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Dear Chris,

Conclusion of initial assessment of proposed BBC Scotland television channel

On 30 November 2017, the BBC published its proposal to launch a new television channel for audiences in Scotland. As the same time, we began our own review to decide if the BBC's plan should be allowed to proceed.

This letter is to notify you that we have completed the first stage of our review, and concluded that it represents a material change which warrants further assessment.

As you know, Ofcom wants to see Scottish audiences well served by the BBC. Our job in the next stage will be to consider whether the public value offered by a new BBC channel would justify any potential adverse effects which it could cause to fair and effective competition.

We explain below our decision to undertake a Competition Assessment ('BCA') of the proposals, which we must conclude by 11 July 2018.

Background

The BBC's mission is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain. To ensure it continues to deliver programmes which fulfil its mission, the BBC may look to make changes to its existing activities or seek to develop new services to meet the needs of audiences.

Some changes can be considered minor; for example, day-to-day editorial decisions about individual programmes, or their scheduling. However, as a large, publicly-funded organisation, other changes the BBC might wish to make could have a significant impact on competition in the wider media market.

Under the terms of the Framework Agreement¹, the BBC may only make a ‘material change’² to its UK Public Services if the BBC concludes that any such proposal satisfies a Public Interest Test (‘PIT’). The PIT is then only satisfied if the BBC Board decides:

- a) the proposed change contributes to the fulfilment of the BBC’s mission and the promotion of at least one of the public purposes;
- b) reasonable steps have been taken to ensure the proposal will have no unnecessary adverse impacts on fair and effective competition; and,
- c) the public value of the proposed change justifies any adverse impact on fair and effective competition.

In this case, the BBC determined its proposal to launch a BBC Scotland channel would constitute a material change to its services, and conducted a PIT over summer 2017. The BBC published the findings of its PIT, along with supporting evidence, on 30 November 2017, stating that the BBC Board believed the PIT had been satisfied.³

Ofcom’s role

If the BBC Board concludes that a PIT has been satisfied, Ofcom must carry out its own assessment of the proposal before a change can be implemented.

The Framework Agreement divides Ofcom’s work into two phases. During the initial phase, which must be completed in six weeks, Ofcom is required to:

- a) confirm whether the BBC proposal is material; and, if so
- b) decide what form our detailed assessment during the second phase should take.

To help us to do this, on 30 November 2017 we published an Invitation to Comment asking stakeholders to provide us with further information explaining how the launch of a new BBC channel for Scotland could affect them.⁴ We said that we would consider, during this initial period, whether the BBC’s PIT contained sufficient information to enable us to complete a more detailed assessment in phase two; and that, if possible, we would look to review the procedures the BBC followed during its consultation on the public interest test.

The BBC’s proposal

The BBC’s proposal is set out in its Public Interest Test, which states that:

¹ Clause 7(6) of the Agreement Between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, December 2016.

² A material change is defined in the Agreement as one where the BBC is proposing either to carry out “a new UK public service” or to make a change which “may have a significant adverse impact on fair and effective competition” (clause 7(7)).

³ [BBC Board decision on the BBC Scotland TV channel Public Interest Test](#)

⁴ [Ofcom review of proposed BBC Scotland television channel – invitation to comment](#)

- the new channel would start broadcasting at 12 noon every day. Original programming shown between 12 noon and 7pm would include political coverage and other “ad hoc events (mainly sport)” and would be limited to 150 hours per year.⁵ During other times up to 7pm the channel would show “a sustaining service/simulcast of BBC Two programming”;
- the channel would continue to broadcast from 7pm to midnight every evening, with content during these hours comprising 50% first-run originations and acquisitions, and 50% repeats;⁶
- just over 19% of original content shown during the core evening hours would be news and current affairs, including a news hour to be broadcast at 9pm every weekday evening “alongside a mix of documentaries, specialist factual, lifestyle, music, quiz and factual entertainment programming”. This programming could include material currently shown on BBC Two Scotland, and either simulcasts or repeats of content shown on BBC One Scotland. There may also be repeats of programmes from other BBC channels (e.g. BBC Four) or archive programmes; and
- the channel’s programme budget would be around £32 million per full year, although this could be affected by the co-commissioning of programmes with other BBC services, particularly in the genres of comedy and drama.

Additionally, the BBC stated that this proposal would give rise to certain associated changes:

- separate programming for Scotland on BBC Two would end, with audiences in Scotland instead receiving the same programming as audiences in England;
- BBC Four’s standard-definition stream would move “to a less prominent slot on the EPG in Scotland” to make way for the new channel;
- cross-commissioning opportunities “could lead to the provision of up to an additional 100 hours of non-news content each year on BBC Alba”; and
- there would be a “strengthened multi-platform newsgathering team” with “around 80 journalism-related posts of varying experience for new entrants to established journalists”. Among other things, this team would “produce further news output or re-version content for radio, use on the website (with particular focus on longer, more investigative pieces) and social media, allowing a richer range and depth of journalism, cross-platform.”

Although the BBC did not include these changes within the scope of its PIT, it did acknowledge the potential for these changes resulting from its core proposal to have adverse impacts on fair and effective competition.

⁵ The PIT noted that currently BBC Two Scotland showed approximately 66 hours of political coverage, 30 hours of sport and 44 hours of live events in day time each year.

⁶ A detailed “indicative content mix” for the channel is set out on pp 20-21 of the BBC’s PIT document.

We consider that the activities set out above, taken together, comprise the BBC's proposals to carry out a new UK Public Service. Our assessment of materiality and any further assessment is, therefore, by reference to all these proposals.

What stakeholders told us

In response to our Invitation to Comment, we received responses from 17 stakeholders.

Many respondents welcomed the BBC's proposal, acknowledging its potential value to Scottish audiences, and benefit to growth in the Scottish media sector. However, respondents also raised a number of concerns. Some questioned whether the channel was adequately funded to deliver a quality service, generating significant public value. Others considered aspects of the BBC's proposal could have a substantial impact across the media sector, in particular by crowding out competition. Finally, many respondents challenged what they perceived to be a lack of detail in the BBC's proposal, and the absence of the detailed economic analysis which the BBC had used to make its assessment of potential market impact.

All respondents agreed that the proposal represented a material change to the BBC's UK Public Services. Most respondents considered that it would be appropriate for Ofcom to assess the BBC's proposals via a BCA. However, some favoured a Shorter Assessment as they considered that a BCA could delay the launch of the BBC's proposed service.

Materiality of the proposal

Ofcom must undertake a competition assessment if we consider that the BBC's proposal is a material change to the UK Public Services.

The Framework Agreement makes clear that the carrying out of any activity as a new UK Public Service is a material change.

Following our review of the BBC's proposal, along with the input we received from stakeholders, we are satisfied that the BBC's proposal comprises a new UK Public Service. We have therefore concluded that this is a material change to the UK Public Services.

Scope for further assessment

Under the Framework Agreement, our phase-two assessment must take the form of either a Competition Assessment (BCA) or a Shorter Assessment (SA). In our guidance document, *Assessing the impact of proposed changes to the BBC's public service activities*, we explain that⁷:

- a) a BCA is more likely to be appropriate "where a proposal raises large, complex and/or particularly contentious issues, potentially involving a number of interested parties and ways in which there may be an adverse impact on fair and effective competition"; whereas,

⁷ [Assessing the impact of proposed changes to the BBC's public service activities](#), December 2016

- b) a Shorter Assessment is likely if “there is a narrower range of issues to consider,” for example where we consider the BBC’s public interest test “adequately addresses all (or most) issues”.

In our Guidance we set out factors we expected to take into account in deciding which assessment was most appropriate, including:⁸

- the thoroughness, quality and balance of the BBC’s PIT;
- the likelihood of an outcome other than unconditional clearance;
- whether there is a separable element of the proposal giving rise to concern, while other elements give rise to few concerns; and
- the proportionality of the resources required.

We recognise that the BBC’s proposal may result in a number of positive outcomes for audiences in Scotland. The new channel may enhance public value, and encourage competition, by offering more choice, stimulating demand, or promoting innovation. However, the BBC’s proposal also has the potential to harm fair and effective competition.

Our initial assessment of the BBC’s proposal highlighted some potential market impacts we think it is appropriate to consider in our further assessment. These include⁹, but are not limited to:

- potential for the new service to crowd out FTA commercial broadcasters (e.g. STV Group);
- potential for the new service to crowd out Scottish online news providers and Scottish newspapers;
- potential impact of the creation of 80 journalism roles on access to journalists; and
- potential impact of the BBC’s investment in Scottish-produced content (positive and/or negative) on access to Scottish content, and on the Scottish production sector more generally.

We are satisfied that stakeholders had a suitable opportunity to comment on the BBC’s PIT, and that the BBC carried out extensive qualitative and quantitative market research and economic analysis to support its assessment of its proposals. However, there are certain areas of the assessment which we consider the BBC could have addressed in greater detail. These include, but are not limited to:

- consideration of the additional public value generated by the BBC’s proposal to the overall public value of its activities for Scottish audiences (in particular the impact on the public value of the proposed reduction in BBC Four’s prominence on platforms in Scotland, and the removal of Scotland-only programming from BBC Two, as well as the impact on BBC Alba);

⁸ After reviewing the BBC’s proposal, along with the views from third parties in response to our Invitation to Comment, we have concluded that no additional factors are appropriate.

⁹ In addition to considering these potential market impacts, we may also consider other relevant potential market impacts as part of our further assessment.

- description of the nature of the BBC's investment in news programming on the new BBC Scotland channel, and on the BBC's online news offering, including the role that will be played by the 80 additional journalism posts the BBC is creating; and
- impacts of the proposal on free-to-air commercial broadcasters (in particular, providers of TV content aimed at Scottish audiences, such as STV Group), Scottish online news providers and Scottish newspapers.

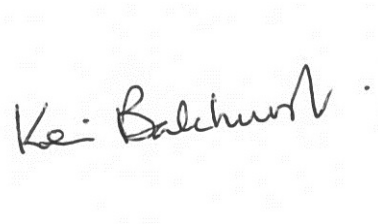
We consider that the points above raise concerns and issues which are sufficiently significant to justify conducting a BCA.

Furthermore, we consider the activities proposed by the BBC, taken together, comprise a single proposal to carry out a new UK Public Service. We do not consider that the aspects of the BBC's proposal giving rise to our concerns can be clearly separated from an assessment of the overall proposition.

Next steps

Under the Framework Agreement, Ofcom has six months in which to conduct a BCA into the proposed BBC Scotland television channel. The BCA process will involve market research and economic analysis and we will take account of the stakeholders responses we have already received. We will look to complete our work as promptly and efficiently as possible. We will publish a consultation setting out our provisional view on which we will be inviting stakeholders to comment. We will publish our final decision by 11 July 2018.

Yours sincerely

A handwritten signature in black ink that reads "Kevin Bakhurst". The signature is written in a cursive style and is positioned above a faint, circular watermark or stamp.

Kevin Bakhurst