

RADIOCENTRE RESPONSE TO OFCOM CONSULTATION ON ASSESSING THE IMPACT OF PROPOSED CHANGES TO THE BBC'S PUBLIC SERVICE ACTIVITIES

INTRODUCTION

1. Radiocentre welcomes the opportunity to respond to Ofcom's consultation¹ on changes to its guidance for assessing the impact of proposed changes to the BBC's public service activities (the 'Guidance'), in light of the updates to the Charter and Framework Agreement (the 'Agreement').
2. We support regulation of the BBC that is both fit for purpose and evolves when required. Appropriate regulation would contribute to providing greater flexibility to the BBC to adapt to market dynamics, protect and enhance competition and minimise regulatory uncertainty. These in turn will lead to better outcomes for industry and audiences.
3. Ofcom itself has recognised that the dynamics in the markets in which the BBC operates vary. While there has been profound change in the competitive dynamics in some of its markets, this is not the case in radio and audio, where the BBC remains the single largest provider of radio services. Unlike commercial radio operators in the UK, the BBC benefits from stable licence fee income and is able to leverage its audiences from its audiovisual and digital services into radio, for example by extensive cross-promotion. As a consequence, the case for material change in the regulation the BBC faces in radio is much weaker.
4. The changes to the Agreement are substantive in their own right. They change the dynamics and process by which decisions are made. While the changes appear technical in nature, they risk fundamentally changing the level of independent scrutiny applied to material changes to BBC services. While this may be appropriate for some of the markets in which the BBC operates, our firm view is that the BBC is more likely to have distortive effects in radio and audio – as such, Ofcom needs to take a different regulatory approach.
5. Indeed, recent experience of changes to the BBC's radio services strongly suggests that the BBC's engagement with third party stakeholders is inadequate and that its assessment of the competitive impact of changes is lacking.
6. Relying on a BBC-led materiality assessment and PIT risks less independent scrutiny at the point of launch and less opportunity to test evidence/assumptions. We are therefore concerned that the proposed changes to the Guidance risk reducing independent scrutiny of the BBC by:
 - a. Allowing Ofcom to approve material changes without running its own competition assessment (where it relies on the BBC PIT), and
 - b. Removing the automatic link of new services being material (and thus requiring a full PIT/BCA) and instead shifting the burden onto the lighter touch materiality assessment.

¹ [Ofcom, Consultation: Assessing the impact of proposed changes to the BBC's public service activities, January 2026](#)

7. The proposals appear to amount to Ofcom outsourcing its regulatory scrutiny of the BBC to the BBC, which has a clear incentive to conclude in its own interest – as Ofcom notes in the consultation document “*the BBC has an incentive to reach a positive conclusion of its public interest, as it will only propose a change it wants to make*”. For the proposed changes to work at any level, Ofcom needs to ensure that expectations around stakeholder engagement are much clearer and more robust, and it must retain the ability to step in in appropriate situations (and, indeed, to actually do so).
8. The Guidance is a fundamental element of the regulatory framework that governs the BBC’s provision of public services. If the Guidance is not sufficiently robust, there is a genuine risk the BBC, in the exercise of its public services, has an adverse impact on competition.
9. We also believe that Ofcom should adopt a different regulatory approach to changes in the BBC’s radio and audio services relative to other markets in which the BBC operates. This should include strengthening stakeholder engagement and transparency expectations of the BBC so that such engagement is meaningful. In addition, Ofcom should only rarely exercise the ability not to undertake its own assessments (or to undertake shorter assessments).
10. Finally, Ofcom should be particularly mindful that its first decisions will form precedents for how the process will work in future. It should therefore avoid making ‘no further assessment’ decisions when stakeholders have genuine concerns with the BBC’s adherence to the Guidance.

The changes to the Agreement have the potential to undermine independent scrutiny of the BBC

11. We recognise that the changes to the Agreement have already been made², and we share our concerns on these changes for completeness. Notwithstanding the fact the changes to the Agreement have been made, Ofcom still retains discretion about how it implements these changes (for example, via the Guidance) and in how it regulates the BBC under the provisions of the Agreement.
12. The changes to the Agreement will enable Ofcom to approve a material BBC change without conducting a BBC Competition Assessment (BCA) or to undertake a shorter assessment if Ofcom is satisfied with the BBC’s Public Interest Test (PIT); and they remove the automatic requirement to undertake a full PIT and BCA for new public services.
13. The ex-ante model of regulating the BBC’s competitive impact presumes that there are sufficient regulatory safeguards to prevent harm to competition arising *prior* to the BBC implementing a change, particularly given the challenges of remedying material impacts on competition after they have arisen. For example, the current framework relies heavily on the BBC’s own projections of public value and competitive impact – but there is no effective mechanism to mitigate a situation where an approved BBC proposal subsequently grows to achieve a larger audience and competitive impact than what was stated in the BBC’s original assessment. Although it is beyond the scope of this consultation, we will be calling on government for the implementation of an additional independent layer of competition

² [Updates to BBC Framework Agreement, December 2025](#)

evaluation in the next BBC Charter that is triggered automatically if an Ofcom-approved BBC service reaches a significant scale and/ or is beyond the BBC's original projections of competitive impact.

14. We are concerned that, absent new and enhanced provisions set out in the Guidance, there is a risk that the proposed changes remove an important check and balance in the regulatory system, and consequently fundamentally change the level of independent scrutiny applied to BBC. For example:
 - a. The BBC will be even more instrumental in assessing whether changes are material and in assessing the scale and scope of potential impacts on competition, notwithstanding the clear incentives³ it has to evade appropriate regulatory scrutiny of changes to its activity.
 - b. The BBC PIT could be the only formal analysis undertaken before Ofcom approves any material changes to the BBC's public services. This implies less formal and independent scrutiny over the BBC's plans.
 - c. Industry stakeholders could potentially lose formal opportunities to engage with Ofcom before it approves material changes to the BBC's public services.
 - d. There is reduced stakeholder visibility overall if the starting position for new services is that they are not material and do not require analysis beyond a materiality assessment, with a risk that competitive impact (including cumulative impact over time) is not fully assessed. This shift makes the materiality assessment even more important, but the current process is fundamentally flawed (see below).
15. As the consultation on the Guidance highlights⁴, the BBC has an incentive to reach a positive conclusion from its own analysis (whether a materiality assessment or a PIT), as it would want to go ahead with the envisaged changes. This could lead to the BBC overstating the public value of its proposals and/or understating the potential negative effect in competition. In addition, it could create a risk that the BBC's approach to engaging with industry is suboptimal both in terms of the quality of the materials for engagement and the timing of the sharing of such materials.
16. As a consequence, the updated Guidance must be robust enough to ensure that the potential risks for fair and effective competition are appropriately mitigated.

The BBC's market position in radio and audio and incentives are important considerations to inform the updated Guidance

³ [Ofcom, Consultation: Assessing the impact of proposed changes to the BBC's public service activities, January 2026](#), Para 4.16

⁴ [Ofcom, Consultation: Assessing the impact of proposed changes to the BBC's public service activities, January 2026](#), Para 4.16

17. The BBC retains an overall market share of 43% in radio⁵, almost double that of its nearest commercial competitor. This market structure is different to many of the markets in which the BBC operates, and the BBC's strength in radio and audio has persisted over time.
18. This significant and persistent market share means that it is much more likely that decisions the BBC makes in radio and audio could have a material impact in the industry compared to other markets in which it operates. Ofcom should therefore acknowledge that changes in radio and audio require greater regulatory scrutiny given the potential for adverse competition impacts.
19. More explicit recognition of the difference between radio and other markets would be consistent with Ofcom's recent decisional practice in relation to the BBC's Operating Licence, where it has retained most of the quotas for radio⁶ in order to ensure the BBC's services are distinct from those provided elsewhere in the market.
20. It would also be consistent with government's view, as expressed in the recent BBC Charter Review Green Paper⁷, that radio is a market that needs to be treated differently in order to ensure the BBC cannot have an unfair impact on other actors in the market.

The updated Guidance should build on learnings from recent competition processes and seek to reflect on likely evolution of the industry

21. Regulation is vital in limiting adverse market impact of BBC activity. It also helps sharpen delivery of the BBC's public service mission. The changes to the Agreement threaten the amount of independent oversight on the BBC. Recent experience shows the risk to fair and effective competition should this independent oversight be lost.
22. In 2024, the BBC proposed four new music radio spin-off stations that directly imitated commercial services⁸ and changes to an existing service (Radio 5 Sports Extra). In both the BBC's materiality assessment and its PIT, the BBC claimed that the public value outweighed any adverse effect on fair and effective competition.
23. The BCA, carried out by Ofcom, however, blocked the Radio 2 extension⁹, after the BBC concluded in its materiality assessment and PIT that it should launch on BBC Sounds and DAB+ respectively. The changes to Radio 5 Sports Extra were also blocked despite the BBC concluding they should go ahead. We are concerned that the potential loss of this independent scrutiny and the process could have led to a poor outcome for consumers. The new music radio stations experience highlights:
 - a. Limited transparency from the BBC, with crucial information not shared with stakeholders or made public.

⁵ RAJAR Q4 2025

⁶ [Statement: Modernising the BBC's Operating Licence](#), Para 2.21

⁷ [Britain's Story: The Next Chapter - BBC Royal Charter Review, Green Paper and public consultation, December 2025](#)

⁸ [New BBC radio stations should be rejected by Ofcom - Radiocentre](#)

⁹ [Three new BBC DAB+ stations given final go-ahead – but not Radio 2 spin-off or extended Radio 5 Sports Extra](#)

- b. Limited meaningful engagement, despite repeated efforts to raise concerns.
 - c. Significant scope for implementing different methodological approaches to assess the impact on the BBC proposals on competition (i.e. the BBC, Ofcom and Radiocentre's methodologies differed, in addition the BBC's methodology evolved through the process).
24. Furthermore, in 2026, the BBC intends to launch a new Sounds-only spin-off of BBC Radio 6 Music¹⁰. The precedent set by materiality assessments of earlier BBC Sounds launches – progressing with limited scrutiny and stakeholder engagement – is concerning. It risks creating a pathway for incremental BBC expansion that, over time, will divert listening and advertising revenue from commercial radio, with a significant cumulative impact.
25. This underlines the need for improved guidance on both the materiality assessment and PIT, including the approach and role that the BBC and Ofcom would take:
- a. More detailed guidance on the types of evidence and analysis that should be included in a PIT to ensure a robust assessment is made by the BBC.
 - b. Providing structured opportunities for stakeholders to provide meaningful evidence on market impact and public value within a reasonable timescale.
 - c. Greater clarity on exactly how Ofcom proposes to assess the BBC's materiality and PIT analysis including its timing for assessment and sufficient time for stakeholders to make informed representations.

¹⁰ [Plans announced for a new BBC Radio 6 Music stream, available exclusively on BBC Sounds](#)

RADIOCENTRE'S RECOMMENDATIONS FOR UPDATED GUIDANCE

Proposal 1: Strengthened stakeholder engagement and transparency requirements on the BBC when carrying out materiality assessments and PITs

26. We support Ofcom's emphasis on effective engagement, but expectations of the BBC need to be strengthened and clarified:

- a. Earlier engagement while proposals are still changeable, including at the materiality assessment stage (see answers to Question 1 below)
- b. Sufficient detail of the proposed changes to be set out to allow meaningful scrutiny, including, but not limited to, detailed descriptions of the new service, music policy, modelling of market impact and assessment of public value (see paragraphs 54 and 57).
- c. A structured route for stakeholders to provide evidence, including commercially sensitive evidence (where BBC is not the appropriate recipient) – this is particularly important for PITs.
- d. More robust expectations for how the BBC will engage at the materiality assessment phase, particularly given Ofcom proposals result in this becoming an increasingly important stage in the process. Recent experience from the proposed Radio 6 spin-off demonstrates poor stakeholder engagement and transparency, with the BBC adopting compressed timeframes, providing limited information and confirming details of the proposals publicly prior to having received stakeholder views.

27. Where stakeholders have significant concerns with the approach taken by the BBC to fulfil its obligations to consult in a meaningful way, and Ofcom agrees with stakeholders' concerns, Ofcom must undertake its own analysis. This step should be made clear in the Guidance.

Proposal 2: Strengthened requirements and expectations on how Ofcom will consider the BBC's assessment

28. We support Ofcom's emphasis on examining a number of factors when deciding whether the BBC may carry out the proposed change without further assessment. This is especially important under the new framework where Ofcom will potentially go from carrying out its own analysis on the impact on fair and effective competition to stating whether it agrees or disagrees with the conclusions the BBC makes.

29. Greater clarification on exactly how Ofcom will consider these factors and how it will therefore scrutinise the BBC's thinking is crucial. In particular:

- a. What does the standard of the BBC's own work need to be for Ofcom to consider a full assessment would be largely duplicative?
- b. How will Ofcom determine when modification to the BBC's plans is appropriate and whether the modification is enough to reduce any harm to fair and effective competition, such that the harm is outweighed by the public interest?

30. There should be limited discretion afforded to Ofcom on how it undertakes its own assessment in coming to a decision not to undertake further assessment. Ofcom cannot in any way short cut its scrutiny of the BBC's thinking.
 - a. Ofcom cannot assume that there is a large and compelling public value case, and the effects on fair and effective competition are small and necessary relative to the public value (4.19) without sufficient evidence and scrutiny of the BBC's work.
 - b. Similarly, it is inappropriate for Ofcom to base decisions about the level of regulatory scrutiny it applies on internal resourcing matters. Ofcom's references to proportionality/resources should not translate into reduced scrutiny of competitive impacts in radio and audio.
 - c. An 'in the round' assessment should not afford Ofcom the opportunity to carry out a more subjective, less detailed assessment of the BBC's analysis.
31. Therefore, in coming to a decision not to undertake further assessment, we expect Ofcom to carry out a full assessment (not duplication) of the BBC's work. This should include its assessment of the BBC's methodology, reliability and appropriateness of data sources used, evidence examined and conclusions drawn in each and every case. This full assessment should be published in Ofcom's provisional determination.
32. Ofcom should consider establishing automatic triggers which, if met, result in Ofcom conducting its own BBC Competition Assessment rather than relying on the BBC's PIT. Examples could include the following:
 - a. Insufficient engagement – where the BBC has failed to meet the minimum standards of stakeholder engagement (outlined by Ofcom) or has set unreasonable timeframes or where the BBC has not engaged with credible, alternative methodological approach to assessing market impact that contradicts the BBC's findings.
 - b. Cumulative impact – where the BBC proposes multiple or incremental changes within a certain timeframe and the cumulative market impact over time has not been adequately addressed in a PIT process.
33. Furthermore, a two-week window for a response to Ofcom's provisional determination is not a sufficient amount of time and should be extended to a minimum of four weeks. Commercial radio operators do not have sufficient time or resources to properly review Ofcom's decision in such a short consultation window, and there may be a need to commission additional research to meaningfully interrogate or challenge the BBC's data and/or Ofcom's provisional findings. This is especially important in cases where stakeholders have had limited time to assess the BBC's analysis either because (i) the BBC has either not shared sufficient detail on, for example, its modelling of market impact in advance of publishing its PIT, or (ii) where its methodology and thinking has changed significantly throughout the process.

Proposal 3: Providing enhanced clarity regarding the most suitable methodology to assess impact on competition

34. The Agreement sets out that the BBC is required to undertake a PIT, but it does not set out a methodological framework that the BBC must follow to assess any adverse impact on fair and effective competition.
35. The changes to the Agreement mean that Ofcom would first consider whether it agrees with the BBC's conclusions in the PIT. To do so, it will consider the approach to the analysis undertaken by the BBC, whether the BBC has sufficiently considered relevant issues and has come to an evidence-based decision.
36. The Agreement also means that, when Ofcom agrees with the BBC's conclusion in its PIT, there is a possibility that Ofcom does not need to undertake its own BCA. Or that, in some circumstances, Ofcom will only consider additional work to add further to the conclusions reached by the BBC.
37. As a result, the BBC's own PIT analysis will become the 'central' analysis to assess any adverse impact on fair and effective competition. This is problematic for two main reasons:
 - a. As recognised by Ofcom, the BBC has an incentive to reach a positive conclusion from its PIT; and
 - b. Assessing potential impacts on fair and effective competition is not a straightforward exercise. As set out above, recent experience demonstrates that different stakeholders have taken different approaches.
38. While we note that Ofcom's proposed updated Guidance creates stronger incentives for the BBC to undertake a thorough analysis as part of the PIT process, we are concerned that these are not sufficient.
39. We believe that Ofcom should provide more prescriptive guidance regarding the methodology, data and considerations that the BBC should follow to ensure that the BBC's analysis is sufficiently objective and robust. This would mirror and expand on the details set out in Ofcom's Guidance for how it would assess the impact of proposed changes to the BBC's public service activities¹¹. Paragraph 5.9 states that in carrying out a BCA it will likely estimate audience growth and audience substitution but does not set out any methodologies for doing so. We would propose a non-exhaustive list that may include:
 - a. A full and comprehensive description of all measurement techniques and data sources, particularly those used to estimate audience size and where listening will come from.
 - b. Audience research including the use of consumer surveys to inform economic modelling and demonstrate how consumers view any overlap, as well as act as a cross-check for analysis using other data sources.

¹¹ [Annex 2: Guidance for assessing the impact of proposed changes to the BBC's public service activities](#)

Proposal 4: Improved materiality assessment guidance

40. The materiality assessment is becoming more important as new BBC services are no longer automatically material and therefore it is likely that the materiality assessment is triggered more often in the future.
41. Experience to date of the materiality assessment process highlights a significant lack of transparency and meaningful engagement from the BBC (i.e. the experience with the Radio 6 spin-off is a concerning precedent) and therefore does not work as originally envisaged.
42. We would therefore propose that Ofcom updates the Guidance to ensure that BBC provides sufficient granular information in sufficient time to facilitate meaningful engagement with the industry and to ensure that Ofcom can reasonably assess whether the proposed changes are material.
43. We have made some suggestions below in our response to Question 1 on how Ofcom could enhance para 4.41 of the current Guidance¹².

Proposals 5: Initial decisions that Ofcom takes need to recognise the substantive changes to the regime and the precedent assumed by the first determinations, particularly any decisions on ‘no further assessment’

44. Relying on a BBC-led materiality assessment and PIT risks less independent scrutiny at the point of launch and less opportunity to test evidence/assumptions. If the purpose of the regulation – avoiding harms to competition from material changes to the BBC’s service activity – are to be realised, Ofcom needs to exercise care in how any changes are implemented. This is particularly the case in radio and audio, where the BBC’s substantial market position means harm to competition is more likely than in other markets in which the BBC operates.
45. The changes to the Agreement are substantive in their own right. They change the dynamics and process by which decisions are made. As with any change, there will be an element of uncertainty, and the industry will need to adjust to the new norm.
46. To mitigate against this risk, it is important that the process works as Ofcom envisages. In other words, the BBC follows the strengthened Guidance, including providing stakeholders the opportunity to meaningfully engage with the BBC’s proposals during both the materiality assessment and PIT processes.
47. To reduce uncertainty further, it will be important for Ofcom to give due weight to stakeholders’ feedback and representations, including where the industry raises concerns with the BBC’s adherence to the new Guidance. Stakeholder views should be a key consideration of when further assessment is needed.
48. Furthermore, Ofcom should be particularly mindful that its first decisions will be assumed to form precedents for how the process will work in future, and therefore avoid making ‘no further assessment’ decisions when stakeholders have genuine concerns with the BBC’s

¹² [Guidance for assessing the impact of proposed changes to the BBC's public service activities](#)

adherence to the Guidance. We believe that Ofcom should set clear criteria and a high bar before it can conclude that ‘no further assessment’ is needed for radio and audio proposals.

QUESTIONS

Question 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 is required?

PIT process

49. We agree with the principles behind the proposals to add guidance in this area. However, as highlighted above, we are concerned that the BBC will only share sufficient details of its proposals and analysis in a final published PIT.
50. This would not allow stakeholders sufficient time or ability to engage meaningfully on the BBC's analysis. We therefore recommend that the Guidance be more expansive on the factors set out at 4.4.3.
51. The Guidance should stipulate exactly what needs to be shared by the BBC and exactly when in the process these need to be shared with stakeholders. This should include:
 - a. The level of detail the BBC should share on its planned changes.
 - b. Timescales for implementation.
 - c. The level of analysis of the potential impact on the market and of the public value.
52. In addition, we would like to see further detail set out on what constitutes a robust and evidence-based assessment to facilitate stakeholders' engagement with the BBC on its evidence. This is all the more important given that the PIT could potentially be the only opportunity for stakeholders to comment.
53. We believe it is important that Ofcom provides more prescriptive guidance regarding the methodology, data and considerations that the BBC should follow to ensure that the BBC's analysis is sufficiently objective and robust. This would mirror and expand on the details set out in Ofcom's Guidance for how it would assess the impact of proposed changes to the BBC's public service activities¹³.
54. Paragraph 5.9 states that in carrying out a BCA, Ofcom will likely estimate audience growth and audience substitution but does not set out any methodologies for doing so. We would propose a non-exhaustive list that may include:
 - a. Setting out in full all measurement techniques and data sources, particularly those used to estimate audience size and where listening will come from.
 - b. Audience research including the use of consumer surveys to inform economic modelling and demonstrate how consumers view any overlap, as well as act as a cross-check for analysis using other data sources.
 - c. Determining a competitor set.

¹³ [Annex 2: Guidance for assessing the impact of proposed changes to the BBC's public service activities](#)

- d. Examining the degree of differentiation in any market, including informing how distinctive proposals are.
- e. Analysing quantitatively and qualitatively the closeness of competition between the BBC and competitor services.
- f. Diversion analysis to estimate the degree of substitution from individual commercial stations, as well as aggregate substitution away from commercial radio, to allow an assessment of the impact on individual stations, not just the aggregate impact.

Materiality assessment process

55. Recent experience on the Radio 6 Music spin-off extension proposal indicates that we are not aligned with the BBC's interpretation of Ofcom's Guidance on how the BBC should conduct its materiality assessment.
56. As set out above, we believe that the proposals amplify the importance of the materiality assessment. We would therefore like to see additional guidance given on the materiality assessment to enhance the expectations set out at paragraphs 4.9 and 4.41.
57. We would like all materiality assessments related to radio to include details on the factors we set out in our letter to the BBC of 3 February 2026. These are reproduced here for convenience:

General	• The anticipated name of the new station • The projected annual cost of the new station • Expected percentage (weekly average) of archive content • Expected percentage of repeat programming at all times • Expected amount (annually) of new commissioned content • Expected audience composition, including anticipated reach with diverse audiences • Basis of the BBC's calculations of competitive impact (including expected reduction in commercial listening and revenues)
Speech content	• Expected percentage of speech content during daytime • The anticipated frequency of news output
Music output	• Proportion of proposed music output expected to be new music

	• Details of proposed music selection for the new programming (including a detailed breakdown of playlists and genres) • Details of the modelled impact on individual close competitor stations, not just in aggregate • Expected music crossover with relevant commercial radio services during peak times • A comprehensive list of tracks that are likely to be played. If not available, confirmation as to how analysis has been carried out in terms of music overlap
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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 is required?

58. We support Ofcom's emphasis on examining a number of factors when deciding whether the BBC may carry out the proposed change without further assessment.

59. However, Ofcom should provide further clarifications regarding how it will consider these factors, including:

- a. BBC's modifications following stakeholder concerns.
 - i. How will Ofcom determine that the BBC has adequately taken into account stakeholder concerns in its analysis and correctly determined whether a modification is appropriate, and whether the modification is enough to reduce any harm to fair and effective competition such that the harm is outweighed by the public interest?
- b. Ofcom's assessment that the BBC's PIT is appropriately balanced and robust.
 - i. What is the standard of the BBC's own work that would allow Ofcom to consider a full assessment would be largely duplicative?
 - ii. How will Ofcom factor in the quality of the data/information sources?
 - iii. Will Ofcom consider whether other alternative data might have been more appropriate and potentially lead to alternative conclusions?
 - iv. How will Ofcom assess the suitability of the methodology used and the quality of the analysis?
 - v. Will Ofcom set out whether it would have drawn the same conclusions as the BBC on the basis of (i) the BBC's own data/methodology and (ii) when considering alternative data/methodologies available (not limited to commercially sensitive information that Ofcom may have received)?

- c. Full and objective discussion of adverse impacts and limitations in the public value.
 - i. As set out under our response to Question 1, we would like to see further detail set out on what constitutes a robust and evidence-based assessment.

60. If Ofcom intends to rely on a BBC-led PIT and decides to not undertake a further assessment, it should establish and set out clear minimum standards that the BBC's analysis must meet to ensure a consistent, fair and objective process.

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

- 61. We understand the rationale behind this proposal, however it raises a number of practical issues that may undermine its effective application.
- 62. It is unclear how Ofcom will assess that there is 'clearly a large and compelling public value case' nor whether Ofcom's assessment will be set out fully within its provisional determination.
- 63. In the absence of a clearly articulated assessment, it would be difficult for stakeholders to assess whether the purported public value outweighs even a small adverse effect on fair and effective competition, nor whether it is correct to find only a small adverse effect.
- 64. In practice, the BBC tends to articulate public benefit in broad qualitative terms whereas competitive impact has tended to be assessed in quantitative terms. It is not at all clear from Ofcom's consultation document how qualitative public interest evaluation should be assessed relative to quantitative competitive impact evaluation. Where the BBC cannot quantify the public benefit, Ofcom should be less willing to accept subjective judgements that public interest 'clearly' outweighs quantifiable competitive impact.
- 65. In addition, Ofcom should set out more clearly the factors that should be included in public interest analysis to ensure it is robust and not just conjecture. As set out in our response to Question 1 and Question 2 more detailed guidance is needed.

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?

- 66. We are concerned that an 'in the round' assessment could introduce regulatory uncertainty and undermine stakeholders trust in the regulatory regime, as it is inevitably more subjective than if the BBC had fulfilled each of Ofcom's core expectations relevant to an assessment.
- 67. At a minimum, it would be important that core factors of the assessment are robust (i.e. the impact on fair and effective competition, and that the BBC has appropriately engaged with industry), and the BBC should meet Ofcom expectations.
- 68. It is inappropriate for Ofcom to base decisions about the level of regulatory scrutiny it applies on internal resourcing matters. Particularly – as seems to be implied – where there could be material adverse effects on competition. Ofcom's references to proportionality/resources should not translate into reduced scrutiny of competitive impacts in radio and audio. Where

Ofcom cannot deploy sufficient resources to undertake proper scrutiny, there should be a presumption against approving changes to the BBC's services until Ofcom is in a position to undertake requisite scrutiny.

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?

69. A two-week window for response to Ofcom's provisional determination is not a sufficient amount of time and should be extended to a minimum of four weeks. If Ofcom intends to rely on a BBC-led PIT and decides to not undertake a further assessment, it should establish and set out clear minimum standards that the BBC's analysis must meet to ensure a consistent, fair and objective process.
70. This will be the first time in the process that stakeholders will have an opportunity to raise any concerns with Ofcom and present evidence to counter anything in Ofcom's provisional determination that they do not agree with. Moreover, it may also be the first meaningful engagement that third parties have in the process, given the BBC's consistent record of failing to meaningfully engage with third parties during its own processes.

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

71. We agree with the proposed revision in principle. Nonetheless it would be important, as set out in our response to Question 1 and Question 2, that the more detailed guidance is provided to the BBC regarding the thoroughness, quality and balance of the PIT.

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

72. We believe that removing the automatic requirement to undertake a full PIT and BCA for new public services increases the risk of poor outcomes for audiences, particularly where it is clear that the BBC and stakeholders take different views on how to interpret Ofcom guidance on the level of detail and robustness needed in materiality assessments.
73. Given this removal, we welcome the opportunity to strengthen the Guidance around novelty within materiality assessments. This addition should help reduce the risk that the BBC does not provide enough information about a novel service to allow third parties and Ofcom to accurately assess a new proposal for materiality.
74. It is important that Ofcom does not establish a de facto approval of proposals that are 'novel' simply because it is harder to accurately assess impact. Ofcom should strengthen its guidance to be explicit on this point.