



## BT's response to Ofcom's consultation on the BBC's commercial activities

13 February 2017

BT TV is BT's digital TV service that combines digital terrestrial television (DTT) delivered Freeview channels with a comprehensive selection of IP delivered channels and on-demand programming. We broadcast five channels of sports content on BT Sport and offer a range of entertainment channels, including access to AMC.

BT and BT Sport interact with the BBC in a range of different ways.

As both a potential partner of and competitor to BBC commercial activities in future, we seek to ensure that the regulatory framework for BBC commercial activities is sufficiently robust, whilst not being overly cumbersome on the BBC.

We broadly support the proposed framework for the BBC's commercial activities, however we wish to draw Ofcom's attention to the points raised below.

In addition, once this framework has been established, we would seek the opportunity to engage with Ofcom on an ongoing basis about how the framework will work in practice, depending on different circumstances which might arise.

**Point 1: the importance of considering the impact which BBC commercial activities in international markets can have for competition in the UK**

We support the proposal that if Ofcom receives a complaint that the BBC is not complying with the requirements included in the Framework, then Ofcom may investigate and make directions to the BBC as appropriate. We note that Ofcom has discretion about when it opens an investigation.<sup>1</sup>

In the framework it states that: "When deciding whether to open an investigation, we will consider whether there is evidence that the BBC's arrangements are outside the market norms for the relevant line of business and if the BBC's commercial activities are likely to distort competition in the UK. We would not expect to consider distortion to competition in international markets. We would therefore expect complainants to clearly demonstrate how the BBC's arrangements are outside of market norms and in particular how they are likely to impact UK competition."

Given the international dimension to broadcasting, we consider it important that Ofcom take into account the impact of the BBC's commercial operations in international markets – e.g. Britbox – have on the UK broadcasting sector. It would be useful to have further guidance from Ofcom as to the extent to which the impact of international activities by the BBC have an impact on the UK on this point.

Furthermore, in order to capture situations in which a situation could be within market norms, but still distort competition, we suggest that this should be an "and/or" test.

**Point 2: we will engage with Ofcom's reviews on BBC transfer pricing arrangements and the specific nature of the range of different commercial activities that sit within the BBC's commercial subsidiaries in due course**

We seek the opportunity to input into the ongoing development of the framework more generally.

**Point 3: we urge Ofcom, as per the wording of the Charter and Agreement, to conduct an assessment of the BBC Studios commercial activities, and whether it meets the requirements of the trading and separation requirements of the Framework, within two years of Ofcom assuming its new responsibilities**

We note that the wording in the Framework, states that Ofcom "will consider whether this is appropriate in due course." Given the impact of BBC Studios on the UK production sector, we

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<sup>1</sup> We refer Ofcom to paragraph 6 of BT's response to Ofcom's consultation "Assessing the impact of the BBC's public service activities" where we provide suggestions as to the process Ofcom should adopt in opening an investigation; those suggestions can equally apply where Ofcom is investigating a matter relating to the BBC's commercial activities.

consider that such a review, within two years of BBC Studios operating as a commercial entity, would be appropriate. In particular, as we noted in our response in November 2016 to the BBC Trust's consultation on the proposal to turn BBC Studios into a commercial subsidiary, we urge the Unitary Board to publish, and Ofcom to consult on, how sports commissioning and production will work once the in-house guarantee for sports is removed by the end of 2019.

**Point 4: we agree with the proposed operational separation requirements as set out on p. 12**

**Point 5: we support the proposed framework for regulating the supply of goods and transfer pricing**

We propose that where it is not possible for the BBC Public Service to make goods and services which are available to BBC commercial subsidiaries available to the wider market, or where BBC commercial activities have not paid a market-based transfer price for Public Service goods and services, then the BBC should be required to provide an explanation to Ofcom as to why this was not the case.

**Point 6: we support the proposed framework to ensure that BBC commercial operations generate a commercial rate of return and the requirement that where this is not the case, the BBC must inform Ofcom**

**Point 7: we support the proposed framework to ensure monitoring, reporting and transparency of BBC commercial operations**

In addition, we note that Ofcom might wish to consider introducing a requirement for the BBC to publish guidelines on how it tenders work with third parties – including its commercial operations – so that there is sufficient transparency about the processes under which this occurs.

With regards to the reporting obligations, we consider that there should be a requirement for BBC commercial operations to report the percentage split of revenues that have been generated through partnerships and commercial agreements with BBC Public Services, and where these have been generated from working with external parties.

**Point 8: we support the proposed procedures the BBC must follow to make a material change to its commercial activities and the framework which Ofcom should follow to determine whether the change can go ahead**

We agree that any proposals for new commercial operations for publication, and that any redactions to the non-confidential published version should be properly justified, in order to enable full understanding and comment by third parties.

We support the proposed two-stage process which Ofcom would follow in order to determine whether a change to a BBC commercial operation should go ahead and we welcome the opportunity for third parties to provide input in this process.