



Consultation: Assessing the impact of proposed changes to the BBC's public service activities: Proposals for changes to our guidance

Consultation response

23 February 2026

1. Introduction

We'd like to thank Ofcom for acting swiftly after the signing of the updated Framework Agreement by updating their guidance on Assessing the impact of proposed changes to the BBC's public service activities.

The consultation removes references to "new services" being automatically considered a material change. It also reflects Ofcom's new power to impose conditions or modifications following a short assessment. These are technical changes to which we have no comments on Ofcom's implementation.

However, we have some concerns in Ofcom's implementation of the guidance, how the current guidance works in practice and the proposed changes for approving a material change without conducting a BBC Competition Assessment or short assessment. We discuss these below.

2. How Ofcom will decide whether a BBC change can be approved without conducting a competition assessment

We welcome the flexibility provided by the updated Framework Agreement and the proposed additions to Ofcom's guidance.

2.1 BBC's engagement

We consider that we currently have a robust approach to engagement as part of the Public Interest Test ("PIT") process. Prior notification of proposed changes is made as part of our Annual Plan process as envisaged by our Charter, or occasionally in speeches and other announcements when developments occur during the year.

We engage with interested parties in good faith during our consultation periods.

However, there is an inherent tension in engagement on a PIT with commercial stakeholders as we will already have identified a likely significant adverse impact on competition. A company that is likely to be adversely affected by our proposal will remain opposed regardless of the public value that might be generated or the level and quality of the BBC's engagement with them.

In line with our general duties, the BBC has been open in each of the PIT consultations we have carried out to refine our proposed changes to services where we consider such adaptations: i) support our delivery of public value; ii) enable us to serve our audience; and iii) do not detract from our intended strategy.

For both the proposed BBC Radio 2 extension and the proposal to turn Radio 5 Live extra into a full-time station, between consultation and submission of the PIT we made substantial changes to the propositions. On the former we had increased the amount of speech and news content, and with the latter we reduced the broadcast schedule hours. On the other hand, although it was suggested by commercial radio stakeholders, we did not include news bulletins in the proposed Radio 1 Anthems, Radio 1 Dance and Radio 3 Unwind schedules as this would have undermined the .

The BBC takes care to engage at a time when modifications can be made to our proposals. Effective engagement cannot, however, mean that we must adopt any proposal put to us by interested parties. It must be for the BBC to decide whether or not to modify our proposals as a result of stakeholder engagement. Our practice in our published submission to Ofcom has been to explain the reasoning for why we have accepted or rejected modifications. Ofcom should reflect this in their guidance and be clear that their assessment is about the process the BBC had adopted and not the outcome.

4.43 ... A) Whether the BBC has engaged with interested parties at a stage where it is still realistic that input could meaningfully influence proposals in a manner which mitigates potential adverse impacts on fair and effective competition.
Where relevant, we will take account of changes the BBC has made to its proposals in response to such engagement.

One of Ofcom's proposed criteria is that we have ensured sufficient time and detail in line with its guidance, but has now provided further expansion on this. It has been our practice to consult for a 4 to 6 week period on PITs.¹ Ofcom uses a similar standard for its consultation on its PIT decisions and for this present consultation. We consider it is important that Ofcom is clear in its guidance that this will normally be an appropriate length of consultation on PITs. Ofcom should not create a route for stakeholders who may have an incentive to delay improvements to the BBC's services to extend the process through strategic delays.

In regards to detail, in our most recent PIT we published more information than we had during prior PITs at the time of consultation. We welcome expanded guidance on the level of analysis Ofcom considers appropriate for consultation.

2.2 BBC Assessment

We do not have any concerns with Ofcom's additional guidance around the assessment that the BBC has conducted as part of its PIT and determining the need for a competition assessment. This reflects our longstanding practice. For every PIT we have engaged with Ofcom in good faith on the development of our analytical approach in particular where we conduct audience surveys and with the development of our impact modelling. This has supported the removal of duplication in the process seen in earlier PITs.

As was seen in the process for the PIT for our new digital radio stations, even where Ofcom has undertaken a full BCA, Ofcom have in practice adopted the BBC modelling rather than starting from scratch. In the most recent assessment Ofcom made minimal changes to the modelling inputs, which resulted in a limited difference to the outturn impact.

We take the investment of resources in a PIT very seriously treating it as a deliberative, thoughtful exercise in understanding the potential impact of our proposed service changes. Regarding paragraph 4.45, we will only be launching a PIT where we believe we have a strong case based on the legal test and therefore a high chance of success. The BBC is under a general duty to ensure rigorous stewardship of public money and must account for value for money, amongst other things.² Were the BBC to do more speculative PITs or if we did not undertake a balanced and robust analysis, this would be a waste of the licence fee. For every PIT that is taken forward, a range of other proposals will have been assessed and not taken forward.

2.3 Impact of the scale of change

In its proposed guidance Ofcom sets out that:

4.18 The potential impacts of a change may be a factor we consider when determining whether a competition assessment is needed. We consider that where a BBC proposal has a large and compelling case to provide public value,

¹ For the new digital music stations and Radio 5 Sports Extra we consulted from 14 February to 27 March 2024. For Radio Cymru 2 we consulted between 27 July and 31 August 2023

² Charter article 16 and article 16(4) in particular

and the adverse impacts on fair and effective competition are small and necessary relevant to that public value, we would be less likely to need to undertake a competition assessment.

4.19 We propose to add the following guidance:

a) Where there is clearly a large and compelling public value case, and the adverse effects on fair and effective competition appear both small and necessary relative to the public value we would be more likely to consider not undertaking a BCA;

As part of its general duties under the Charter the BBC must have particular regard to the effects of its activities on competition in the United Kingdom.³ Further, the BBC Board will only decide on a PIT where the proposed change has:

...no adverse impact on fair and effective competition which is **not necessary** for the effective fulfilment of the Mission and the promotion of the Public Purposes; and
the public value of the proposed change justifies any adverse impact on fair and effective competition.⁴

The *and necessary* is therefore duplicative of the overall test. In agreeing with any finding that the PIT is met, Ofcom is therefore concluding that any identified harm to fair and effective competition is necessary for the fulfil of the Mission and Public Purposes. Ofcom instead appears to be proposing a scale factor where the public value case is sufficiently compelling vis a vis the size of the harm identified. We suggest the following modification:

a) Where there is clearly a large and compelling public value case, and the adverse effects on fair and effective competition appear ~~both small and necessary~~ relative to the public value we would be more likely to consider not undertaking a BCA;

2.4 How Ofcom will consider these factors and inviting comment

We have no additional comments and welcome Ofcom's pragmatic approach.

³ Charter Paragraph 11

⁴ Framework Agreement Clause 8(1)(b) & (c)

3. Engagement and consultation on non-material changes

While not covered in this consultation we encourage Ofcom to review its specified requirement and guidance on stakeholder engagement during the materiality stage. In its review concluded in April 2023, Ofcom introduced a new specified requirement:

The BBC must publicise planned changes to its public service activities in sufficient detail, and in sufficient time, to enable stakeholders to comment during an assessment of materiality by the BBC.

And amended its guidance to include the following paragraph:

The BBC should make reasonable efforts to seek dialogue with parties who may be affected by the change as part of its consideration of whether the change is material. We would expect the BBC to explain how it has engaged with stakeholders, and taken account of this engagement, as part of any materiality assessment.⁵

We have two objections to this requirement and the related guidance.

First, as we stated at the time, we consider that this is a significant misinterpretation of the requirements of the Charter and Agreement.

These requirements go significantly beyond the intention of the Charter and Agreement extending as they do to all changes the BBC plans to make to its public service activities. Article 36 of the Charter requires that the BBC publishes an Annual Plan which includes a requirement that it includes “any significant developments planned for the year including any material changes to the UK Public Services and commercial activities”.⁶ In the interests of transparency and to avoid pre-judgement of any materiality assessment, the BBC has gone further than strictly required and typically listed those proposed changes that are (a) known at the point the Annual Plan is published and (b) that are likely to be assessed for materiality.

However, there is no indication in the Charter and Agreement that there is any expectation that the transparency and stakeholder engagement requirements set out for material changes should extend to non-material changes. To do so would significantly impinge on the BBC’s ability to operate; particularly when it must do so in a market characterised by rapid and repeated change to services.

This is to some extent recognised in the BBC’s policy and Ofcom’s guidance in relation to “business-as-usual” changes.⁷ But this still leaves a set of changes that are highly unlikely to be material, will not have a significant adverse impact on fair and effective competition, and therefore will not require a PIT, but are not “business-as-usual”.

⁵ [How Ofcom regulates the BBC’s impact on competition: Changes to guidance and requirements](#), Ofcom, April 2023, p.23.

⁶ [BBC Charter](#), article 36(2) and definition of “work plan” in article 63.

⁷ [Policy on material changes to the BBC’s public service activities and commercial activities](#), BBC, August 2017, paragraph 2.3 and [Guidance for assessing the impact of proposed changes to the BBC’s public service activities](#), Ofcom, April 2023, paragraph 4.10.

Ofcom's current requirements essentially require us to consult competitors on such developments.

In its April 2023 statement Ofcom suggested that it was necessary for stakeholders to be engaged to understand "how BBC proposals may impact their businesses, and to raise informed and relevant concerns with the BBC while its plans are still at an early stage of development." Ofcom also stated that it did not "think that this disproportionately increases the regulatory burden on the BBC" and attempted to quantify the obligation and set expectations for external stakeholders.

However, the protection envisaged in the Charter and Agreement for fair and effective competition (and therefore external stakeholders) is contingent on detailed knowledge of the BBC's non-material plans, but rather on the fact that that Ofcom can intervene and direct the BBC to carry out a PIT if it considers that the BBC is making a change that is likely to be material without publishing the change and carrying out a PIT.

Second, in practice, our experience is that the requirement and guidance has created a disproportionate burden. Our experience since the launch of the guidance has been stakeholders challenging the reasonable timescales the BBC has set in line with Ofcom's guidance and requests for a disproportionate range of information that is beyond the scope and scale of the materiality test. This has yielded little in the way of constructive engagement. Stakeholders have predominantly focussed on process issues and attempting to show that the BBC has not followed the guidance, rather than substantive response on the potential impact of our proposal. This has diverted resources (for both the BBC and stakeholders) and added delay into our processes for, definitionally, low risk activity.

In summary, the specified requirement and guidance goes beyond the scope of the expectation in the Charter and Agreement for the materiality test. We are concerned that the requirement for engagement on changes that are not material significantly delays and limits our ability to develop and innovate services, increases our compliance risk with competition law and gives those stakeholders an advance opportunity to develop their services in response. The updating of Ofcom's guidance in response to the changes to the Agreement allows for this overreach to be addressed.

We therefore ask that Ofcom remove the specified requirement and related guidance. We will continue to notify stakeholders of potential changes via our Annual Plan or within other announcements or briefings throughout the year, at which points concerns can be raised by stakeholders.

Annex 1: Ofcom's consultation questions

Question 1: Do you agree with our proposals to add guidance on how we will consider the BBC's engagement with stakeholder as a factor in determining whether a competition is required?

We consider that Ofcom needs to be clear on what it means by *sufficient time ... to allow third parties to understand the proposal and its analysis fully and provide constructive input*. We currently follow best practice for public consultation and are concerned that Ofcom is requiring us to go significantly beyond this.

Question 2: Do you agree with our proposals to add guidance on how we will consider the BBC's assessment as a factor in determining whether a competition assessment is required?

We have no substantive comments on Ofcom's proposed amendments.

Question 3: Do you agree with our proposal to add guidance on how we will consider the impact of the scale of a change?

We consider Ofcom is proposing guidance that is duplicative of the test in this area. We consider the same outcome could be achieved by dropping the *and necessary* from the proposed amendment:

- a) Where there is clearly a large and compelling public value case, and the adverse effects on fair and effective competition appear ~~both small and necessary~~ relative to the public value we would be more likely to consider not undertaking a BCA

Question 4: Do you agree with our proposal to set out in guidance how we will consider a range of factors in determining whether a competition assessment is required for a BBC change?

We have no substantive comments on Ofcom's proposed amendments. We welcome Ofcom's consideration that there may also be instances where it is appropriate for Ofcom to consider whether the resources needed to conduct a full assessment are proportionate to the scale of the proposal. The BBC funds Ofcom's activity through the licence fee. It should be used efficiently.

Question 5: Do you agree with our proposal to set out, in light of our new option to not undertake a competition assessment, when we will invite third party comment on our determination?

We consider this a technical amendment and have no substantive comments on Ofcom's proposal.

Question 6: Do you agree with our proposed revisions to our guidance to clarify when a shorter assessment may be appropriate?

We consider this a technical amendment and have no substantive comments on Ofcom's proposal.

Question 7: Do you agree with our proposed revision to the guidance in order to clarify the text in light of other changes to our guidance?

We consider this a technical amendment and have no substantive comments on Ofcom's proposal.

Question 8: Do you agree with our proposed revisions to the guidance to reflect the change to the Agreement (at Clause 9)?

We consider this a technical amendment and have no substantive comments on Ofcom's proposal.

Question 9: Do you agree with our proposed revisions to the guidance to reflect the change to the Agreement (at Clause 11)?

We consider this a technical amendment and have no substantive comments on Ofcom's proposal.