research Board (BARB) is a panel of approximately 5,100 homes providing the official broadcast TV measurement for the industry.

²⁶ BARB, individuals (4+), network. The reach criteria is 15+ consecutive minutes, full weeks used. From the 'Media Nations 2018: UK' report by Ofcom, page 27.

²⁷ BARB Establishment Survey data, Q1 2018. This may include those on a free trial. For more information, see: <https://www.barb.co.uk/resources/establishment-survey/>

²⁸ The total BBC spend was £1.16bn including BBC One, BBC Two and the BBC portfolio channels. Figures based on Ofcom/broadcasters calculation as show in the 'Media Nations 2018: UK' report by Ofcom, pages 6 and 40-41.

- 3.5 Opportunities to make programmes for the BBC are available to both BBC producers and external producers. During the previous Charter period, in addition to its 25% independent production quota, the BBC was required to secure competition for the making of 25% of its broadcast hours, ensuring diversity of supply. Industry publication Broadcast reported that the BBC worked with 295 different suppliers in 2017 - an increase of seven on the previous year and of which over 50 were new partners.²⁹
- 3.6 In September 2016, the BBC announced that it proposed to make changes to the way it made programmes by moving some of its in-house production function to a new commercial production entity called BBC Studios. It further announced in November 2017 that it would merge BBC Studios and Worldwide into a combined production and distribution company. As well as pitching ideas to the BBC for new programmes, and continuing to produce the returning programmes brought over from the public service that have not yet been opened to competition, BBC Studios can also produce programmes for other content providers such as Discovery, Channel 4 and PBS.³⁰ Director General Tony Hall has highlighted BBC Studios as allowing the BBC to 'continue to play its crucial role in supporting the successful UK creative economy'.³¹
- 3.7 Broadcasters and content providers are competing to commission the best programmes to attract viewers. At the same time, there is increasing pressure on budgets and spend as noted above. The BBC believes that programme making in recent times has been affected by rising costs in production, sports rights and talent costs and notes its responsibility from 2020 to meet the cost of free TV licences for over-75s³²; in addition, commercial broadcasters have also faced challenges from falling advertising revenues.³³
- 3.8 Broadcasters are therefore seeking to make their content budgets go further. Alternative ways to produce and fund content, such as co-productions, production tax incentives and deficit financing, are now common across many genres; the combined third-party funding for UK first run originated content across the BBC, Channel 4 and Channel 5 has more than doubled over the last ten years with a 19% increase from 2016 to 2017 alone.³⁴ The ability to exploit a successful programme or format is crucial to broadcasters to generate revenue. However, control over these intellectual property rights is also important to producers.

²⁹Broadcast, 'BBC: year of upheaval as BBC Studios launches and charter renewal changes kick in', 12 March 2018:

<https://www.broadcastnow.co.uk/indie-survey-2018/bbc-year-of-upheaval/5127388.article>

³⁰ <https://www.bbcstudios.com/news/bbc-studios-natural-history-unit-wins-historic-commission-from-discovery-channel>; <http://www.channel4.com/info/press/news/bbc-studios-lands-first-c4-commission-to-examine-fatberg-phenomenon>; <http://www.bbc.co.uk/mediacentre/bbcstudios/2018/bbc-studios-pbs-commission>.

³¹ 'BBC Worldwide and BBC Studios to join forces as single commercial organisation', 29 November 2017:

<http://www.bbc.co.uk/mediacentre/latestnews/2017/studios-worldwide>

³² BBC Annual Report and Accounts for 2018-19, page 14.

³³ TV advertising income in 2017 declined by 7.5% in real terms to £3.9bn, with all three categories of broadcaster (commercial PSBs, commercial PSB portfolio channels and non-PSBs) seeing a decline since 2016. See 'Media Nations 2018: UK' report by Ofcom, page 34.

³⁴ We do not have comparable data for ITV or the ITV breakfast licence. See 'Media Nations 2018: UK' report by Ofcom, page 42.

- 3.9 Content production in the UK is undergoing constant and rapid change, and the factors set out above present both opportunities and challenges for broadcasters and producers. They also mean that the way the BBC commissions programmes, and from whom, is important to both the BBC (and BBC Studios) and external producers. They may also give rise to incentives for the BBC to treat BBC Studios more favourably. The promotion and protection of fair and effective competition is therefore important.

How the BBC commissions its television programmes

- 3.10 The BBC goes through a continuous process of identifying programmes which will return to its schedule, or be decommissioned to make room for new ideas. Opportunities for new programmes are created in line with the BBC's overall creative plans and commissioning priorities, which are communicated to producers via its websites and through briefings across the UK. The BBC commissions programmes in three main ways: (i) its Pitch system; (ii) formal tenders; and (iii) specific programme-making opportunities.
- 3.11 Most programmes are commissioned through the Pitch process. Producers – including BBC Studios – develop ideas for programmes and submit them through the BBC's pitching software 'BBC Pitch'³⁵. Producers must be registered with BBC Pitch to submit ideas and must therefore meet the BBC's eligibility criteria to do so.³⁶ Ideas may be submitted before or after interaction with the BBC's commissioners.
- 3.12 The BBC's Commissioning Process Framework sets out the processes it uses for television.³⁷ This framework includes a provisional timescale for how the BBC will deal with pitches it receives from producers, including the various stages of the commissioning process. Further, the BBC's processes for dealing with independent producers are set out in its Code of Practice and it sets out expectations around appropriate diversity in its Commissioning Code of Practice.³⁸
- 3.13 When producers submit their ideas through Pitch, BBC commissioning teams will consider which ideas it is interested in pursuing given their priorities. An idea of interest to the BBC may be commissioned straight away, or may enter a development phase, during which the BBC and producers will work together to develop the idea so it meets the BBC's needs. During this phase, the BBC may also support producers, for example, to obtain funding or access studio facilities.
- 3.14 Once a successful commissioning decision has been made and agreed by commissioners and controllers, a contract will be negotiated between the BBC and the producer, establishing for example ownership of intellectual property rights. For certain commissions, the terms of trade (or business framework) agreed by the BBC and Pact set

³⁵ <https://pitch.bbc.co.uk/>

³⁶ See 'Eligibility criteria': <http://www.bbc.co.uk/commissioning/tv/articles/pitch#eligibility-criteria>

³⁷ BBC Commissioning Process Framework: <http://downloads.bbc.co.uk/commissioning/site/bbc-commissioning-process-framework.pdf>;

³⁸ 'BBC Code of Practice': http://downloads.bbc.co.uk/commissioning/site/code_of_practice.pdf; 'BBC Commissioning Diversity Code of Practice': <http://downloads.bbc.co.uk/diversity/pdf/diversity-code-of-practice-2018.pdf>

out the standard agreements between the BBC and the successful producer including information on who can control and sell the programme or format in secondary markets, how much the BBC will pay for programmes and how it may show programmes on its television and online public services.³⁹

- 3.15 Although programmes resulting from pitches account for most of the BBC's commissions for the television Public Services, the BBC also on occasion operates a formal competitive tendering process in which it invites eligible production companies to pitch for the opportunity to make an existing returning series for which the BBC holds the rights. As of July 2018, the BBC has completed four tender processes for such programmes and is currently offering a fifth opportunity for *Bargain Hunt* and a sixth for coverage of the *Proms*.⁴⁰
- 3.16 In addition, the BBC may seek to meet a specific need in its schedule and will allow producers to submit creative ideas and pitches for a specific opportunity. The BBC has used this approach to invite pitches for individual programme ideas to commission for *Horizon*, a science programme strand.⁴¹
- 3.17 Each of these ways feature some common components of identification of new opportunities by commissioners, the making available of information to producers, the setting of criteria for eligibility to participate, development discussions between commissioners and producers, and decision making. Each of these elements gives the BBC an opportunity to affect competition between producers; we return to this discussion in the next section.

Radio commissioning

Sector context

- 3.18 Audiences in the UK continue to benefit from a thriving audio industry including a live radio sector. The UK listener can now choose from a wide range of radio stations across the country including UK-wide BBC stations, national commercial stations and hundreds of local commercial stations, BBC local and non-BBC local and community radio services across analogue (i.e. AM/FM), DAB (digital audio broadcasting) and TV platforms. Many services can also be accessed online.
- 3.19 The structure of the sector is different to the television sector in terms of opportunities and producers. Radio has a mostly live-oriented schedule and personality-led

³⁹ <https://www.bbc.co.uk/commissioning/tv/articles/how-we-do-business#business-framework>

⁴⁰ 'BBC One daytime series Bargain Hunt announced as next title for competitive tender', 06 February 2016: <http://www.bbc.co.uk/mediacentre/latestnews/2018/bargain-hunt-tender>; 'BBC television coverage of the Proms announced as the next title for competitive tender', 31 May 2018, <http://www.bbc.co.uk/mediacentre/latestnews/2018/proms-tender>. Of the four completed processes, BBC Studios secured the rights to produce *Question of Sport*, *Holby City* and *Doctors*.

⁴¹ 'Horizon: invitation to pitch', 09 December 2016: <http://www.bbc.co.uk/commissioning/news/articles/horizon-invitation-to-pitch-december-2016>. BBC Studios, Windfall Films and Wingspan Productions were successful bidders.

- programming. Currently most production is undertaken by broadcasters in-house; there are fewer opportunities for independent producers to work with big broadcasters on broadcast radio programmes. In addition, according to AudioUK estimates, the largest 15 independent production companies account for 85% of radio turnover in the sector.⁴²
- 3.20 This means that the opportunities offered to the UK radio production sector are different to those for television. Producers are generally more reliant on securing opportunities to pitch and produce new programmes or produce existing ones on a 'work for hire' model than on the ability to exploit the secondary rights and formats for shows they have created due to fewer opportunities for secondary exploitation.
- 3.21 The BBC is the biggest commissioner of independent radio content in the UK and the only live radio broadcaster to offer these opportunities to the sector. It works with BBC producers⁴³ and independent producers to make programmes and materials for its UK network radio stations and its local radio stations.⁴⁴ The BBC spent £289m overall on content for its UK network radio stations alone in 2017-18.⁴⁵
- 3.22 The BBC is required by the current Charter and Agreement open more of its in-house guarantee hours to competition between BBC producers and external producers. This builds on the previous 10% independent production quota imposed by the BBC Trust on BBC network radio stations and on the introduction of a further 10% window of creative competition from 2012-13.⁴⁶ The BBC Trust noted that independent producers won 75% of the hours made available in the radio window of creative competition in 2013-14.⁴⁷ These factors together mean that new opportunities will be available for all types of producers in the sector and that the way those programmes are commissioned - and that competition for them is fair and effective - is critical.
- 3.23 The popularity of new audio formats including podcasts means that the radio and audio production industry is increasingly competitive. Some of the biggest shared audience experiences in recent years have come from popular on-demand audio products including the podcasts *Serial* and *S-Town* developed by This American Life, or *Death in Ice Valley* from the BBC World Service and NRK.

⁴² 'Indie Business Census 2015', a report prepared by Enders Analysis for the Radio Independents Group, 10 March 2015, page 8: <http://www.radioindies.org/images/census/Indie%20Business%20Census%20Survey%202015%20-%2010.03.15.pptx>. In May 2018, the Radio Independents Group became AudioUK.

⁴³ Although BBC in-house remains the biggest BBC producer for radio, we understand that the radio comedy department moved to form part of the commercial BBC Studios alongside the television comedy department. As such, we refer to BBC producers in this section to include those elements of BBC Studios.

⁴⁴ The BBC's UK network stations include: BBC Radio 1, BBC Radio 1Xtra, BBC Radio 2, BBC Radio 3, BBC Radio 4, BBC Radio 5 Live, BBC Radio 5 Live Sports Extra, BBC Radio 6 Music and BBC Radio Asian network.

⁴⁵ The BBC's Annual Report and Accounts for 2017-18, page 64.

⁴⁶ BBC Trust, 'Radio Independent Supply BBC Trust Review', August 2010, pages 6 and 11:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/radio_supply/trust_conclusions.pdf

⁴⁷ BBC Trust, 'The supply arrangements for the production of the BBC's television content, radio content and online content and services', June 2015, page 10:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/content_supply/2015/content_supply_review.pdf

- 3.24 Some larger radio producers are now launching new podcast production studios to take advantage of new opportunities with the BBC and others.⁴⁸ The launch of the *BBC Sounds* application and the BBC's *Podcasting House* shows further how off-schedule listening is growing in the UK; the way in which these off-schedule opportunities are commissioned is therefore important to consider when looking at the BBC's impact on fair and effective competition.

How the BBC commissions its radio programmes

- 3.25 In general, radio schedules tend to offer audiences a regular set of programmes fronted by individuals (or groups), such as Chris Evans, Clara Amfo or Shaun Keaveny, over a longer period. Further, as in TV, some of the most popular programmes are long-running strands or series produced by the BBC in-house teams such as *The Archers* or BBC breakfast shows. This means that where the BBC offers the sector opportunities to produce such existing shows, this will often be on a 'work for hire' basis where producers will have more limited involvement in generating new ideas for programmes.
- 3.26 However, the BBC also offers producers opportunities across its output to put forward new ideas and original creative pitches for new programmes such as comedy programmes or documentaries on BBC Radio 3 and Radio 4. Over the course of the year, the BBC runs several commissioning 'rounds' per network station once it has identified where these opportunities will fit into its schedules. Rounds often consist of specific briefs for certain pre-determined slots on a network station which include a brief editorial description setting out the BBC's requirement - although the BBC also accepts speculative ideas from producers on most network stations.
- 3.27 Pitches put to the BBC by registered independent producers normally use the BBC's Proteus system⁴⁹ – a website for registered producers to submit ideas to the BBC. Depending on the type of programme being commissioned, the BBC will set out the process it expects to follow from those made available in its Radio Commissioning Principles and Process Framework.⁵⁰
- 3.28 Each of the processes – whether for a creative pitch or a 'work for hire' pitch – include a number of common stages where the BBC will identify the opportunity and communicate these to producers, establish the eligibility criteria it intends to apply, require producers to submit a short initial proposal and set out how it will make its decisions. As with television, we consider the potential impact of these components in the next section.

⁴⁸ 'Sound Directions, The Somethin' Else Podcast and Smart Audio Studio', 7th June 2018, <http://www.somethinelse.com/news/sound-directions-podcast-and-smart-audio-studio/>

⁴⁹ <https://ext-proteus.external.bbc.co.uk/>

⁵⁰ 'BBC Radio Commissioning Principles and Process Framework': <http://downloads.bbc.co.uk/radio/commissioning/CommissioningFrameworkPrinciples.pdf>

Online commissioning

- 3.29 The BBC has several online services which it offers to UK audiences including BBC Three, BBC iPlayer, BBC iPlayer Radio and the BBC Sounds application (including off-schedule podcasts), additional children's services (CBBC and CBeebies) and news, sport and weather services. It can commission materials based on either new or existing intellectual property alongside opportunities to provide online technical services for the BBC. In 2016/17, the BBC spent a total of £182.4 million on these services.⁵¹ The BBC noted that its online services had a reach of 63.3% in 2016-17.⁵²
- 3.30 To support its online commissioning, the BBC has produced a New Media Rights Framework which sets guidelines on how the BBC will work with independent producers.⁵³ They are intended to apply to stand-alone new media commissions and not to professional services or new media elements of independent television or radio production.
- 3.31 During the previous Charter period, the BBC was subject to a quota of 25% (by value) for eligible content and services it commissioned from external suppliers. In 2017-18, the BBC reported that 30.9% of its online spend was external.⁵⁴

How the BBC commissions its online materials

- 3.32 The BBC commissions editorial content, technology and software for its online services. It sets out commissioning opportunities on its website.⁵⁵ It offers a tendering process for online commissioning for suppliers who are signed up to one of its BBC digital framework agreements. It also sometimes publishes open tenders for opportunities that fall outside of the scope of the framework agreements.
- 3.33 Ideas for BBC Three that are similar to long-form television content are pitched to the relevant commissioning genre team in a similar manner to television commissioning. Any other BBC Three content which is shorter or different in format tends to be pitched directly to the BBC Three commissioning editor.⁵⁶
- 3.34 While the online commissioning process may be more varied depending on the opportunity offered, we consider that the processes will still feature some of the common elements identified in television and radio production and we look at the potential impact of these in the next section.

⁵¹ The BBC's Annual Report and Accounts for 2017-18, page 65.

⁵² The BBC is updating measurement systems for online reach and did not provide comparable information for 2017-18. The BBC's Annual Report and Accounts for 2017-18, page 65.

⁵³ 'New media rights framework', <http://www.bbc.co.uk/commissioning/online/articles/how-we-work>.

⁵⁴ The BBC's Annual Report and Accounts for 2017-18, page 146.

⁵⁵ See 'Pitching and procurement': <http://www.bbc.co.uk/commissioning/online/articles/how-to-work-with-us>.

⁵⁶ 'BBC Three Commissioning', <http://www.bbc.co.uk/commissioning/tv/articles/bbc-three>

4. Potential competition concerns and our approach

4.1 In this chapter, we describe the potential competition concerns we have identified relating to the BBC's commissioning of programmes and materials for its UK Public Services, as well as possible mitigating factors. Mindful of our role in protecting fair and effective competition and our duty to hold the BBC to account against the commissioning requirements in Schedule 3 of the Agreement, we then set out our proposed approach in light of the potential competition concerns discussed.

Potential competition concerns

4.2 As already described, the BBC plays a major role as a commissioner and broadcaster in the UK's commissioning landscape across television, radio and online. It is a vertically integrated operator, and producers from the commercial BBC Studios can compete for opportunities to make programmes for the BBC alongside other independent producers.

4.3 Audiences, the BBC and external producers can all benefit significantly from fair and effective competition between producers in the commissioning of content. Competition can increase choice and quality, decrease costs, and spur innovation within the sector. Audiences would be able to watch and listen to higher quality content. For the BBC, securing the best programmes is likely to contribute to its Mission to serve audiences through the provision of high quality and distinctive output as set in the Charter. For producers, there are the economic and creative benefits that making content for the BBC can provide.

4.4 However, as a vertically integrated operator, the BBC may, in the absence of regulation, favour BBC Studios or in-house producers, or particular external producers, and commission in a way that is harmful to fair and effective competition. If it did so, given it is a major broadcaster in the UK, this could have a significant impact on the production sector. There is also a risk that the BBC's public funding could be used to subsidise or benefit its commercial subsidiaries. Favouring its own or particular producers could also lead to lower quality, less innovative or less cost-effective programmes, with the consequence of delivering less public value to audiences in the UK.

4.5 There may be several incentives for the BBC to favour its own producers or particular external producers. It may choose to favour BBC Studios or its in-house producers in order to retain and control the intellectual property rights. It may believe that there is benefit of keeping intellectual property 'in-house' where it thinks that the ability to control and sell the programme or format (i.e. selling a programme format in other countries) may result in greater financial returns to the BBC public service. This incentive may be strengthened

further when considering the mission of BBC Studios to be a creative and commercial success and generate revenue for the BBC.⁵⁷

- 4.6 The BBC may also be incentivised to select producers with whom it has a positive track record or historic relationship. It can be legitimate for the BBC to consider the experience and ability of a producer to deliver programmes when it is making commissioning decisions. However, if the BBC were to only commission from a limited group of 'favoured' producers in this way, this could reduce the potential range and diversity of ideas from alternative producers and adversely affect fair and effective competition.
- 4.7 In the absence of appropriate controls, the BBC could act on these incentives in the way that it commissions. There could be opportunities to do so at the different stages of the commissioning process: in the identification of new opportunities by commissioners, in making available information to producers, in the eligibility criteria to compete in competitive processes, in relation to development discussions between commissioners and producers, and in decision making.
- 4.8 The Charter and Agreement recognise these potential concerns and risks to competition. They place obligations on the BBC to ensure that it commissions content in a way that seeks to minimise any adverse impact on fair and effective competition. The Agreement does this primarily by requiring the BBC to make commissioning opportunities contestable, and by specifying that, where it does so, the BBC should proceed on a fair, reasonable, non-discriminatory and transparent basis and evaluate these bids on the same basis.
- 4.9 The Agreement also recognises the risks and the potential impact of distortion from the BBC's relationship with its commercial subsidiaries. It provides that the BBC's commercial activities must not, as a result of the relationship with the Public Services distort the market or create an unfair competitive advantage. Ofcom has set requirements in the Operating Framework to achieve that, including that the BBC operates its commercial subsidiaries at arm's length.
- 4.10 However, the Charter and Agreement also recognise that fair and effective competition may require additional protection. They require us to set the Operating Framework and include in it requirements to protect such competition. They give us the discretion to include in those requirements provisions specifically relating to commissioning. It is, accordingly, appropriate for us to consider whether imposing additional requirements is necessary to fulfil our regulatory role.

Our approach

- 4.11 Although we think there are potential risks to fair and effective competition, our provisional assessment is that, at this stage, there are insufficient grounds to impose additional requirements on the way the BBC commissions. There are five main reasons.

⁵⁷ 'Tony Hall's speech at the launch of the Annual Plan for 2018/19', 28th March 2018: <http://www.bbc.co.uk/mediacentre/speeches/2018/tony-hall-annual-plan>

- 4.12 Firstly, the BBC is subject to trading and separation requirements as set out in Ofcom's Operating Framework which detail how it should act when working with its commercial subsidiaries.⁵⁸ In this context, we note that we have also published a consultation proposing additional reporting requirements which seek to provide transparency on, and build confidence in, the BBC's processes and controls on information exchange between the BBC public service and its commercial subsidiaries.⁵⁹
- 4.13 Second, the provisions of Schedule 3(7) of the Agreement are themselves broad. They commit the BBC to increasing the contestability of commissioning and impose strong general requirements as to the quality of that competition.
- 4.14 Third, the BBC has been subject to requirements to make some of its commissioning opportunities contestable on a fair and transparent basis for a number of years, including the obligations of the 'window of creative competition' for television, radio and online services under the previous Charter and Agreement. The BBC put in place procedures that it considered would ensure that the relevant proportion of its programming was made following a competitive process and, where it did so, independent producers won the large majority of commissions (80 per cent of the hours offered in 2016-17).⁶⁰
- 4.15 Fourth, the BBC has taken steps to ensure confidence in its commissioning processes for the producers it works with and the sector more widely. The BBC's Commissioning Process Framework sets out detailed guidance on the BBC's processes which should apply to all types of producers when working with the BBC. Further, to provide clarity, the BBC sets out specific reporting commitments in that Framework, including a commitment to publish annual updates on its progress towards competition.⁶¹ In addition, the BBC made several commitments on how it would commission content when it proposed to merge BBC Studios and BBC Worldwide.⁶²
- 4.16 Finally, although there is a risk that incentives may remain for the BBC to favour particular producers, there may also be incentives for it to ensure genuine competition in commissioning. In fulfilling its Mission and promoting the Public Purposes, the BBC is aiming to generate a successful programme across its genres which will be popular with audiences. Seeking pitches from, and working with, the widest variety of producers has the potential to produce this outcome.
- 4.17 Considering these points, our provisional judgment is that at present there is no need for further regulation of the way the BBC should commission programmes and materials, either to ensure the BBC's compliance with the requirements in Schedule 3(7) or to protect

⁵⁸ Where BBC producers have access to information about the BBC's commissioning priorities and needs that is not available to the wider market, the BBC should be able to justify why such an exclusive or preferential arrangement with the commercial subsidiaries was necessary and should put in place mechanisms to ensure that the information is only used for the specific purpose for which it was obtained.

⁵⁹ <https://www.ofcom.org.uk/consultations-and-statements/category-2/bbc-commercial-trading-activities>

⁶⁰ BBC Annual Report 2016-17, page 114.

⁶¹ The BBC Commissioning Process Framework, sections 9 and 10: <http://downloads.bbc.co.uk/commissioning/site/bbc-commissioning-process-framework.pdf>

⁶² 'The merger of BBC Studios and BBC Worldwide: The BBC's commitments', pages 4-5:

https://www.ofcom.org.uk/_data/assets/pdf_file/0014/112334/BBC_commitments_to_Ofcom.pdf.

fair and effective competition more widely. We are, however, mindful of the importance of the BBC's commissioning activities and the significant adverse impact any anti-competitive behaviour could have. We have therefore considered whether we should take any further steps to ensure that our proposed approach is effective. We also need to ensure that we have the information necessary to enable us to help us gauge whether that approach continues to be appropriate in the future.

- 4.18 First, where concerns do arise with the BBC's commissioning activity, we have the regulatory tools to investigate this further. Such an investigation would need to consider whether the BBC had commissioned on an FRNDT basis, and could arise as the result of either a stakeholder complaint to Ofcom or as an own-initiative investigation into a potential problem. Information from stakeholders is important in this respect. We also note that the BBC has committed to provide Ofcom with information where it receives a complaint which falls within Ofcom's jurisdiction.⁶³
- 4.19 We would consider each case on its merits, and our assessment is likely to depend on the specific circumstances in question. Nevertheless, we think it would be helpful to set out factors which we expect are likely, in many cases, to be relevant to our assessment. We discuss these factors in the next section.
- 4.20 Second, it is also important that the BBC is held to account in a transparent manner. This should give it increased incentives to comply with the specified requirements relating to commissioning. It should also ensure that stakeholders have appropriate transparency about how the BBC is fulfilling its requirements. Likewise, that Ofcom has the information that helps us to fulfil our regulatory responsibilities, including considering whether further regulatory intervention is appropriate.
- 4.21 To those ends, we also propose to introduce a monitoring and reporting framework to understand how the BBC is commissioning and performing against its obligations. We propose that this approach would support our monitoring of complaints the BBC receives from stakeholders. We discuss potential reporting requirements as part of our proposed framework in section 6.

⁶³ BBC Complaints Framework and Procedures, page 41:

https://ssl.bbc.co.uk/complaints/forms/assets/complaintsnew/resources/BBC_Complaints_Framework.pdf

5. Assessing compliance with the BBC's FRNDT requirement

- 5.1 In this section we set out our proposals for the factors we are likely to take into account when assessing, in particular in the context of an investigation, if the BBC has complied with the requirements in the Agreement regarding FRNDT competition in television, radio and online commissioning.
- 5.2 The factors we propose below, and the way we describe their possible application, are not exhaustive. Whether and how they would apply is likely to vary depending on the case and different factors may be relevant in different circumstances. Nevertheless, they would serve as a broad guide to the type of evidence and factors we might consider.
- 5.3 This section does not set out how Ofcom proposes to monitor and assess the BBC's compliance with its quotas for contestability under Schedule 3(7) of the Agreement. This is set out in the next section on monitoring and reporting.

Enforcement procedures

- 5.4 The BBC commissions hundreds of programmes every year, and the decisions about what it commissions and what programmes best fulfil its Mission and Public Purposes are matters for it, not Ofcom. Although the BBC's regulatory obligations (e.g. arising from the Charter and Agreement and the Operating Licence) have an impact on its programme offering, Ofcom will not get involved with the BBC's creative decisions about what the 'right' programmes are and why some programmes may not be suitable. It is the BBC which has the creative expertise and audience insight to make those judgements. Ofcom's concern is with the way in which the BBC goes about making commissioning decisions to make programmes in a way which help the BBC to meet its Mission and Public Purposes and its regulatory obligations.
- 5.5 Ofcom will also not directly be involved in how the BBC commissions content for the Public Services: we are not prescribing detailed processes it must follow or ex ante requirements it must meet. In the first place, it is for the BBC to establish processes which ensure it meets its obligations. We expect only to consider the BBC's approach to commissioning where we receive a complaint or where we open an investigation of our own initiative because concerns about what it has done or that its commissioning processes are failing to deliver genuine competition on FRNDT terms.⁶⁴
- 5.6 The Charter and Agreement have established a process which requires that complainants take any complaint, including in relation to fair and effective competition in

⁶⁴ Clause 58 of the Agreement.

commissioning, to the BBC first.⁶⁵ Where a complainant disagrees, for example, with the BBC's approach to commissioning for the Public Services, it should first take its complaint to the BBC.

5.7 In general, a complaint should only be made to Ofcom,⁶⁶ where:

- the BBC has failed to resolve a complaint;
- has not resolved it satisfactorily; or
- where, following the resolution of the complaint by the BBC, the complainant considers that the imposition by Ofcom of a sanction may be appropriate.⁶⁷

5.8 We expect that the majority of complaints can and will be resolved through the BBC's complaints process, and that Ofcom will only intervene in a limited number of cases. Nevertheless, Ofcom will maintain oversight on the amount and nature of those complaints. The BBC has committed to providing us with information on complaints it receives which fall within Ofcom's jurisdiction.⁶⁸

5.9 Ofcom has published procedures for making a complaint to Ofcom about the BBC's compliance with the requirements in this document (as well as other competition requirements). Such procedures include other matters which Ofcom are likely to take into account when considering whether to accept a complaint.⁶⁹

Submissions from the parties and Ofcom's analysis

5.10 Parties wishing to make complaints to Ofcom should do so in line with our Procedures for enforcement of BBC competition requirements. They should set out why they believe the BBC has not commissioned on a fair, reasonable, non-discriminatory and transparent basis. We would expect the BBC to provide us with all relevant information about the commissioning process concerned and to make submissions about how it was in accordance with the BBC's obligations.

5.11 The factors we have proposed below, which may be relevant to the question of whether the BBC commissioned in an FRDNT manner, could be used as a guide to the kinds of things we would expect the parties to include in their complaints and submissions. Other factors may be relevant as well.

5.12 Individual commissioning processes should be contestable but Ofcom's remit also extends to protecting fair and effective competition as a whole. We may therefore intervene in individual cases where the complainant alleges the BBC has not commissioned on FRDNT

⁶⁵ Clause 56(4) of the Agreement.

⁶⁶ In exceptional circumstances Ofcom may intervene at an earlier stage to handle and resolve a complaint not resolved by the BBC as set out in Clause 57(2) of the Agreement.

⁶⁷ Article 49(3) of the Agreement specifies that where the BBC has failed to comply with a specified requirement, Ofcom may impose a penalty on the BBC.

⁶⁸ BBC Complaints Framework and Procedures, page 41 – which refers to complaints falling within Ofcom's "remit appeal jurisdiction."

⁶⁹ 'Statement on procedures for enforcement of BBC competition requirements':

https://www.ofcom.org.uk/data/assets/pdf_file/0011/102521/Statement-on-Procedures-for-enforcement-of-BBC-competition-requirements.pdf.

terms. However, those cases are likely to be more suited to resolution by the BBC. Ofcom is most likely to be concerned about matters where a potential substantive adverse effect on competition as a whole can be identified, and the bigger the adverse effects, the more likely we are to be concerned. Cases, or groups of cases, which raise concerns about the commissioning process as a whole are likely to be our highest priority. We would expect the complainant to set out the anti-competitive effects it alleges result from the BBC's behaviour. As part of our analysis, we will assess the specific risks and possible impact on competition that arise from the conduct outlined in the complaint.

- 5.13 Another likely important consideration in our analysis is the BBC's duties and obligations under the Charter and Agreement and how the BBC believes it should best fulfil its Mission and promote the Public Purposes. In its submissions to Ofcom, we would therefore expect the BBC to clearly set out why and how the position it has taken is appropriate to achieve those ends.
- 5.14 It is also possible that Ofcom would decide to open an investigation of its own initiative. For example, following review of information submitted to Ofcom by the BBC⁷⁰, where the BBC continues to get similar complaints from a number of producers over its commissioning practices, or where a number of stakeholders have informally raised the same issue with Ofcom. We would, in the course of such investigations, seek submissions from the BBC on the same issues, and may seek information from third parties.

Factors

- 5.15 We have noted that the commissioning process has different stages: from the identification of new opportunities by commissioners, to making available information to producers, eligibility to participate, development discussions between commissioners and producers, and decision making. We recognise that commissioning decisions will involve creative judgments and will be based on a number of criteria which might differ in different cases. Nonetheless, it is important at each stage that the BBC has the right processes in place and that it applies these and behaves in a way consistent with genuine competition on a FRNDT basis.
- 5.16 We have provisionally identified a number of high-level, in principle factors we expect are likely to be relevant in many cases at different stages of the commissioning process. Some of these are specific to a particular stage (e.g. setting of eligibility criteria), whereas others are likely to be relevant throughout (e.g. transparency). They may apply when the BBC commissions for any of its Public Services (including its television, radio and online Public Services), and whichever commissioning process the BBC has used (whether formal tenders or more informal pitches).

⁷⁰ See more about Ofcom's monitoring of the BBC's compliance with its FRNDT requirements below.

We welcome stakeholder comments on our approach in this area.

Identification of opportunities and transparency of information

- 5.17 Transparency about the BBC's commissioning needs and how the BBC goes about commissioning content is key in ensuring a wide group of producers can submit programme ideas to the BBC and compete fairly for the right to make relevant content.⁷¹

Transparency about the BBC's commissioning needs

- 5.18 Having clear commissioning priorities for its UK Public Services which can be accessed by all producers on an equivalent basis will allow producers pitching to the BBC to develop the most appropriate and specific ideas to support the BBC's objectives, regardless of whether they are a BBC producer or an external one.
- 5.19 The BBC provides information about its commissioning needs by publishing creative plans on an annual basis and by publicising additional information on its commissioning website. It also undertakes commissioning briefings, during which commissioners give further information and flavour about the types of ideas they are looking for. In addition, the BBC publishes specific briefs where it offers a targeted commissioning opportunity, such as an invitation to tender or an invitation to pitch. These are all important tools to disseminate information to producers.
- 5.20 In considering whether the BBC commissioned on a FRNDT basis, we are likely to consider how the BBC communicated its commissioning needs and priorities to the wider production sector. In particular, we may consider the amount of information provided, how it was disseminated to producers, how easily accessible the information was, whether it was provided in a timely fashion, and whether producers could access the same information at the same time.

Transparency about the BBC's commissioning process

- 5.21 Clear commissioning processes help ensure such processes are fair to all involved and give producers clear expectations about timescales and process requirements.
- 5.22 In considering whether the BBC commissioned on a FRNDT basis, we are likely to take account of whether the BBC clearly established its processes for commissioning content and how it communicated them to producers. We would expect the BBC to provide clarity around key stages of the processes, including how it plans to interact with producers, timescales for submitting information and the nature of the decision-making.
- 5.23 In an investigation, we would also expect to consider whether the BBC had applied its procedures and guidance appropriately. We understand there may be circumstances

⁷¹ Transparency around the programmes broadcast by the BBC and compliance with its contestability requirements are dealt with in Section 7 of this consultation.

where the BBC needs to depart from its usual processes. However, where this is the case, we would consider whether the BBC had communicated this appropriately to producers.

Eligibility to pitch and criteria related to the identity of the producer

- 5.24 Competition in the production market enables the BBC to best fulfil its Mission and promote the Public Purposes by providing a greater variety of programmes from which to commission. It is in the BBC's interest to allow the greatest possible number of producers to submit commissioning ideas. Similarly, commissioning programmes from a wide range of producers will enable the BBC to ensure a diversity of voices in its programme offering.
- 5.25 However, the BBC also needs to be confident that producers are able to meet its commissioning needs and priorities. In commissioning programming for the Public Services, we would therefore expect that the BBC will want to assess the ability of producers to deliver their proposed ideas, for example by considering their previous experience.
- 5.26 We would also expect that the BBC will want to consider how working with producers allows it to fulfil the Mission and promote the Public Purposes, for example by commissioning content in different areas of the UK, or to promote diversity. We note that one of the Public Purposes is to reflect, represent and serve the diverse communities of all the UK's nations and regions, and to support the creative economy across the UK, and we would expect the BBC will consider this when setting eligibility and other requirements.
- 5.27 The BBC therefore sets eligibility criteria for access to the BBC's online pitch systems; or for submitting a commissioning proposal in relation to a specific pitch or tender opportunity. The BBC will similarly take such criteria into account when accepting or rejecting proposals at the pitching stage. Nevertheless, we would expect that any eligibility and other requirements the BBC imposes to be linked to the sorts of legitimate objectives described in the previous paragraph and to be necessary to meet them.
- 5.28 In considering whether the BBC commissioned content on a FRNDT basis, we are likely to consider if any eligibility criteria had the effect of unduly limiting producer participation in the commissioning process or unduly favouring a particular producer or type of producer. We note that there may be different ways in which producers could respond to eligibility requirements, for example through co-production or other ways of working. We are also likely to consider whether the BBC has been clear about the criteria which it would use to assess the suitability of a producer and, where appropriate, the relative importance of such criteria, in the context of assessing programme proposals.

Access to commissioners and idea development

- 5.29 Commissioning programmes typically involves a creative exchange between commissioners and producers, in which commissioners are directly involved in the development of the programme ideas submitted to them by producers. This seeks to ensure that the programmes commissioned best meet the broadcaster's priorities and vision. It can also help producers, who can benefit from commissioners' expertise, and it may facilitate or enable access to funding, facilities and services. However, not all ideas come to fruition,

and the process can be time and money consuming for both broadcasters and producers without guarantee of success.

- 5.30 Access to commissioners is often key for producers, whether to get their ideas noticed or to ensure successful development. Such access will depend on a range of factors, including the quality of ideas, a producer's track record in successfully delivering programmes, and the stage of the commissioning process that a producer's idea has reached. However, access to commissioners could also skew a producer's ability to get its ideas noticed. We would therefore expect the BBC to carefully consider how it can engage with a wide range of producers (including producers from all nations and regions across the United Kingdom) so that there is genuine competition between them on a FRNDT basis.
- 5.31 Access to funding and a range of services such as studio facilities is another important factor in successfully developing an idea. The BBC may enable or facilitate such access. The BBC may also impose conditions as part of the development process. It may, for example, require the producer to produce pilot episodes prior to commissioning a programme.
- 5.32 In considering whether the BBC commissioned content on a FRNDT basis, we will usually consider the bases on which the BBC offers producers access to commissioners, funding and facilities. We will also likely consider the conditions the BBC imposes for programme development. We are likely to be concerned if any of these things have the effect of unduly restricting the ability of producers to participate fairly and effectively in commissioning processes.
- 5.33 We note that, in some instances, BBC commissioners and BBC producers may be co-located, for example at Pacific Quay. We would expect the BBC to take steps to ensure that BBC producers do not derive an unfair competitive advantage – such as access to information about commissioning needs that is not available to the wider market – through their co-location with BBC commissioners⁷².

Assessment criteria and decision making

- 5.34 Producers submit thousands of ideas to the BBC every year and the BBC will not develop or make them all. When evaluating producers' ideas for programming for the Public Services, the BBC considers a number of factors or criteria. The BBC will assess, for example, the strength of producers' ideas and the ability of producers to deliver their proposed idea on time and within budget. Assessment criteria may also relate to the BBC's ability to fulfil its Mission and promote the Public Purposes and fulfil its regulatory obligations. However, a decision to take forward an idea does not just involve the application of strict criteria, but also creative judgement for what may work with audiences.

⁷² We also note that under the Trading and Separation requirements, the BBC has certain obligations to ensure operational separation between the Public Service and the commercial subsidiaries. This includes a requirement to "ensure that commercial subsidiaries do not have access to information about the BBC Public Service's strategy, priorities and activities that is not available to the wider market, other than that strictly required to ensure the activities of the BBC's commercial subsidiaries fit with the Mission and Public Purposes or for the fulfilment of any existing commercial relationship."

- 5.35 The quality of an idea, and how it helps the BBC to deliver on its mission and public purposes (as well as the BBC's strategy and creative plan) is for the BBC to assess, and the BBC is free to decide not to commission a proposal. As long as the BBC complies with its regulatory obligations, Ofcom would not intervene in this respect. Even so, we note that the BBC plays an important role in developing new talent. One of its Public Purposes is to show the most creative, highest quality and distinctive output and services. In promoting that purpose, we expect that it will place some focus on innovation and take risks.⁷³
- 5.36 It is important that the BBC offers as much clarity as possible to producers regarding any relevant assessment criteria it will take into account when commissioning, and regarding the relative importance of criteria. In considering whether the BBC commissioned content on a FRNDT basis (and mindful that a commissioning decision does not just involve the application of a formal checklist), we will usually consider both (i) whether any such criteria are objectively justifiable and do not give an unfair advantage to a particular producer or group of producers; and (ii) whether the BBC applied them properly in making its commissioning decision(s). We will also consider whether the results of those discussions were properly communicated to producers.

Contractual terms

- 5.37 The terms on which a commission is made are governed by the contract agreed between the BBC and the producer. Where relevant, contract discussions take place within the framework set by the terms of trade agreed with the trade bodies for independent television and radio production.⁷⁴ The BBC has also published additional guidance on the terms on which it will commission, as well as tariffs. However, there remains scope to agree contracts outside the terms of trade, or to negotiate amendments to terms. In addition, there are no terms of trade for certain contracts (e.g. for some online commissions), and terms of trade only apply to contracts with qualifying independent producers.
- 5.38 The protection offered by the terms of trade (and other published guidance) is important, and, as we noted in our review of the television production sector⁷⁵, they have been critical in the development of the independent production sector. The flexibility to amend contract terms is equally important. The Charter requires the BBC to exercise rigorous stewardship of public money, and in fulfilling that requirement, the BBC will want to ensure it negotiates fair contracts that help secure the best use of public money. However, contractual terms could also lead to unfair practices. For example, if competitive pressure on the producers enabled the BBC to force those producers to accept unfavourable or ambiguous terms.

⁷³ Paragraph 3.17, 'Holding the BBC to account for delivering for audiences':

https://www.ofcom.org.uk/data/assets/pdf_file/0023/107069/bbc-performance-statement.pdf

⁷⁴ 'BBC Business Framework, 7 July 2014: <http://www.bbc.co.uk/commissioning/tv/articles/how-we-do-business#business-framework>

⁷⁵ 'Review of the operation of the television production sector', 23 December 2015:

https://www.ofcom.org.uk/data/assets/pdf_file/0028/82684/tv_production_sector_review.pdf

- 5.39 In considering whether the BBC commissioned content on a FRNDT basis, we will usually, where relevant, consider whether any terms negotiated are aligned with the terms of trade and, where not, whether they are the result of a fair negotiation between the parties.

The BBC's wider regulatory requirements

- 5.40 The BBC determines the creative plans for its Public Services, setting out how the Public Services will fulfil the Mission and promote the Public Purposes. For example, the BBC's creative plans for 2018-19 noted that for children, it would show "memorable content, always available, that helps children create and explore" and set out its priorities in this respect.⁷⁶ The BBC maintains editorial control of the Public Services and makes commissioning decisions to fulfil its creative plans.
- 5.41 In addition, when commissioning programmes for the Public Services, the BBC must meet a broad range of regulatory requirements (as well as its own public commitments). Its regulatory requirements include those set out in the BBC Charter and Agreement, Operating Framework and Operating Licence.
- 5.42 When assessing a complaint, we will therefore take into account the BBC's wider regulatory requirements that it must consider when commissioning programming for the Public Services. As we have noted at various points when discussing the factors above, the BBC's wider regulatory requirements could impact on how it commissions content, for example when setting eligibility criteria or assessing programme proposals. However, such obligations exist alongside the BBC's requirement to commission on a FRNDT basis and the BBC must comply with all of them.

⁷⁶ 'The BBC Annual Plan 2018-19', March 2018:

http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_annual_plan_2018.pdf

6. Our proposed reporting and monitoring approach

- 6.1 In this section, we set out our proposed approach to what the BBC should report to stakeholders and to Ofcom to demonstrate that it is complying with the requirements set out in Schedule 3(7) of the Agreement.⁷⁷
- 6.2 We do not propose that we should impose additional substantive requirements on the BBC about how it commissions programmes and materials for its UK Public Services. However, to ensure it is complying with its obligations, we think that it is necessary to monitor the BBC's commissioning activity on an ongoing basis.
- 6.3 This is because we believe that monitoring the BBC's compliance with the commissioning requirements in a transparent way is important for Ofcom and for stakeholders. It will allow Ofcom to assess whether the regulatory framework is effective and, where concerns are raised, consider whether further action is needed. It will also provide the production sector confidence that the BBC is complying with its requirements. Being held effectively and transparently to account should also supplement the BBC's incentives to comply with its obligations.
- 6.4 The BBC agrees that transparency is important in showing how it is meeting its new regulatory requirements. It has made public commitments about how it will report its progress towards greater contestability and reducing the in-house guarantee in its Commissioning Process Framework.⁷⁸
- 6.5 We set out below the information we therefore propose that the BBC should make available to stakeholders and provide separately to Ofcom. Our proposed approach takes account of the different nature of qualitative and quantitative commissioning requirements the BBC is subject to and the need for any reporting to be proportionate.
- 6.6 In summary, we propose that the BBC should publish, annually, a full update on its progress towards meeting (or its compliance with) the contestability requirements in Schedule 3(7)(1) of the BBC Agreement. We invite the BBC to commit to meeting this expectation below.
- 6.7 We also propose that Ofcom needs to have additional information to enable us to fulfil *our* duties. The BBC already provides us with information on the programmes and materials it commissioned. Where it needs supplementing, the BBC has indicated that it will work with us to develop this. We therefore do not propose to impose any requirements on the BBC in respect of the information to be provided to Ofcom at this stage.

⁷⁷ This section also covers the BBC's compliance with the independent production quota as set out in Schedule 3(6) of the Agreement.

⁷⁸ See Sections 9 and 10 of the Commissioning Process Framework: <http://www.bbc.co.uk/commissioning/tv/articles/who-we-are-how-we-commission>

- 6.8 Alongside information reported by the BBC, we expect that stakeholders will play an important role in holding the BBC to account by raising issues with the BBC and with Ofcom about the BBC's commissioning activity.
- 6.9 We welcome stakeholder views on this, and in particular on whether there is any additional information which it would be useful for Ofcom to obtain in order to assess the BBC's compliance with its FRNDT requirement.

Commissioning information published by the BBC

- 6.10 Under the Charter the BBC must prepare an annual report.⁷⁹ So, too, must Ofcom. These are important in providing transparency about the BBC's compliance with its obligations, including the competition obligations in Schedule 3(6) and (7) of the Agreement.
- 6.11 The BBC has recently published its first Annual Report. The report included information on its progress in meeting some of the contestability requirements as well as its compliance with the independent production quota for television. It also reported network television and radio supply (by genre for television, and by network radio service for radio) by type of producer.⁸⁰
- 6.12 The information reported by the BBC this year is necessary for stakeholders to get an appropriate view of the BBC's commissioning activity, and we expect the BBC to continue to report this information annually.
- 6.13 However, in relation to reporting on its progress to meeting the contestability quota, our provisional assessment is that the BBC has not done enough. It published its progress towards meeting the contestability requirements for television drama, comedy, factual and entertainment, as well as for radio and online. These are ongoing requirements that must be met by 31 December 2018, 31 December 2022 and 31 December 2027, respectively. However, it has omitted to report on its progress towards meeting the contestability requirements for television children's, sport and non-news related current affairs which must be met by 31 December 2019.
- 6.14 It is important that the BBC reports on its progress to achieving the quotas set in the Agreement. This enables Ofcom to see whether it is on track to meeting them and to identify any need for additional regulation or oversight. For example, were the BBC to appear well short of a particular quota, we may wish to discuss with it the steps it plans to take to ensure the target is met and the benefits of competition are realised.
- 6.15 It is also important the BBC publishes this data so stakeholders have confidence the BBC is taking the necessary steps towards compliance. It could help them see where commissioning opportunities are likely to arise and, if appropriate, to inform any complaints to the BBC and/or Ofcom. This sort of transparency would also further incentivise the BBC to meet its obligations. The BBC has indicated its agreement in this area

⁷⁹ Clause 37 of the Charter.

⁸⁰ The BBC's 2017-18 Annual Report and Accounts, page 146-147 and 130.

in its Commissioning Process Framework, which states: 'The BBC will publish progress in its commitment to competition on an annual basis. This will show how much of the existing in-house guarantee has been made available to competition.'⁸¹

- 6.16 These considerations apply in the same way for the children's, sport and non-news related current affairs genres, as for other genres. While the contestability requirement in these genres must be met by a later date than for drama, comedy, factual and entertainment programmes, this will be earlier than for radio and online, on which the *BBC has* reported.
- 6.17 Ofcom intends to assess the BBC's progress in meeting this requirement, and to publish this information in our Annual Report this year. We plan therefore to request that the BBC submits to Ofcom the necessary progress data for children's, sport and non-news related current affairs for the year 2017/18.
- 6.18 In addition, in future, we propose that the BBC should publish (on an annual basis), for every remaining year of the Charter period, its progress towards meeting (or its compliance with) its obligations set out in Schedule 3(7)(1) of the BBC Agreement:
- the quota for drama, comedy, entertainment and factual programmes (Schedule 3(7)(1)(a)(i));
 - the quota for children's, sport and non-news related current affairs (Schedule 3(7)(1)(a)(ii));
 - the quota for all relevant TV programmes (Schedule 3(7)(1)(a)(iii));
 - the quota for radio programmes (Schedule 3(7)(1)(b)); and
 - the quota for online material (Schedule 3(7)(1)(c)).

We invite the BBC to commit to publishing this information in its response to this consultation. In the absence of such commitment, we propose to impose a requirement on the BBC to this effect in the operating framework.

Commissioning information provided to Ofcom

- 6.19 While we propose that publication of the above information is necessary, our provisional view is that that is not sufficient to fulfil our duties. Given the extent of the BBC's commissioning activity and its potential impact on the production sector, the competition requirements for commissioning are key regulatory provisions. It is important Ofcom is vigilant in ensuring the BBC complies with them and that our approach continues to be appropriate. We need additional information in order to be able to assess the BBC's compliance so that we fulfil *our* duties to assess and report on the BBC's performance.
- 6.20 In relation to the amount of programme hours made contestable, Ofcom needs to understand how the BBC has measured its progress towards meeting the requirements. We expect that having access to more granular detail on the programmes produced for, and shown by, the BBC will help us to monitor its compliance over time.

⁸¹ The BBC's Commissioning Process Framework is available at <http://downloads.bbc.co.uk/commissioning/site/bbc-commissioning-process-framework.pdf>

- 6.21 We also need to be able to assess the BBC's compliance with the requirement that competition in commissioning is on a FRNDT basis. One way we might do this would be to require the BBC to provide us with information about every decision made in every commissioning process, and for us to consider each decision in detail. We are not minded to do so, however, on the basis that doing so would be disproportionate (and likely not possible). We have therefore considered alternative approaches.
- 6.22 It appears to us unlikely that there is a single measure which will allow us to assess the BBC's compliance.⁸² However, we propose that collecting and monitoring a range of high-level indicators, which together could be used as signals as to compliance, would be appropriate.
- 6.23 We set out below the information we propose it may be necessary for Ofcom to obtain.

Television

- 6.24 Our provisional view is that it is necessary for Ofcom to have a detailed understanding of the outcome of the BBC's processes (i.e. the programmes the BBC has commissioned as reflected in what was shown on its public services). We refer to this as "output data". This would include, for each programme shown in a given period, information including but not limited to the name and type of producer, the genre, the channel on which the programme was shown, whether the programme was a repeat, acquisition or original commission, whether the programme was commissioned via a contestable process, and any spend information associated with the programme.
- 6.25 Such output data would allow us to understand further the information the BBC publishes in its annual report about its progress towards meeting of and compliance with the contestability quotas. It would also serve as an indicator of whether the outcomes are the result of FRNDT processes. We would expect, for example, that genuinely competitive commissioning processes should, over time, lead to a range and diversity of producers making BBC programmes across genres.
- 6.26 The BBC already submits a large amount of output data to Ofcom as part of its PSB annual data return. Prior to this consultation, we provided the BBC with our views on additional output information we thought was necessary to help monitor its commissioning activities. The BBC agreed to make amendments to this data set to provide this additional output information as part of its PSB annual returns. We therefore do not propose to impose regulatory requirements on the BBC in this respect.
- 6.27 We also think, however, that further information beyond outputs of commissioning processes is necessary for Ofcom to understand the BBC's commissioning, in particular to help ensure its processes are FRNDT and what this means for producers pitching to it. This includes qualitative data, such as the information published by the BBC on its websites or internal guidelines about its commissioning processes. It may also include quantitative

⁸² The BBC also notes that 'there is unlikely to be one single headline measure which indicates that the outcomes of commission reflect genuine competition, based on a level playing field and meritocratic decisions':

<http://www.bbc.co.uk/commissioning/tv/articles/who-we-are-how-we-commission>

data. For example, it may be useful to obtain information related to the number of pitches submitted to the BBC and the proportion of these which were successful. This could help us to consider the BBC's FRDNT requirement, by monitoring the levels of producer participation and the conversion of pitches and bids into successful commissions. This could also help us get a deeper understanding of the BBC's output data.

- 6.28 Again, we do not think these kinds of data points, on their own, could demonstrate whether the BBC is complying with the FRDNT requirements. However, they would give us a set of prima facie indicators as to compliance or where concerns may be arising. Taken together with other things like complaints made to the BBC and/or to Ofcom, we could use these indicators as triggers for more in-depth investigations in appropriate cases and to give us insight into the BBC's commissioning activities over time.

We welcome comments from stakeholders on the information Ofcom should consider collecting, in particular with reference to the pitch success rates referred to above. In light of the responses to the consultation, the types of information we determine will be useful, and the BBC's agreement to provide this data, we will consider the need to impose a regulatory requirement on the BBC.

Radio and online

- 6.29 Our provisional view is that the same principles as set out above for television should be adopted in relation to the BBC's commissioning for the radio and online Public Services. For radio, this means that, as a minimum, we would be provided with similar output data, i.e. information on programmes broadcast on a programme-by-programme basis.
- 6.30 Historically, the BBC has not collected and provided to Ofcom the same amount of detail regarding the programmes and materials it has broadcast or generated for radio. However, the BBC has agreed to work with us to develop an appropriate set of information to be provided to Ofcom.
- 6.31 We recognise that it is more difficult to develop an appropriate set of information for online commissioning, given the more varied nature of opportunities. For the online Public Services, materials are generally not provided in a set schedule and can take a wide range of formats. We propose to work with the BBC to establish an appropriate monitoring framework for these commissions. However, we welcome any contributions from stakeholders on the appropriate metrics for this type of commissioning activity.
- 6.32 In light of the above, we do not propose to introduce any additional reporting requirements on the BBC in relation to its radio and online Public Services at this stage. However, this approach relies on the BBC delivering an appropriate reporting framework to Ofcom within a reasonable period. We expect the BBC to be able to deliver detailed information to Ofcom by the time of its next Annual Report in 2019.

We welcome stakeholder comments on the scope of Ofcom's proposed monitoring approach for the BBC's radio and online public services.

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 24 September 2018.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/commissioning-bbc-public-services>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to bbccommissioning.consultation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address is for this consultation only and will not be valid after 31 October 2018.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- BBC Commissioning project
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential).
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 If you want to discuss the issues and questions raised in this consultation, please contact Oliver Rollinson on 020 7981 3196, or by email to oliver.rollinson@ofcom.org.uk.

Confidentiality

- A1.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.
- A1.11 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A1.14 Following this consultation period, Ofcom plans to publish a statement by the end of 2018.
- A1.15 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A1.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.17 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact Steve Gettings, Ofcom's consultation champion:

Commissioning for the BBC's Public Services

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title: organisation realise

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)