

Introduction

The PPA is disappointed that Ofcom does not think it appropriate to introduce greater regulatory scrutiny, but agrees that market conditions have changed to the point where it is appropriate to step back from competition assessments.

The changes to the Charter and Agreement that Ofcom has proposed must be balanced by measures to encourage the BBC to be transparent about its plans and engage properly with stakeholders. Greater clarity on regulatory processes will also be useful. Ofcom’s proposals do have the potential to improve the BBC’s transparency and engagement, but the drafting of the additions/amendments to the guidance must be sufficiently detailed and robust to fulfil Ofcom’s stated aims.

This response will therefore focus on making suggestions to improve the proposed changes to the guidance. We will also make the case for Ofcom to set out its views on the BBC’s position in the market for online written journalism (including specialist media as well as news media content).

We recognise that this guidance is being developed in tandem with an updated Operating License and would remind Ofcom that positive changes to the guidance on competition will necessarily be limited if the concerns raised by PPA in response to the consultation on the Operating License are not heeded.

Consultation Question 1

The PPA agrees with the proposal to (a) place a requirement on the BBC to publicise its planned changes to its public services, and (b) provide further guidance on how the BBC should set out information in its planned changes. However, the proposed changes to the guidance could be improved.

The guidance should set out in greater detail what information would be likely to constitute a minimum level of ‘sufficient detail’ when publicising proposed changes to its public service activities. This is necessary to ensure that stakeholders can properly assess, and comment on the potential impact of the BBC’s plans on competition. This could mirror the ‘minimum’ information that Ofcom proposes that the BBC provide as part of a PIT consultation (to be found on page 30 of the consultation document).

The proposed guidance rightly states that the BBC must publicise proposed changes in ‘sufficient time’, but should go further and provide clarity on what Ofcom would generally expect to be ‘sufficient time’. This is particularly necessary for the development of plans outside the normal timescale for inclusion in the annual plan.

We agree that the BBC should use an ‘alternative, consistent’ means of communication when the BBC develops plans outside the normal timescale for inclusion in the annual plan. Ofcom uses the example of a ‘dedicated page on the BBC website that is regularly updated, or through regular, scheduled discussions with relevant stakeholders’, but this example is not set out in the proposed changes to the guidance. It would be helpful if this example was included in the guidance (just as an example of a ‘dedicated and monitored email inbox’ as a means for stakeholders to easily raise concerns with the BBC is proposed to support a positive approach to dialogue between the BBC and stakeholders, without stating that the BBC must do this). Further, it could be clarified means that ‘consistency’ should be achieved by using the same channel, or the same multiple channels, each

time a change is communicated outside of the normal timescale, rather than (for example) the BBC 'consistently' alternating between two or means of communication.

Consultation Question 2

We agree that more guidance is necessary about how stakeholders and the BBC should engage during the assessment of materiality by the BBC, but believe that additional changes could help encourage constructive dialogue and exchange of views, rather than merely guaranteeing that stakeholders can contact the BBC with concerns (although this is of course important).

The guidance should state that the BBC should make efforts to meet with stakeholders who describe specific concerns and justify them with appropriate reasoning, as well as respond to reasonable requests for clarification. We appreciate that it would not be practical for the BBC to meet stakeholders in every case, but the guidance could state that the BBC should be open to such discussions, particularly when detailed evidence has been received, or detailed proposals for the BBC to make adjustments to its proposed changes have been submitted. However, we disagree with the proposal that 'Stakeholders should describe specific concerns with the BBC's proposal and justify these concerns with appropriate reasoning and, where possible, evidence'. Whilst we appreciate this proposal intends to elicit useful evidence, it is unacceptable for Ofcom to directly instruct publishers on how they should engage with the BBC, as Ofcom is not a press regulator.

The proposed guidance states that 'timescales for any dialogue would be set by the BBC'. It may be helpful to set a minimum timescale to prevent the setting of such narrow timescales that stakeholders could not be reasonably expected to collect and develop their reasoning and collect evidence about specific concerns. This is particularly important given that Ofcom 'does not expect the BBC to delay implementation' if stakeholders have not engaged where there has been a 'reasonable opportunity'.

Equally, the BBC should be expected to delay implementation if it has not engaged in proper dialogue with stakeholders that have provided compelling reasoning and evidence.

Consultation Question 3

We agree with proposals to include further guidance on what the BBC should include in its PIT consultation, but believe the BBC should be encouraged to provide sufficient detail (or 'show its working'). Whilst it is positive for the BBC to be expected to provide information on, for example, 'a firm indication on the scale of the changes' the BBC could foreseeably still present very bland or limited information that does not help stakeholders understand the potential impact on their businesses. Therefore, the guidance should encourage the BBC to provide sufficient detail to allow proper analysis of its proposals, including the way that it has come to its position, with supporting evidence.

Consultation Question 4

We agree that more detail in Ofcom's guidance about the materiality process is useful, but an improvement could be made by making engagement by the BBC with Ofcom mandatory when it undertakes a materiality process, rather than an 'expectation'. This will make the requirement watertight.

Consultation Question 5

If there is to be flexibility for Ofcom to decide whether a consultation at the initial assessment stage following a BBC PIT, it would be helpful for third parties to be given adequate time for third parties

to respond in cases where third-party comments are invited. The two-week limit in the current, and proposed new guidance makes it impractical for many organisations to gather evidence.

It can be assumed that, if the proposal for flexibility is introduced, Ofcom will only ask for third-party comments in cases where it is believed it is likely that the BBC's proposed changes may not be material, and in turn, it is likely that third parties will have a strong interest in submitting robust evidence.

Therefore, it may be helpful if the guidance clarifies that Ofcom may, on a case-by-case basis, allow an extension to the two-week limit if organisations can demonstrate that they are in the process of developing useful evidence.

Consultation Question 6

We generally agree with the guidance setting out Ofcom's expectations for the BBC's public value assessments, in particular, the guidance that clarifies that it is the 'overall change in public value as a result of the proposal that is relevant for assessing whether any adverse impact on competition is justified', and the recognition of the value of non-BBC services.

However, we are concerned about the proposed guidance setting out that the BBC may consider 'how the proposed changes contributes to the BBC's long-term sustainability', including through reaching audiences 'not well served by the BBC' or increasing awareness of the BBC brand 'among harder-to-reach audiences'. Specialist media publishers, by their very nature, are adept at reaching audiences that other media providers often struggle to reach. We recognise that the BBC can create public value by reaching underserved audiences, but believe that this part of the guidance should re-state the need for the BBC to consider the overall change in public value, recognising non-BBC services and smaller businesses in particular. The BBC's significant resources mean changes to its services have the potential to crowd out small, specialist media businesses, so the Corporation must take care to take account of these businesses in its public value assessments.

Consideration of the BBC's market impact in online written journalism

The PPA has previously raised concerns about the impact of the BBC's increasing volume of 'soft' or 'specialist' online written content on the BBC News website on the specialist media industry. The plans for a 'digital-first' BBC mean that the volume of such content is likely to increase. We, therefore, ask that Ofcom consider the market for the online written journalism sector and set out its views, as it has done for the audiovisual and audio sectors in this consultation.

Doing so will provide a useful starting point for assessing the impact of any proposed changes on the market, and help stakeholders to engage with Ofcom and the BBC.

Conclusion

The proposals set out in the consultation are generally positive (although, as stated, we believe Ofcom could have gone further and introduced greater regulatory scrutiny). However, if the proposals are to achieve Ofcom's stated aims of encouraging a more productive dialogue between the BBC and stakeholders, we believe it is necessary to make some (generally small, but crucial) amendments to the proposed guidance. The changes we have proposed will not create additional burdens for the BBC or Ofcom, or prevent the BBC from adapting and innovating in sectors that are undergoing significant change; they will however be extremely useful in ensuring that commercial providers can properly engage with the development of the BBC's plans through the competition regulation framework.

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We would welcome the opportunity to discuss this response in greater detail.