

Ofcom first consultation on proposed changes to BBC iPlayer – call for evidence

Response from Viacom International Media Networks

10 May 2019

Viacom International Media Networks (VIMN) welcomes the opportunity to respond to Ofcom's first consultation on proposed changes to the BBC iPlayer. This response focusses on the prospective impact of the changes on Channel 5, My5 and the broader PSB ecology, though many of the points made in this response are equally applicable to the broader VIMN family of channels, Nickelodeon, MTV, and Comedy Central. Ofcom should regard this document as complimentary to the views presented in the response of the Commercial Broadcasters Association, of which VIMN is an affiliate member.

EXECUTIVE SUMMARY

- VIMN empathises with the BBC's desire to change its iPlayer VOD service in response to a market environment that has seen tremendous change over the past ten years. VIMN is a very strong supporter of PSB, and share concerns about the pressures they face. However, due to the negative impact on the revenues of commercial broadcasters and the cannibalization of public value in the broader PSB ecology, it opposes the BBC proposals full implementation. Ofcom has a duty to strengthen and maintain PSB but this duty applies collectively across all PSBs.
- The BBC assessment of public value focuses solely on the creation of public value for audiences, balancing this against market harms through loss of revenues to other broadcasters and VOD services. It fails to consider the cannibalization of public value created by other PSBs such as Channel 5 and the deleterious consequences this will have for strategic innovation by these services.
- The proposals in the Public Interest Test (PIT) will lead to a reduction in revenues for all commercial broadcasters in the UK. There will be a loss of advertising revenues due to reduced viewing on both linear and VOD services. Further, by taking inventory out of the secondary rights market VIMN anticipate some price inflation. These are meaningful long-term market impacts that Ofcom must consider when reviewing the BBC proposals.
- VIMN recommends that Ofcom propose a set of remedies to the BBC proposals to constrain the negative impact of the proposals on both market competition and public value. Specifically: limiting catch-up on iPlayer to 30 days after the last episode of a new

series airs on linear; proscribing the number of boxsets that can be made available; and, reviewing the impact of the proposals on the secondary rights market two years after implementation.

BBC PUBLIC IMPACT TEST (PIT)

Question 2.1: What do you think of the BBC’s proposals and the procedures it has followed in carrying out its PIT?

The BBC has followed the required procedures in carrying out its PIT. VIMN is sympathetic to some of the overall issues raised in the PIT, specifically the need for services to adapt to changing viewer habits. However, VIMN would recommend that Ofcom’s inquiry interrogate the narrative put forward by the BBC that the, “proposed changes are the minimum necessary”¹ to prevent iPlayer from falling, “further behind the market”².

Similar to the consultation with stakeholders the PIT describes the proposals in general terms. A clearer outline of how many boxsets and the volume of archive material that may be placed on the iPlayer in the longer term would have been appreciated.

Question 2.2: What are your views on the BBC’s assessment as set out in its PIT? Do you agree with its conclusions?

The BBC’s iPlayer proposal is premised on the notion that its services currently present a poorer offering to consumers than do its competitors because of constricting regulation to ensure a competitive VOD market that is no longer applicable. It specifically observes the challenge posed by the global SVOD services³ and notes the number of boxsets on All4 and the 12-month window for many shows on My5 as examples⁴ of the need for its proposals to be approved by Ofcom without any, “further unnecessary delay”⁵.

VIMN would observe that this is not a wholly accurate picture of the current UK broadcast market on which to base these proposals. As noted in the BBC’s stakeholder consultation⁶ iPlayer is already one of the leading on-demand services in the UK, with an 18% share of the VOD market. This gives it a greater share of the VOD market than all the commercial PSBs combined.

Its significant advantages include an unrivalled ability to cross promote across its numerous different services, driving audiences to the iPlayer from its market leading linear channels and online services. It has exceptional brand awareness and the competitive advantage of being

¹ BBC 2019, ‘BBC iPlayer Public Interest Test’, pp7.

² Ibid.

³ Ibid.

⁴ BBC 2019, ‘BBC iPlayer Public Interest Test’, pp8.

⁵ BBC 2019, ‘BBC iPlayer Public Interest Test’, pp6.

⁶ BBC 2019, ‘BBC iPlayer proposals: Public Interest Test consultation’

advertising and subscription free. As the BBC’s annual plan notes, the iPlayer has “unique advantages”:

“iPlayer remains the best place to find new British content. We have the broadest and most distinctive genre mix, with unique depth in factual programmes, news and current affairs, and British comedy and drama. We have a world-leading offer for children and are a trusted family brand. We are free at the point of use and available on over 10,000 devices and platforms. Last but not means least, we bring all of our live TV to iPlayer as well, including sport, music and news.”⁷

The enviable range and depth of content is the result of significant public funding - more than any other public broadcaster in Europe.

We continue to agree with Ofcom’s previous assessment which stated that, “We consider there is a risk that this increase in viewing to BBC iPlayer could come at the expense of its competitors – particularly other UK video-on-demand services such as ITV Hub, All 4, My5 and Now TV”⁸.

SECTOR DEVELOPMENTS

Question 3.1: Do you have any comments or other views on how the sector has evolved or is likely to evolve in the future that we should consider?

We agree with both Ofcom and the BBC’s general assessment of the changes in the audio-visual media market that have taken place in the last decade. As Ofcom recently noted, the simultaneous advances in technology since the advent of the iPhone in 2007, the same year the BBC iPlayer was launched, along with huge growth in superfast broadband and 4G connectivity has fueled the increased demand for online and on-demand content services⁹. The BBC plays a critical role as: a publicly funded PSB making groundbreaking British content; a significant investor in UK production and talent; and as a developer of new services that are not viable for commercial broadcasters.

Many of the restrictions placed upon the iPlayer, though sensible in 2007 seem anachronistic when considered in 2019. In particular, we support the suggestion that the BBC be permitted to amend the 30 day catch-up window. Where consumers decide to watch a new series after the fourth or fifth episode has aired on linear, it is particularly frustrating for them to find that the first episode is no longer available on iPlayer.

We also agree more generally that changes in the market mean that the BBC’s intention to move iPlayer from being purely a catch-up service to a ‘destination’ for viewing is logical and sensible. As noted above however, we disagree with the narrative put forward that the changes to the iPlayer are necessary so that the BBC can “adapt to market changes, or risk becoming

⁷ BBC Annual Plan 2018/2019, page 6

⁸ Review of the BBC’s Materiality Assessment of Proposed Changes to the BBC iPlayer, Ofcom, 1.12 and 1.13

⁹ https://www.ofcom.org.uk/__data/assets/pdf_file/0022/117256/CMR-2018-narrative-report.pdf

irrelevant”¹⁰, given that the BBC is the UK’s largest linear broadcaster with the most popular VOD service.

VIMN also disagrees that the proposed changes are necessary to allow the BBC to compete more directly with global SVOD companies, and that the quality of a VOD service should be judged primarily on the number of titles it carries.

VIMN observes that the global SVOD services exist to create value for shareholders by creating and distributing content that attracts the most number of viewers/subscriptions. The BBC, through its five public purposes set out in the Royal Charter and Agreement, has a mission to inform, educate, and entertain. SVOD services are regarded by consumers as complimentary to UK PSB and pay-TV VOD services¹¹ and whilst there is some audience overlap it is a mis-representation to regard them as directly competing services. In its infancy SVOD services primarily took market share from the now diminished DVD market, a market that the BBC never sought to enter previously in the interest of public value.

The BBC iPlayer more directly competes with UK PSB VOD services – ITV Hub, My5, All 4. In this context iPlayer’s 18% share of total VOD viewing is very impressive. It is a greater share of viewing than the other PSB VOD services combined. It is these services that will most negatively impacted by any changes to the iPlayer, moving viewing within the PSB VOD ecology rather than taking viewing from global SVOD services.

¹⁰ BBC 2019, ‘BBC iPlayer Public Interest Test’, pp 25, 32.

¹¹ Enders Analysis 2018, ‘*Video On Demand Insights*’

ASSESSING PUBLIC VALUE

Question 4.1: What are your views on the methodology and conclusions of the BBC's assessment of public value generated by the proposals? Are there any impacts on public value that have not been identified by the BBC? Please provide evidence to support your views.

VIMN has two observations on this topic. Firstly, VIMN questions the correlation made by the BBC between increasing public value and increasing share of viewing, second is the need for the Ofcom analysis to more fully consider the risk of potential cannibalization of public value elsewhere in the broadcasting sector. Our comments on these two issues is as follows:

Share of viewing as a metric for public value

The BBC is not proposing to launch a new service, or invest in any additional content. The iPlayer proposal is to amend current restrictions placed upon it by the previous regulator (BBC Trust) so that the service can carry more content for longer periods. Within the BBC proposal document, generation of public value is linked to increasing the attractiveness and 'favourability' of the service to consumers.

By its nature, the BBC has significant marketing budgets and a higher share of viewing for on air promotion. It is able to use its market power to cross-promote both linear, catch-up, VOD, radio and app services. Thus, in comparison to other broadcasters, it has the best chance of enticing viewers into new shows from episode one.

The MTM research commissioned by the BBC, reflects the BBC's existing scale in the market showing that 'favorability' of iplayer is already second only to Netflix at 6.9 (out of 10) for all viewers. The proposed changes would push this to 7.6 – only just above Netflix's 7.5 - and even further away from its terrestrial competitors and way ahead of Prime Video¹². A question for Ofcom to consider is whether increased favorability of a service that already very popular is demonstrable of generating increased public value.

Further, it is worth noting that the MTM analysis claims the changes would have the biggest impact on favorability among light/non-users of BBC iPlayer. What the report does not examine, and may be a worthwhile analysis by Ofcom's, is why consumer are light or non-users of iPlayer. If these viewers are not users of VOD in general, then the viewer uplift is likely to come from other BVOD services, such as My5 or linear viewing.

However, the BBC asserts that consumers are instead watching SVOD services. We would question this assumption. Ofcom's Media Nations report (2018) suggests that the majority of SVOD subscribers also have a traditional pay-TV service. The SVOD service is "complementary to a traditional pay-TV subscription"¹³ which implies that subscribers are already heavy

¹² MTM 2019, 'BBC iPlayer Public Interest Test: Audience research debrief'

¹³ Ofcom 2018, 'Media Nations: UK', p. 16

commercial multi-channel TV viewers and are not primarily PSB viewers. This reinforces VIMN concerns that the majority of public value generated will be because of shifting viewing from UK BVOD services.

Cannibalization of public value elsewhere in the market

The BBC proposals focus on creating public value for consumers by improving its ‘commercial’ offering to market with the intention of keeping viewers within the iPlayer ecosystem through ‘coherent onward journeys’ between pieces of content on the platform¹⁴. The improved iPlayer offering as articulated in this set of proposals is expected to increase both the frequency of visits to the iPlayer and the duration of time spent by consumers viewing iPlayer content.

The BBC PIT acknowledges that this will lead to a reduction in both commercial PSB share of viewing and commercial PSB revenues on both linear and VOD services. The PIT considers the loss of revenue to other PSBs in terms of monetary value, it fails to acknowledge that a consequence of reduced revenues to other PSB services will be a loss of the public value that they currently contribute.

As one of the UK’s three commercial public service broadcasters, Channel 5 has a number of substantial programming responsibilities which it is required to deliver as part of its licence agreement. These cover news and current affairs, original, independent and regional productions, and access services. When Viacom bought Channel 5 in 2014 it was subject also to a Change of Control review by Ofcom which led to an increase in the news and original production quotas. Additionally, Channel 5 agreed to a request from the Government to commit to broadcasting at least 600 hours of UK-originated children’s content on its main channel at least until the end of the licence period in 2024.

Since 2014 increased spend on original UK content has funded the creative reinvention of Channel 5 under its Director of Programming Ben Frow, allowing it to display greater range and ambition in its commissioning. No other UK broadcaster has undergone such a transformation over the same period. Channel 5 is the smallest of the UK’s PSBs with a programme budget of just £240M and a team of only nine Commissioners yet its public value contribution is significant.

In the last twelve months Channel 5 has increased the number of brand new home grown commissions by a third (April 18 – April 19), with 114 new and original series or one-offs transmitting (compared to 86 for the preceding 12 months). In 2018, the number of independent production companies who saw their programmes premiere on the channel increased by 18%, with over 90 indies commissioned by Channel 5. In the same period we boosted our regional output (hours) by over 40% year on year. Further we have increased the number of hours of origination in peak by around 40% in five years; 80% of Channel 5’s peak output last year was home grown.

¹⁴ BBC 2019, ‘BBC iPlayer Public Interest Test’, Fig 12, p 22.

Channel 5 devotes many hours of content, beyond its licence obligations, to deliver feature-length documentaries on important issues to a UK audience. It focused on domestic abuse with the ground breaking 90 minute documentary *The Abused* and companion programme *How to Leave An Abusive Partner Safely*. It has tackled the subject of rape in the RTS award-winning film *Raped: My Story*, which followed ten brave men and women who told their story to camera, followed by a debate programme to explore the issue.

Channel 5 delivers public value by speaking to and, giving a voice to people from across the UK that other PSB channels do not engage with, from countryside communities to the armed forces and NHS workers. Channel 5 contributes to the diversity and plurality of PSB content.

Channel 5 aired over 500 hours of accessible, popular current affairs last year, nearly four times its public service quota of 130 hours, covering subjects of interest to our viewers. We air over 280 hours of news programming every year, with a significant proportion of our audience skewing female and relying on Channel 5 for our popular and accessible service

Additionally, Channel 5 is the only commercial PSB to offer a dedicated, branded block of programming for children on its primary linear channel – this is a key element of Channel 5's brand differentiation compared to the other PSBs. With 21.5 million viewers tuning in during 2017 *Milkshake!* is the brand-leader for pre-school television in the UK. *Milkshake!* offers a wide range of high quality programming including documentaries, wildlife, music-based entertainment and animation, and is behind some of the UK's most popular pre-school shows including Peppa Pig, Thomas and Friends, Bob the Builder and Ben and Holly's Little Kingdom. Through entertainment, its programming covers healthy eating, science, wild-life, pets, social and religious festivals, as well as reading initiatives, music, dance and hobbies.

In 2018 Channel 5 invested in 29 hours of new originated content for *Milkshake!*, equating to approximately 160 individual episodes. It is currently Channel 5's intention to increase this figure to 50 new UK-originated hours per year from 2021, which will double production to over 300 individual episodes.

Any market changes that put increased financial pressure on Channel 5 risks undermining the on-going renaissance of the channel as an important and valued UK PSB, driven by a policy of increased investment in high quality, UK-originated programming across a wide range of genres, including children's content. Without appropriate remedies to the BBC proposals, the public value delivered by Channel 5 will be undermined, as will its long term strategic vision.

Question 4.2: Do you agree with our approach to reviewing the BBC's assessment of public value generated by the proposals? Please provide evidence to support your views.

It is Ofcom's intention to assess the public value of the BBC's proposals by considering three criteria¹⁵: the scale of any increase in public value, e.g. the attractiveness to audiences of the proposals; the impact on other sources of public value; the audience categories affected. VIMN agrees with this approach, it would make the following points for consideration in each of these areas.

Increase in public value

VIMN would caution Ofcom against directly correlating the attractiveness of the BBC proposals to audiences with increased public value. As the UK's largest linear broadcaster with the most popular VOD service and global brand recognition, it is unsurprising that analysis shows the ability to watch the same number of BBC shows but more of the time is attractive to audiences.

Impact on other sources of public value

Assessing impact on other sources of public value is essential to Ofcom's approach to assessing public value, we are pleased that this is included in the proposed approach. As noted above the BBC considers the proposals a net positive in terms of public value due to its attractiveness to audiences, but the impact on 'public value' across the entire UK broadcast ecology, particularly PSB, must be considered.

Audience categories affected

As noted above, each of the PSBs has both licence obligations alongside market driven points of differentiation. It is crucial that increasing viewing of BBC PSB content is not regarded as more important than the loss of viewing of PSB content on other channels.

An area of particular concern for VIMN is the impact of the proposals on the children's TV market. Children's TV is a core element, and point of differentiation, across the VIMN family of channels despite it being a more challenging demographic for commercial broadcasters. Ofcom should consider the negative effects on the Children's TV market.

¹⁵ Ofcom 2019, 'First consultation on proposed changes to BBC iPlayer', pp 15.

MARKET IMPACT

Question 5.1: Do you agree with the concerns that we have set out in Section 5, or are there any others that we should consider? Please provide relevant evidence to support your views.

We agree with Ofcom's assessment that there are five potential ways that competition might be adversely impacted by the proposed BBC iPlayer changes. For VIMN specifically its primary concern is the impact on the revenues and profitability of competing linear and VOD services.

Question 5.2: Please provide evidence on whether and how the BBC's proposals could directly impact on rivals' viewing, revenues and investment.

As VIMN has already commented upon in this submission the BBC iPlayer is already the market leading UK VOD service provider. Any improvement to its consumer offering through boxsets and a relaxation of the 30 day window will primarily draw viewing away from the UK commercial PSB VOD services.

As Ofcom is aware, Commercial VOD services generate revenue through advertising which is distributed on the basis of viewing share. A reduction in the share of viewing to commercial VOD services will correlate to loss in revenues. The meeting of PSB obligations, such as those set out in Channel 5's licence, occurs through reinvestment of advertising revenue. A loss in revenue on My5 will naturally lead to pressure on content investment.

Commissioned by the BBC, Frontier Economics state that they identify no impediment to fair and effective competition on the basis that the effects of the changes proposed are too small to have an impact. Further, the BBC PIT document states 'we have structured our proposals to be complementary to other UK PSB services'¹⁶, but VIMN would challenge the description of the proposals as 'complementary' given they estimate a reduction in viewing of 3.4% to My5. We would also disagree with the BBC's observation that this will lead to 'a very small impact on the profitability of these competitors' services' – the projected 3.6% drop in revenues to My5 is meaningful in terms of the opportunity cost of potential content investment and platform innovation. 3.6% is also currently greater than annual inflation; it would represent a cut in real terms to our annual budgeted costs. We would urge Ofcom to evaluate this closely.

Frontier Economics estimate a -5.3% impact on My5 volumes (Figure 28)¹⁷. VIMN believes this may underestimate the effect on My5, in particular when considering the high strength of substitution of My5 (both in absolute terms and compared to other services) as shown in the results of the MTM survey (Figure 22)¹⁸.

¹⁶ BBC 2019, 'BBC iPlayer Public Interest Test', p.9

¹⁷ Frontier Changes to BBC iPlayer: Competition Assessment'

¹⁸ MTM 2019, 'BBC iPlayer Public Interest Test: Audience research debrief'

Further, the analysis is very clear that My5 is affected more than other BVoD services. However the full impact of this does not feed through to the revenue calculations, as Frontier's analysis assumes a 1% reduction in viewing of VOD leads to only a 0.67% reduction in VOD advertising revenue. It is assumed that this inelasticity results from the price of VOD advertising increasing as VOD viewing contracts, partially offsetting lost revenues. We would argue that the loss would be 1:1 (as is the assumption when forecast growth in volumes is translated into growth in revenues going forward in footnote 11, page 14). The asymmetry between the resulting change in revenue from a change in viewing is acknowledged but dismissed, stating that results are 'not particularly sensitive to the precise counterfactual assumptions' but we would urge Ofcom to ensure the impact here is not being underestimated.

Even assuming the impact is not being underestimated, we do not agree that the effects of the changes proposed are too small to have an impact. Given My5's smaller scale than other BVOD services and not being state owned, any declines in revenue or margin have a near instant effect on the business's budgets. We therefore do not accept that these changes will not affect investment decisions and that there is no adverse impact on fair and effective competition.

Even though the modelled reduction in revenue is smallest for My5, in percentage terms it is the greatest (figure 31). The Frontier Economics report points out that My5's profit margin in 2024 is forecast to be larger than in 2015 – this gives the impression that the reduced margin is less impactful¹⁹. VIMN would not consider 2015 to be a good benchmark year. Channel 5's VOD player was relatively young and in development at this stage. One would expect the margin of an investment in an emerging line of business to increase over time as it becomes more mature. This erosion in margin (as shown in Figures 34 and 35) is significant as it will affect viability and willingness to invest in the service.

We are specifically concerned about the impact on children's viewing. Frontier Economics own analysis suggests that, 'Approximately a quarter of the uplift in BBC iPlayer consumption is as a result of increased viewing of children's programming on iPlayer'²⁰. This has a disproportionate effect on Milkshake, where we have just committed to increasing investment. We would recommend that Ofcom considers whether fair and effective competition will be maintained specifically within the kids genre.

¹⁹ Frontier Economics, 'Changes to BBC iPlayer: Competition Assessment', p. 61

²⁰ Frontier Economics, 'Changes to BBC iPlayer: Competition Assessment' 5.2.4 p57

Question 5.3: Please provide any evidence on whether there might be reduced access to content rights, and whether this might reduce the ability of rivals to compete and why. We also welcome evidence on the alternative sources of content rivals would consider.

Presently the BBC sells secondary rights to other platforms once they can no longer be on the iPlayer (such as *The Night Manager*, *The Missing* on Prime). A consequence of this proposal is that rights for shows such as these may reside with the BBC for longer (12 months in place of 30 days, or as part of a boxset).

One might expect that by restricting the volume of content on the secondary rights market prices may increase due to a lack of supply. However if, as many expect, prices for the secondary rights of BBC shows will reduce due to greater exploitation in the 1st VOD window, this could have consequences for both producers and broadcasters. Frontier Economics suggest that if the value of the secondary rights window were to decline, they would expect the value of primary commissions to increase to account for this. However, increased costs for primary commissions may not be affordable for the commissioner, and producers with long-term production agreements with broadcasters may not be able to alter their contractual terms.

Question 5.4: How do you think any potential for adverse market impact of the proposals could be reduced?

VIMN believes there are some remedies that could be put in place to constrain the negative impact of the proposals on both market competition and public value. We would recommend Ofcom consider the following options:

- The iPlayer catch-up window for a new series should be extended from 30 days after each episode to 30 days after the linear showing of the final episode. This would address consumer frustration when a first episode of a new series is unavailable despite later episodes still broadcasting on linear channels. At the same time, it would limit market impact.
 - The number of boxsets made available should be stipulated by Ofcom at a level that appropriately balances public value and market impact.
 - Given the uncertain consequences of the changes to the secondary rights market, VIMN recommends Ofcom commit to conducting a review of the secondary rights market two years after implementation of the BBC proposals – with a view to recommending new remedies if required.
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