



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

Response from Boom Radio

Executive summary

- The underlying rationale, and the legal basis, for regulating the market impact of the BBC are largely unchanged.
- It seems irrational to be holding this consultation with Charter Review under way, when the future of every aspect of the BBC and how it is regulated is uncertain.
- The BBC retains significant market power in radio.
- No organisation – least of all the BBC – is able to regulate itself objectively or in a way that is contrary to its own interests.
- When proposing new DAB services in 2024, the BBC was secretive and evasive, deliberately avoiding stakeholder engagement. Ofcom's failure to recognise and regulate this behaviour is deeply concerning given that it now proposes to make it easier for the BBC to make potentially harmful changes if it persuades Ofcom it has been transparent and pro-active at engaging with affected competitors.
- It is not plausible that the BBC would conduct a balanced and objective Public Interest Test, or that it would permit its own employees to reach an adverse finding in such a test. Public interest tests should nonetheless be robust and can have value if they make an evidence-based case for change.
- The BBC is not well placed to assess the impact of its services on markets in which it is not a commercial participant and where it lacks both knowledge of how the markets function and access to the necessary data to understand it.
- As our experience with R2X suggests, the BBC will sometimes attempt to make a public value case for change that is not supported – and may be directly contradicted - by the available evidence.
- In light of the above, we need Ofcom to remain vigilant and continue to apply strict scrutiny to any proposed BBC changes. Ofcom's desire for administrative efficiency does not justify making it easier for the BBC to inflict harm on competitors.
- Compliance by the BBC with all the requirements discussed in this consultation is neither onerous nor disproportionate and should be Ofcom's minimum expectation when assessing BBC proposals.



- The proposals in Questions 5-9 are sensible and we support them.



Background and overview

1. Boom Radio is the commercial radio station targeting the Baby Boomer generation, playing a wide mix of music from the '60s and '70s, hosted by presenters familiar to our audience. We are the most successful of all the recent radio station launches, with 1 million regular listeners and with unprecedented levels of listener loyalty. We also have two spin-off services: Boom Light serving those 70 and over; and Boom Rock.
2. Our response to this consultation is informed by our recent experience mounting a challenge to the BBC's proposal for a Radio 2 extension service ("R2X"), through a lengthy series of materiality assessments, public interest tests and a broadcast competition assessment. Although we were ultimately successful in ensuring that R2X did not win regulatory approval – because the considerable competitive harm it would have caused was not justified by the negligible public value it would have created – we identified a number of weaknesses in the current regulatory approach when assessing the competitive impact of new BBC services. The proposals that Ofcom is now considering will further weaken protection for smaller independent operators like Boom.
3. The underlying rationale for regulating the market impact of the BBC is largely unchanged. Its funding by the licence fee puts the BBC in a uniquely privileged position. Historically, the BBC's habitual misuse of this privilege – in sectors from magazines to educational programmes to sports rights – by 'crowding out' commercial investment and innovation, is why Ofcom regulation of the BBC's market impact was introduced. As we saw with R2X, there remain parts of the media ecosystem where the BBC's ability – and motivation – to crowd out new market entrants is undiminished.
4. We acknowledge the need for the BBC to be able to respond quickly to rapid change in the media industry. But not all media sectors are changing at the same pace or in the same way. In radio, unlike TV or online, it remains the case that the BBC has a dominant market position, with a listening share (42.8%) substantially greater than either Global (25.4%) or Bauer (19.6%). The BBC's competitors in radio are national and local operators, not huge multinational tech giants, and the barriers to entry in radio are low so, in a well-regulated market it is possible for small, independent operators – like Boom – to thrive. Robust regulation of the BBC's market impact is much more relevant in radio than it is in TV or online. It is important to have regulatory processes that recognise these differences and do not assume that a single set of principles can be applied equally across all media.
5. We question the timing of this consultation. The BBC Charter Review process is already under way and will dominate all discussions on the BBC's strategy and future. The BBC is also currently without a permanent Director General. Everything about the BBC's mission, purposes, direction, operation and funding is up in the air. The management,



governance and regulatory structures of the BBC have an uncertain future. The BBC has faced unprecedented and uncomfortable challenges and errors in this Charter period and it might be argued that the role of the BBC Trust has been missed. The Trust did, on occasions, reverse decisions from the BBC Executive. If such a body were to return, it would doubtless have a role in this process. This consultation is, in part, motivated by seeking more efficient use of Ofcom's resources. We question whether consulting now on what might soon be a redundant set of guidelines might itself be a poor use of Ofcom's resources.

6. We had originally assumed that, with Charter Review under way, it would be unwise for the BBC to be considering material changes to their services while this process is underway and while they lack permanent strategic leadership. It seemed extremely unlikely that the processes Ofcom is now consulting on would be invoked again before they, potentially, will need to be rewritten from scratch to accommodate the requirements of the new Charter. However, since the launch of this consultation, the BBC has announced a plan to launch an online spin-off of 6Music providing a stream of the same popular mainstream rock music already provided in abundance by several commercial stations including Boom Rock. In making this proposal the BBC is displaying, again, all the same behaviours and characteristics that we saw with its 2024 DAB proposals: withholding of information and a refusal to engage with relevant stakeholders; an overestimate of the public value and underestimate of the market impact of the proposal, with no credible supporting evidence; and a proposed new service entirely lacking in originality and serving no public purpose. Radiocentre has made a submission to the BBC and Ofcom on the 6Music proposal separately from this consultation. As Ofcom considers how it regulates the BBC we trust it will recognise that there is a pattern of behaviour here that gives us reasonable grounds for concern.
7. Internal BBC assessments on market impact are conducted by BBC employees without even the pretence of Chinese walls or an arms-length relationship. Their purpose is to repeat and reinforce the case for a new BBC service, not to scrutinise it. The BBC's case for R2X was largely based on a series of demonstrably misleading assertions that were contradicted by the evidence we presented (much of which was also available to the BBC the whole time). The BBC's materiality assessment and public interest test were principally exercises in self-validation. We expect that the BBC will continue to make determinations in its own interests, and these proposed new guidelines will make it easier for it to do so with impunity. **We remind Ofcom that the R2X proposal passed every materiality and public interest test conducted by the BBC before failing those tests when conducted by Ofcom.** Were the proposed new rules in place two years ago, when the BBC sought to launch R2X, we fear the BBC would have had a much greater chance of succeeding and consequently of putting Boom out of business.

Consultation questions

- 1) **Do you agree with our proposals to add guidance on how we will consider the BBC's engagement with stakeholders as a factor in determining whether a competition assessment is required?**

8. We do not agree with these proposals. What we saw with the R2X proposal were repeated, deliberate and flagrant breaches by the BBC of the current requirements on communication and stakeholder engagement, and little will from Ofcom in enforcing them. Were this new process in place and Ofcom took a similarly relaxed view on the BBC's lack of engagement, the R2X proposal – which was rejected only after a full Ofcom Competition Assessment – could have cleared this initial hurdle and then might well have received no further scrutiny.

9. As the consultation document notes, the BBC is already under an obligation “to be more transparent with stakeholders about its plans and more consistent about how it makes them public.”¹ The aims were “to support a more open dialogue between stakeholders and the BBC about changes to BBC services”²; “to ensure that the BBC informs stakeholders about planned changes which are likely to be subject to an assessment of materiality”³; and to “ensure that stakeholders have sufficient information and consistent opportunities to consider 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*”⁴ [emphasis added].

10. Despite this, the BBC put considerable effort into avoiding stakeholder engagement over its R2X plans. We believe the BBC acted very deliberately to avoid stakeholder engagement in an attempt to minimise our involvement in the regulatory processes that were to follow. The BBC kept secret its plans for new national DAB services right up to their public announcement on 7 February 2024, delaying the publication of the October 2023 BBC board minutes (which recorded the board's approval for the plans) until after the public announcement; issuing categorical denials (including to Radiocentre) in response to media rumours in June 2023 that an oldies music radio station was being planned; and keeping the plans out of the BBC's Annual Plan. Even when the public announcement was made, and although Boom was clearly the commercial service most directly affected by R2X, no attempt was made to engage with us, and we had to reach out to the BBC to ensure we were included in the process.

¹ Ofcom statement - How Ofcom regulates the BBC's impact on competition - Changes to guidance and requirements, April 2023, p8

² Ibid, p8

³ Ibid, p18

⁴ Ibid, p21

11. The BBC's materiality assessments for the online streams of the proposed services were conducted almost entirely in secret. Nothing was published, there were no invitations to respond or contribute, there was no published process or deadline, and we did not know who within the BBC was conducting the assessment, or who the final decision maker(s) would be. After we demanded to be involved in this process, we were invited to a meeting at which a presentation with very limited information was shared with us. The data in the presentation indicated that the audience projections for the proposed services were erroneous, having been compiled by applying invalid methodology to incompatible sets of data. To be clear, this was not a difference of opinion, it was about the BBC using wholly inaccurate data on which the plan had been built. We raised this with the BBC and were told, only after their materiality assessment had been completed, that "the short presentation we shared with you in early March was not the materiality assessment ... [but] some initial thinking shared for the purpose of having an informed discussion."⁵ There was, throughout this process, a very obvious failure in both transparency and engagement.
12. Ofcom also proposes that it should consider whether the BBC has "provided sufficient ... detail to allow third parties to understand the proposal." Here, again, we find in our experience of the R2X processes no reassurance that this guideline will be meaningfully enforced. With respect to the proven abilities of Ofcom, the regulator is not aware of the challenges faced by other businesses and thus the nature of the detail required from the BBC until other businesses have an opportunity to make that clear.
13. The BBC is already required to "ensure stakeholders have sufficient information ... to consider how BBC proposals may impact their businesses, and to raise informed and relevant concerns with the BBC." Throughout the BBC's processes on R2X, even the information that they did publish was woefully inadequate and sparse. Meaningful detail that would help stakeholders understand how the stations would sound, how they would operate, be marketed, and be funded was absent. There were bold, but wholly unsupported, claims about the proposed stations' public value, and there were numerous misleading or untrue claims – about the distinctiveness of the services; the competitive landscape; the budget for the services; and the likely audiences – that were contradicted by the evidence presented by Boom, Radiocentre and others. Whilst commercial radio operators need a full understanding of the competitive backdrop to operate their businesses, the BBC's unique position and role does not always necessitate this and thus, as was clear in the R2X proposal, its understanding of the radio environment is surprisingly poor. It is also the case that the BBC Service Licence places so few specific demands on individual radio services; and requirements are so vague that it is impossible to ensure that the incremental public value will be delivered.

⁵ Letter from Chris Rowsell, BBC to Matt Peyton, Radiocentre

14. The service description for R2X covered less than two pages of the public interest test consultation document. In our response, we described the proposals as “vague and incomplete” and noted that “nowhere is a clear sense given of how the station will sound.”⁶ We detailed the vital information that seemed to be missing in a 17-point list, and we noted that we had requested further information from the BBC, who had not provided a substantive response. As we observed at the time, “It is impossible for [stakeholders] to make any kind of informed comment on these proposals because so little genuine information is provided.”⁷ The revised proposal that emerged from the PIT was not much better, and our response to Ofcom’s BCA listed six outstanding unanswered questions along with six new questions raised by the BBC’s new document. It was not just in programming that there was insufficient information for us to raise informed concerns. R2X’s proposed budget was clearly insufficient to deliver the service proposed, but no financial breakdown was offered, and there was no detail on the allocation to R2X of key central expenses such as music rights and marketing.
15. Ofcom itself, in its provisional determination on R2X and the other proposed new services, highlighted six areas where the BBC had provided inadequate information for Ofcom to make an assessment, and eleven instances of when Ofcom had to ask the BBC for more information as part of the BCA – information that was never made available to other stakeholders. Despite this, however, Ofcom was silent on the broader question of whether the BBC satisfied its obligation to provide stakeholders with “sufficient information”.
16. This was a failure to comply with the obligation to engage on two levels. First, there was the intentional refusal to engage “while its plans are still at an early stage of development”. It is likely that the BBC began formulating its plans for new DAB services some time in early 2023 in order to have them ready for board approval in October. There was perhaps a period of a year before the public announcement in February 2024 when the BBC could have fulfilled its obligation to engage with stakeholders, and it chose not to. Secondly, and more seriously, there were repeated and deliberate acts to avoid or minimise engagement – delaying board minutes, issuing denials, keeping plans secret, suppressing information about processes, and providing incomplete and misleading information in published documents. Throughout the processes leading up to Ofcom’s rejection of the R2X proposal, we repeatedly made Ofcom aware of the BBC’s breaches of its obligation to engage, and of our concerns about them.
17. We detail how the BBC behaved during this process not to relitigate old disputes, but to demonstrate just how far short of complying with its transparency and engagement

⁶ Boom Radio response to BBC public interest test on Radio 2 extension, p11

⁷ Ibid, p12

obligations the BBC fell, and to highlight that this was not carelessness or neglect – it was concerted, deliberate, repeated, calculated action to evade scrutiny and push through proposals that would cause us harm, without giving us the chance to object.

18. We also want to provide context for our objection to Ofcom’s new proposed guidance now. Despite the BBC’s conduct, Ofcom was dismissive of our complaints, stating simply that “we are satisfied that the interested parties were given a suitable opportunity to comment on the BBC’s PITs – as required under the Agreement – at an early enough stage where they could meaningfully influence the BBC’s final proposals to mitigate potential adverse impacts on fair and effective competition.”⁸ More alarmingly still, Ofcom’s Annual Report on the BBC 2024-25, which includes mention of the DAB BCAs, makes the astonishing claim that: “The BBC has made improvements in [transparency] ... It has also improved in communicating proposed changes.”
19. That same test – that the BBC should engage “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” - is now proposed by Ofcom in the updated guidance, but this time on the basis that if Ofcom is persuaded the BBC has passed this test, this alone might allow the BBC to avoid an Ofcom competition assessment. Given that the BBC has previously been judged to have complied with its transparency and engagement obligations when it was obviously and deliberately in breach of them, the proposed new guidelines add further reward for similarly poor conduct, which would have the effect of further incentivising non-compliance.
20. Genuine BBC transparency and engagement serve an important purpose – and can actually help to avoid the need for a full BCA by Ofcom. The requirements on the BBC should have serious meaning and be enforced effectively. We would like these guidelines to define clearly the transparency and engagement requirements as fundamental obligations, rather than just factors for Ofcom to consider. It should be made clear that the BBC must engage with relevant stakeholders “at an early stage of development”, and this should be clearly defined. Materiality assessments should involve a consultation, with published data and a transparent process. The BBC should be required to show evidence of its transparency and engagement, and to defend its actions if stakeholders raise complaints. This evidence should be detailed, specific and substantiated with the supporting evidence accessible to stakeholders. And if the BBC is found to be in clear breach of these obligations, there should be regulatory penalties, so that there is a disincentive to non-compliance.

⁸ Letter from Cristina Luna-Esteban, Policy Director, Ofcom to Chris Rowsell, Regulation Controller, BBC, 19 December 2024



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?

21. We do not, and the reasons for this are set out in sections 4.45 and 4.46 of the proposed guidance.

22. The proposed section 4.45 notes:

The BBC has an incentive to reach a positive conclusion from its public interest test and we would be looking to see evidence that work is appropriately balanced and robust. This may include, for example, full and objective discussion of adverse impacts and limitations in the public value case.

It is not remotely conceivable that any organisation, let alone the BBC, would ever reach a conclusion that was contrary to its own interests, in a test conducted by itself on its own proposals.

23. By the time the BBC launches a public interest test on a set of proposals, those proposals will have been through months of research, development planning and cost. They will have been approved by several layers of management, and potentially been through several iterations and revisions, before finally obtaining the approval of the BBC Board. This is not a quick and easy process, nor a cheap one, and the BBC's commitment to its proposals will increase with each stage of approval. A balanced and objective public interest test would entail the possibility of a BBC employee reaching an adverse conclusion and negating this entire process, overruling the senior management and Board of the BBC, regardless of the strategic importance of the proposals is to the future of the BBC or its wider corporate interests. It is not remotely plausible that the BBC would permit one of its own employees to reach that conclusion. As well as the direct harm caused by not being able to implement the proposed changes, there would be serious public humiliation and reputational harm caused to the BBC as an institution. The BBC blocking its own proposals would completely undermine the credibility of its decision-making, and its commitment to its public service mission.

24. If the BBC were capable of conducting balanced and objective public interest tests, there would have been no need to introduce Ofcom regulation of the market impact of the BBC in the first place. Since it is absurd to expect the BBC to do this, it would seem more sensible for Ofcom to recognise BBC PITs for what they actually are, which is an additional exercise aimed at building support for the proposed change. It is an exercise in advocacy and PR, not regulation.



25. This does not necessarily make the PIT a worthless or invalid exercise. We do recognise that there might be times when a change proposed by the BBC genuinely adds significant public value and has minimal adverse market impact. In these circumstances, a PIT can act as a genuine consultation and information-gathering exercise, identifying possible improvements to the proposals, and addressing concerns raised by stakeholders. A PIT conducted honestly and in good faith can provide useful supporting evidence to help the BBC make the case for the change.

26. Section 4.46 highlights another reason why it is extremely difficult for the BBC competently to assess the market impact of a proposed new service. The proposed guidance says:

We recognise that there may be cases where stakeholders have been unable to share data with the BBC for confidentiality reasons. If we receive this information and it is likely it would have altered the outcome of the analysis, then we would need to consider undertaking a competition assessment. Additional information from stakeholders will not always mean we decide to do a full assessment.

27. The BBC is not at all well placed to conduct a market impact assessment of its own proposals, primarily because it is not a commercial participant in many of the markets in which it operates and it does not have access to the data required to understand the dynamics of those markets. The BBC has access to audience data for broadcast services, and it may also have top-line revenue data for certain industry sectors or major commercial operators. But at the level of individual competitors, the BBC has no way of knowing about other broadcasters' income or expenditure, or knowing what their current business plans look like. Beyond that, the BBC also lacks understanding of how the advertising market operates, how online trading platforms function, how inventories are managed, how different broadcasters measure streaming and online audiences, and the relative importance of each distribution platform to any individual competitor. In the online world, the BBC will have even less knowledge of competitor audience levels or engagement, with data collected in real time and kept private by operators or even hidden from them by platform gatekeepers. Any attempt by the BBC at a market impact assessment necessarily involves what would be for the BBC a lot of poorly-informed guesswork.

28. The only entity capable of reaching a fully informed view on market impact, based on all the relevant evidence, is Ofcom. A key part of our submission to Ofcom as it was considering the materiality of the online stream of R2X was the sharing of confidential and commercially sensitive data that we would never have felt comfortable, as a competitor to the BBC, sharing with it. We shared our business model and revenue projections with Ofcom, and modelled the potential impact of R2X. We explained our ad sales arrangements, and the balance between national, online-only and direct



sales; our cost base and the expected impact of different marketing strategies; and the relationship between audience levels and revenue. We described our inventory strategy and explained how both audience measurement and ad pricing worked on different platforms. We shared the findings of private audience research that we had conducted to determine the likely audience impact of R2X; and we detailed exactly how the likely audience loss caused by R2X would have consequent impacts on marketing spend and listener acquisition cost, on online revenue yield, and ultimately on EBITDA. We also shared, in confidence, our longer-term strategy, including our plans for spin-off services. Even if the BBC had wanted to ameliorate the potential market impact of R2X on Boom Radio, it had no way of calculating that impact without access to our data, and without understanding all the underlying assumptions that explained why the data looks as it does, and what factors cause the numbers to change, and how.

29. It remains possible – indeed, essential – that the BBC conducts a full, robust and evidence-based public interest test to justify the changes it proposes to make. However, it is not reasonable to expect the BBC to conduct a balanced and objective PIT, nor to be able to make a fully informed assessment of market impact without access to competitor data. An effective regulation, that provided protection from crowding out and other forms of market harm, would balance these obligations while recognising the intrinsic limitations. For example, the BBC might be required in its public interest test:

- To identify correctly ALL the stakeholders likely to be adversely affected by the proposed change, and to show evidence of having pro-actively engaged with all of them while the proposed change was at an early stage of development, and throughout the PIT process;
- To demonstrate, from its engagement with stakeholders and any information that stakeholders have been willing to share with it, that it understands the nature of the impact on the relevant market of the proposed changes, even if it is unable to calculate the scale;
- To ensure that all claims or predictions made for the proposed change – particularly those relating to public value or market impact – are fully evidence-based and can be substantiated;
- To make all the evidence on which the PIT relies, including data from market research commissioned or conducted by the BBC, available for scrutiny by stakeholders;
- To summarise accurately and fairly all concerns raised in the course of the BBC’s stakeholder engagement, and to show how these concerns have been addressed in the current proposals.

30. Some of the suggestions above are already incorporated into the proposed guideline 4.43, but what we are suggesting is a stricter approach, such that these become firm



obligations for the BBC, rather than indicative guidance. The requirements on the BBC and the standard to which they must be met both need to be clearly defined and enforceable. This is for the benefit both of the BBC, who will be able to understand clearly what it is expected of them when they conduct a PIT, and of other stakeholders, who can be confident that there is adequate protection for them against harm from unwarranted market impact.

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

31. We recognise the rationale for this proposal and we can support it in principle. Essentially, Ofcom is proposing that where the BBC's case for a proposed change is both strong and incontrovertible, it should be approved without the need for a competition assessment by Ofcom. However, we are concerned about the vague wording of this proposed clause, and how it might apply in practice, particularly in light of the other proposals discussed in questions 1, 2, and 4 of this consultation. Each proposal weakens the regulatory constraints on the BBC and creates the potential for the BBC to push through changes that could have severe, unwarranted adverse market impact.

32. In a perfect world, the proposed clause would incentivise the BBC to propose changes that promise high public value with minimal adverse market impact. However, another possibility is that the BBC seeks to misrepresent its proposals and conduct a misleading public interest test in order to avoid a competition assessment.

33. R2X is, again, a case in point. The BBC's public interest test was not balanced, robust or objective, and it greatly over-stated the public value case while under-stating the market impact – but it took a full BCA for Ofcom to reach this conclusion. Our concern is that actually making a strong public value case, and persuading Ofcom that you have a strong public value case might not be the same thing.

34. One possible additional safeguard, to provide better protection for competitors against unjustified adverse market impact, might be to add an extra 'stakeholder concern' element to the 'impact of change' test. This would be to the effect that Ofcom would be more likely to consider not undertaking a BCA if there was clearly a large and compelling public value case, and the adverse market impact was small and necessary, *AND the proposed change had not prompted significant concerns from directly affected stakeholders*. This effectively treats being uncontroversial as a proxy for being incontrovertible. We would support this proposed clause with this additional proviso.

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?



35. We do not support this proposal, and we would be concerned to see this proposal rolled out in conjunction with the proposals discussed in the previous three questions in this consultation. As we have already discussed, each proposal represents a weakening of the regulatory constraints on the BBC and, thus, a weakening of the protection for the BBC's competitors against unjustified market harm. Each previous proposal lowers the hurdles that the BBC has to clear in order to get changes approved by Ofcom without a BCA – this proposal reduces the number of hurdles.
36. Ofcom has proposed a series of tests that the BBC should pass in order to avoid a competition assessment from Ofcom. The BBC should:
- engage with interested parties at an early enough stage to be able to influence proposals
 - be transparent and provide sufficient information to understand the proposals and their potential market impact
 - conduct a balanced, robust and objective public interest test, to a high standard
 - engage with Ofcom during the PIT process
 - take account of stakeholder concerns.
37. Ofcom is now additionally suggesting that the BBC might not need to satisfy each of these requirements, and that Ofcom should be able to consider “how it has met them in the round, on a case-by-case basis”. This suggests that Ofcom might consider, on a case-by-case basis, that some of these factors are optional or unnecessary. It is not clear what the rationale is for this proposal, or how it might be applied in practice, or which of those factors is potentially considered less relevant than the others.
38. The list of obligations on the BBC when proposing potentially material changes is not long. None of the requirements is onerous or disproportionate and, in our view, each is essential to ensure protection against unjustified market harm. Removing the requirement that the BBC satisfy ALL these obligations weakens the market protections to an unacceptable degree.
39. We are also concerned at the introduction of a further factor – Ofcom's concern about its own resources – as a reason to not conduct a competition assessment. This is a factor entirely outside the influence of stakeholders and also entirely unconnected to the merit of the BBC's proposals. Without any clarity on how “the scale of the proposal” is defined, it is impossible to know for sure what protection is offered to, for example, a single, small, independent operator whose business might be jeopardised by a new BBC service. It is operators like this that are most obviously vulnerable to the adverse market impact of BBC changes as they lack the resources or established relationships to weather the sudden arrival of a huge, publicly-funded competitor.



Measured in terms of lost audience or lost revenue, and viewed in the context of the total relevant market, or the BBC's total spend, the impact of the changes might appear relatively small and, if that is how "the scale of the proposal" is measured, it might be considered fairly insignificant. From the perspective of the competitor now facing an existential threat, of course, the scale of the proposal is considerably greater.

40. In order to ensure that small competitors are adequately protected from the BBC abusing its market power, it does not seem unreasonable to us that the BBC should be obliged to meet some clearly defined obligations, which require it to demonstrate that a proposed change offers a high level of public value with little harmful market impact. If it is unable to fulfil all those obligations – if it is evasive instead of engaging, secretive instead of transparent, if its public interest test is not robust, or if it ignores stakeholder concerns – these are clear indications that it is not confident in its public interest case and Ofcom should conduct a competition assessment. Given that, in this circumstance, the assessment has been necessitated by the BBC's failure to meet its obligations, then if Ofcom is concerned about the resources required to run an assessment, perhaps it should consider a provision allowing it to reclaim costs from the BBC.

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?

41. We support this proposal. We particularly support the provision that stakeholders will be consulted if Ofcom is considering approving a change without an assessment.

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

42. We support this proposal. As we have already argued, we think it makes no sense to expect a BBC public interest test to be balanced and objective, but it can still be robust and provide valuable evidence to support a strong proposal that genuinely delivers public value and does not raise significant stakeholder concern. Where this is the case, we recognise that a full competition assessment might be duplicative or unnecessary.

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?

43. We support this proposal. It makes sense to launch a shorter assessment where only a small aspect of the proposed change warrants further scrutiny.

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



44. We support this proposal.

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

We support this proposal.