



# BBC iPlayer Competition Assessment: Consultation on Ofcom's provisional determination

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BBC Response

10 July 2019

## Executive summary

- The BBC welcomes Ofcom's provisional decision to allow the BBC to increase the availability of content on BBC iPlayer and evolve the service to meet audience expectations and needs.
- The BBC is pleased that Ofcom has acknowledged the significant public value that extending the availability of content on BBC iPlayer will provide. We particularly welcome Ofcom's findings that these changes are critical to the future of the BBC and our continued relevance to our audiences, given the shift in audience viewing behaviours.
- The BBC notes that Ofcom agrees, after undertaking its own in-depth research and analysis, that the BBC's proposals will not have a significant adverse impact on fair and effective competition. An enhanced BBC iPlayer is a key part of a vibrant and successful creative media ecology in the UK.
- The BBC is pleased that Ofcom has come to this conclusion having already consulted with and taken into account the views of stakeholders. The BBC hopes that Ofcom will be able to finalise its decision quickly following this consultation so that we can move forward with our plans and deliver the on-demand service that our audiences want.
- However, the BBC disagrees with Ofcom's assertion that BBC iPlayer is "free of charge", and therefore has a competitive advantage. BBC iPlayer is freely available to licence fee payers, but it is not free. One of the key reasons for the BBC proposals is to ensure we deliver value to all licence fee payers, and particularly younger audiences.
- The BBC will work with Ofcom to develop and implement new reporting around BBC iPlayer. This is likely to include:
  - Publishing further details of our plans for BBC iPlayer and its performance through our Annual Plan and Annual Report and Accounts to reflect its greater significance in our UK Public Services;
  - Ensuring that we are able to provide Ofcom with details of the content in BBC iPlayer at any given time as well as further details of its performance; and
  - Setting out later this year further proposals to Ofcom on how our operating licence can effectively evolve to reflect the delivery of our mission and public purposes across our linear and online services.

## 1. The BBC welcomes Ofcom's provisional decision

The BBC commissions world-class British content across the broadest range of genres and from the whole of the UK creative community. We look forward to making this content available to audiences in the ways that they now expect us to – on-demand, when and how they want – and not excluding those who have lost touch with linear TV schedules. Through these changes the BBC will be able to offer all audiences a deeper, richer experience on BBC iPlayer, enabling everyone to always find something great to watch.

### 1.1 The BBC's proposals will deliver significant additional public value

Ofcom's provisional decision will allow the BBC to deliver significant additional public value to audiences in the UK through BBC iPlayer.

#### 1.1.1 12 months standard availability

By making all commissions available on BBC iPlayer with a standard availability of 12 months, the BBC can offer audiences a clear, consistent and understandable proposition, which is essential if we are to change audience perceptions, behaviours and usage of BBC iPlayer.

Audiences will in future always be able to find any programme from the last year on BBC iPlayer, to watch at least one full series and in many cases the full boxset from the beginning, in particular for scripted comedy and drama. This will eliminate the gaps in our current offer by delivering significantly more content on BBC iPlayer at any one time. It will also reduce searches resulting in dead ends, where programmes are simply not available.

We will build confidence that BBC iPlayer is a reliable destination where there will always be something great to watch, across the full range of programmes that we commission to deliver the mission and public purposes.

The BBC's plans also create exciting new opportunities for us to commission even bolder, more creative British programmes. We have already had considerable success on BBC Three, where we have 24 months availability as standard. Some key titles, for example, new comedy with emerging British talent like *This Country*, *People Just Do Nothing* and *Fleabag*, would not have been the successes they are today both for the BBC and in the secondary market without the opportunity to grow an audience over a longer time on BBC iPlayer. By moving to a 12 month minimum standard, we can provide each programme with more opportunities to find and grow audiences, and avoid being drowned out by US rivals.

#### 1.1.1 Box sets

The BBC's audience research clearly identified box sets as being a minimum expectation of modern audiences from a VOD service, and we welcome Ofcom's support for our proposals to offer audiences full box sets on BBC iPlayer. Our proposals will enable the BBC to make the most of our commissioning spend, making our hits available for longer and in full. This

will allow more audiences to watch them and get greater value for their licence fee. By offering full box sets of selected returning series, we can make the most of new series commissions, capitalise on marketing spend when a series returns, and make the licence fee go further.

### 1.1.1 A modern day repeats strategy

Likewise, when the BBC has developed a programme that remains relevant to UK audiences, we will be able to bring it back from the archive. This is exactly what we have always done with repeats on linear television, but adapted for an on-demand world. And just as repeats are an essential and popular part of running a linear channel, archive is an essential part of our proposals for BBC iPlayer.

## 1.2 The BBC's proposals are consistent with a thriving commercial sector and a strong UK PSB ecology

We consider that the development of BBC iPlayer is positive for UK consumers – not simply through the additional public value directly generated by our proposals, but also by ensuring the BBC can remain an important source of innovation in the market that spurs our competitors to innovate and invest.

Given the current multiplicity of choice, far from having an adverse impact on competition, the BBC investing in production and technology drives innovation and investment by our rivals. We consider this has long been the case with other PSBs, but we are also forcing the American-based SVOD platforms to raise their game by investing in better content, particularly drama. This significantly benefits the UK creative economy overall.

Our BBC iPlayer proposals need to be seen within this context; it does not follow that investment in BBC iPlayer will necessarily be detrimental to our competitors. Rather, we consider that our plans are likely to lead to greater innovation to the benefit of UK consumers, as well as the whole television sector.<sup>1</sup> Our involvement in BritBox demonstrates the confidence we have that our BBC iPlayer proposals will not risk crowding out commercial on-demand services.

### 1.3 Ofcom's BCA process

We note that Ofcom has acknowledged as part of its decision the fast pace of change in audio visual markets, and recognised the need for the BBC to reinvent BBC iPlayer in this context. The BBC strongly welcomes the emphasis Ofcom has placed on wider market developments as part of this BCA and provisional decision. In particular, we are pleased that Ofcom has recognised in its provisional decision the scale and impact of the BBC's proposed

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<sup>1</sup> See for example: [Public and Private Broadcasters across the World - The Race to the Top](#), BBC, December 2013

changes on other players in the market in the context of the much bigger shifts and competition brought about by the likes of Netflix and Amazon. This view of the market and consideration of competition must be where Ofcom starts from. We consider it is vital that Ofcom continues to take this into account in future as part of its work in regulating not only the BBC, but for the wider UK PSB ecology. This will help strengthen PSBs and the broader UK creative economy as well as continuing to ensure a better offer for UK audiences.

Furthermore, we welcome the speed with which Ofcom has completed this BCA. This has minimised the potential adverse impact on the BBC of having to go through this process given the pace change in the market, and particularly considering the time it took for Ofcom to decide that this change was material, contrary to the original decision of the BBC Board. We hope that, given the dynamic competition in the market, this expedited BCA process will serve as a model in future where the BBC finds that a change to one of its UK Public Services is material.

The BBC agrees that its impact on the market must be carefully considered. The BBC's public funding is an important factor. Indeed the Board takes its responsibility to consider the market impact of the BBC's proposals and promote positive impacts in the wider market very seriously. As such we recognise that Ofcom has an important role in scrutinising the BBC Board's decisions around materiality even if the Charter and Agreement do not require Ofcom to approve non-material changes.

However it is essential that where Ofcom does review the BBC's decisions it makes its own decisions quickly, to ensure the BBC is able to effectively respond to market changes and evolve its services. In this case, Ofcom took significantly longer to consider the materiality of the proposed changes than it has taken to reach a provisional decision on its BCA. Given the pace of change in these markets to delay the proposals like those for BBC iPlayer for over a year will have had a detrimental impact on the BBC's ability to deliver its mission and public purposes and provide value to licence fee payers.

To this end, we would like to engage further with Ofcom following this decision about how we can ensure the process around potential material changes to the UK Public Services can be improved. Ofcom must have the appropriate oversight, while the BBC has to be able to continue to evolve in dynamic and fast changing markets, ensuring we are able to compete fairly and continue to improve our offer to serve licence fee payers in a digital world.

#### **1.4 BBC iPlayer is not "free of charge"**

Ofcom states that "BBC iPlayer is not a commercial service – it is free of charge and free from advertising. As a result, it enjoys a competitive advantage that is not available to commercial providers. An expansion of BBC iPlayer thus risks harming fair and effective competition."

We disagree with this position. BBC iPlayer is freely available, but is not free of charge. It is offered as part of a package which is paid for by the licence fee. It is therefore incorrect to

assume that, *as a result of being free of charge*, it enjoys a competitive advantage that is not available to commercial providers.

Audiences expect to receive good value for money in exchange for the licence fee. This needs to be seen in the context of a plethora of VOD services, each competing to improve their services and attract audiences. In this context, BBC iPlayer and the BBC's other services need to match audiences' growing expectations in order to provide value for money.

The BBC fully accepts the accountability and scrutiny that comes with our unique funding model. However, given the dynamic, fast moving nature of the market, it is essential that the requirements on the BBC are proportionate and appropriate. For example, the requirements of the Charter and Agreement for the first Operating Licence meant Ofcom had to build a framework that is focused on linear services rather than enabling the BBC being able to develop on-demand and digital services that audiences increasingly demand. We look forward to continue to discussing these issues with Ofcom.

Furthermore, whilst the security and scale of the BBC's public funding is a huge privilege, it should also be noted, and acknowledged, that the commercial models of our competitors provide some significant flexibilities, and the opportunity to diversify, that are not available to the BBC. Our competitors have the ability to raise their revenues (in some cases by many multiples) by increasing subscription prices (e.g. SVOD), through advertising (commercial PSBs and other broadcasters) or debt financing (where the BBC's borrowing limit is constrained and set by Government). Other business freedoms, including being able to take advantage of vertical integration and take advantage of associated economies of scope and scale, are also not available to the BBC in the same way as they are for others – and which ITV, for example, have utilised so successfully.

In Annex 1 we set out further details on several additional points raised in Ofcom's consultation.

## 2. Further supporting evidence for our proposals around Children’s content

We strongly welcome Ofcom’s provisional decision to enable us to make children’s programmes available on BBC iPlayer throughout our five year public service licence period. We also welcome the opportunity Ofcom has provided through its consultation for us to set out further details on how these proposals will deliver additional public value.

We seek longer standard availability for Children’s programming than in other genres because the way children consume audio visual content is fundamentally different to adults. As Ofcom’s own analysis<sup>2</sup> has shown, children are also moving away from linear channels much faster than other age groups. This makes a strong and sustainable VOD offer essential for continuing to reach these audiences. We therefore need a pattern of on-demand availability that reflects this to deliver maximum public value.

### 2.1 Children’s content has a longer lifecycle than other genres

As Ofcom notes in its *Children’s content review*, “children are not one audience but several... As children grow older, and move between different life and educational phases, their behaviours, needs and wants change with them”.<sup>3</sup>

The target audience for a children’s programme is smaller, often appealing to an age cohort of only a few years. However, children are also more likely to watch the same content multiple times. This means that to gain the best public value from our investment in children’s content, it is necessary for it to have a longer lifecycle than other genres.

This is why we already make children’s content available for longer than other genres, as reflected in the greater number of linear transmissions that are part of a standard commission for children’s programmes. However, the link to our linear schedule means we cannot offer continuous availability, which detracts from the value we can offer to our audiences. As children get older new cohorts will be able to discover the same content if it is on BBC iPlayer for longer. This is clearly reflected in our modelling of take up and usage, as set out in our PIT.

### 2.2 BBC children’s programmes play a distinct role in the UK market

Ofcom’s review of children’s programmes acknowledged the important role the BBC plays in children’s programming and that the activities of other broadcasters are relatively limited for children’s content. For example, the BBC is the only PSB that continues to make children’s drama. As Ofcom’s report sets out “UK children’s drama can help children see their lives

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<sup>2</sup> [BBC iPlayer Competition Assessment: consultation on Ofcom’s provisional determination](#), Ofcom, 12 June 2019, paragraph 4.23

<sup>3</sup> [Children’s Content Review](#), Ofcom, 24 July 2018, p.1 & p.9

reflected back to them but there is no provision beyond the BBC".<sup>4</sup> There has also been a significant decline in factual programming on other PSB services. Ofcom's report notes that of the commercial PSBs only ITV had any factual children's content in 2017, and even then only three hours.<sup>5</sup>

Our audience research demonstrates that participants in the MTM survey who lived with children viewed the proposals more favourably than survey participants in general. On average, across respondents, 57% of participants had a favourable general impression of the proposals, compared with 61% of participants living in households with children aged 0-10, and 60% of participants living in households with children aged 11-17.<sup>6</sup>

Finally, we reiterate the strong support from respondents to our PIT consultation about the high potential public value of BBC Children's' content. The Voice of the Listener & Viewer (VLV) and others singled out Children's content in particular as having the potential to deliver significant public value.

### **2.3 The public value of longer availability for children's content strongly outweighs any potential risk of our proposals adversely affecting fair and effective competition**

We consider that the potential additional public value for children's content strongly outweighs any potential risk of our proposals adversely affecting fair and effective competition.

We agree with Ofcom that the lack of data on the amount of time children spend watching specific services makes it hard to assess the extent to which the proposals might crowd out viewing of commercially-funded services. However, the pattern of reach of non-BBC VOD services amongst children is similar to that of adults.

Our analysis of average weekly reach<sup>7</sup> suggests that amongst adults:

- Netflix is the most popular SVOD service, followed by Amazon Prime. Now TV is the third most popular SVOD service, and is the fifth most popular VOD service overall.
- All 4 is the most popular commercially funded BVOD service (and the third most popular VOD service overall), closely followed by ITV Hub. Of the PSB BVOD services, My 5 has the lowest claimed reach.

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<sup>4</sup> [Children's Content Review](#), Ofcom, 24 July 2018, p.27

<sup>5</sup> Ibid p 24

<sup>6</sup> Source: Question D1 of the MTM survey. Respondents were asked "If ALL of the changes we just showed you were made what would your general impression be of BBC iPlayer?" Respondents gave a score from 1 (extremely unfavourable) to 10 (extremely favourable). A favourable rating is defined as a score of 8-10.

<sup>7</sup> Based on claimed weekly reach of non-BBC BVOD and SVOD services over the period Q4 2017 to Q4 2018, taken from CMM (a diary based survey of respondents aged 16+) and Children's CMI. Note that we have not included YouTube in the analysis since much viewing on YouTube is of short form content.



Similarly, amongst children:

- Netflix is the most popular SVOD service, followed by Amazon Prime. Now TV is the third most popular SVOD service, and is also generally the third most popular VOD service overall.
- Amongst commercially funded BVOD services, ITV Hub has a slightly higher claimed reach than All 4, but My 5 has the lowest claimed reach.

The data therefore suggests that the lion’s share of additional BBC iPlayer viewing of children’s programming that occurs at the expense of SVOD, would mainly come from Netflix, followed by Amazon Prime and then Now TV, assuming that reach is correlated with time spent viewing on-demand services.<sup>8</sup> Amongst BVOD services, we would expect the impact to be spread across All 4 and ITV Hub, with the least additional viewing (in absolute terms) coming from My 5.

Claimed weekly reach of different VOD services with children and adults

	Q4 17		Q1 18		Q2 18		Q3 18		Q4 18	
	Children	Adults	Children	Adults	Children	Adults	Children	Adults	Children	Adults
ITV Hub	15.4	6.3	7.1	6.1	11.0	6.8	7.8	6.1	8.4	6.2
All 4	6.6	7.3	5.9	7.3	6.6	7.4	6.0	7.8	5.7	7.3
My 5	2.5	2.9	1.6	2.3	1.5	2.1	3.2	2.3	2.2	2.8
Amazon	15.9	10.8	2.5	11.8	14.5	8.5	15.3	9.1	14.7	11.0
Netflix	46.4	27.1	2.3	28.6	45.9	22.5	49.0	24.3	47.4	26.8
Now TV	12.4	5.8	11.3	5.1	8.4	5.9	10.2	6.2	9.7	5.7
Sky Go	6.9	2.7	5.3	3.7	5.3	2.5	6.0	2.9	5.2	2.6

Source: Children’s CMI and CMM for 16+ viewing of VOD services

We therefore consider that the results of our modelling in the PIT provide a reasonable assessment of potential changes in consumption. Furthermore, we also know that children’s viewing of linear channels is highly fragmented, as set out below:

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<sup>8</sup> This assumption is reasonable as previous analysis has shown that there a strong historic relationship between reach and share (see for example, Figure 11 in [Forecast consumption and preliminary market impact assessment of revised BBC services](#)).

Children’s viewing of linear TV channels

<b>Average weekly reach (3 min %) – 2018</b>	<b>HPC* (0-3)+Children (4-6) excl. guests</b>	<b>Children (6-12) excl. guests</b>
CBeebies	41.5	15.9
CBBC	8.7	20.8
BBC One	34.7	41.5
BBC Two	13.4	18.3
ITV	32.2	37.8
Channel 4	21.6	26.1
Disney Junior	8.8	-
Nick Junior	14.6	-
Pop	9.8	12.2
Tiny Pop	9.2	-
CITV	7.2	11.9
Cartoon Network	4.4	10.0
Disney Channel	-	6.4
Nickelodeon	-	8.9

Source: BARB TechEdge data week 01-52 2018 \*Housepersons with children

Ofcom data similarly shows that children spent significant amounts of time online on other devices and that much of this time is spent watching clips or user generated content, such as unboxing videos.<sup>9</sup> Therefore the impact of this viewing is likely to be fragmented across a wide range of broadcasters and activities (e.g. gaming).

We therefore conclude that the uplift in viewing of children’s content in BBC iPlayer, at either the level predicted by our analysis or Ofcom’s analysis, is unlikely to come at the expense of other BVOD services. We also agree with the points that Ofcom set out in its provisional decision that, notwithstanding any potential reduction in viewing across other services, there are factors that limit the risk of any potential adverse impact on fair and effective competition, specifically:

- The BBC’s content mix for children’s programming is highly differentiated from that available on other services, e.g. drama, news, factual;
- PSBs are subject to a range of regulation that serves to limit the likelihood of them reducing investment into children’s content; and
- People are unlikely to stop subscribing to subscription services if their (or more accurately their family’s) viewing of children’s content on these services declines.

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<sup>9</sup> [Children and parents: media use and attitudes report 2018](#), Ofcom, 21 February 2019, p.6

### 3. Our response to Ofcom's proposals around potential reporting

We agree with Ofcom that these proposals should represent a new baseline for BBC iPlayer, with any plans to deliver over and above these proposals being considered in line with our standard approach for considering changes to our UK Public Services. This will give us the necessary operational flexibility on an ongoing basis to continue to develop BBC iPlayer, whilst ensuring that there is appropriate oversight over any further changes that could adversely affect fair and effective competition to a significant degree.

We will work with Ofcom to develop and implement reporting around BBC iPlayer. Based on our understanding of Ofcom's proposals as set out in its consultation, as well as our further engagement with Ofcom, we consider this may involve three areas:

#### 3.1 Additional published information

We understand Ofcom's concerns about providing stakeholders with information about our plans for, and the performance of, BBC iPlayer as it becomes a more important part of our UK Public Services.

BBC iPlayer is one of the ways the BBC delivers content to our audiences; it contributes to the BBC's mission and public purposes as part of the BBC's overall suite of services. As such, delivery through BBC iPlayer is already part of some audience figures published in the BBC Annual Report both in terms of experienced and perceived value. It is also included in some of the information published in our Annual Plan about our priorities.<sup>10</sup>

We recognise that as we move to a digital-first world, we will increasingly deliver the mission and purposes through BBC iPlayer. Our plans for BBC iPlayer also involve providing content on BBC iPlayer that would not be shown on other BBC services, so we agree with Ofcom that BBC iPlayer should have greater prominence in our reporting going forward. We therefore expect to publish additional detail in our Annual Plan on upcoming plans for BBC iPlayer each year, where relevant. We also plan to provide details of BBC iPlayer's performance in our Annual Report and Accounts each year.

As part of this we will ensure BBC iPlayer is part of the BBC offer (alongside TV, radio, online and apps) that respondents consider when they rate the BBC overall on its delivery of the mission and purposes. We will also collect a further set of metrics specifically on BBC iPlayer to cover usage of and perceptions towards BBC iPlayer, and its contribution to BBC TV

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<sup>10</sup> For example, in the [2018/19 BBC Annual Report](#), BBC iPlayer is included in the overall BBC reach and time figures (e.g. on pages 4, 56); BBC News reach (Purpose 1 page 18); in under 16s' BBC reach and CBeebies and CBBC overall reach (Purpose 2 page 22, page 24); as part of BARB TV set figures for BBC TV reach and time (e.g. Purpose 1 page 18; Purpose 3 page 27; Purpose 4 pages 39, 41, 43, 45, 47; BBC TV services pages 57, 58); and in the quality and distinctiveness ratings for BBC TV (page 26).

viewing. We will review on an ongoing basis whether further metrics are needed on BBC iPlayer as it evolves over time.

### **3.2 Additional reporting to Ofcom on BBC iPlayer content**

We welcome Ofcom's decision that our BBC iPlayer plans should establish a new baseline for what BBC iPlayer offers our audiences. This would include the programmes with new extended availability, but also other content that is not covered by the scope of these plans (e.g. BBC Three).

Following our engagement with Ofcom, we understand Ofcom's desire to ensure it is able to effectively discharge its obligations in holding the BBC to account by being able to understand what content is available on BBC iPlayer at any given time, and to compare this against a baseline. We agree with Ofcom that routine reporting is not a proportionate way for Ofcom to achieve any necessary oversight, and that instead we should be in a position to provide such information to Ofcom on request, for example, if a stakeholder has raised a legitimate and evidenced concern with Ofcom.

We have separately provided to Ofcom further details around the different types of programmes that are relevant to establish this baseline, and look forward to continuing to work with Ofcom in this area.

We will also continue to engage with Ofcom around potential additional reporting on BBC iPlayer that Ofcom may require. We have already shared with Ofcom details of a range of metrics the BBC tracks around BBC iPlayer's performance.

### **3.3 Future changes to our operating licence**

We note the points raised by Ofcom in its provisional decision about the important role that our operating licence plays in helping to ensure that we deliver the mission and public purposes. We also note Ofcom's legitimate concerns about how the current operating licence conditions could be reflected in a world where our online services, including BBC iPlayer, are increasingly significant to our delivery of the mission and fulfilment of the public purposes.

We share these concerns, and have already started to consider how our operating licence may need to change as we move away from linear services and deliver more online. We hope to engage with Ofcom in the coming months in more detail on how the operating licence could evolve to reflect these changes, and we welcome Ofcom's commitment to also taking this work forward. We expect that these changes could help to provide significant confidence for all stakeholders about how the BBC will continue to deliver the mission and public purpose as our audiences increasingly engage with the BBC online.

We consider that these measures will together provide Ofcom with the reassurance it requires to discharge its regulatory obligations, help us and Ofcom to consider any potential future evolution of BBC iPlayer, and be proportionate for the BBC to deliver.

We welcome further engagement with Ofcom around the details of any conditions Ofcom is minded to impose on the BBC in this area. It is in the interests of the BBC, Ofcom, and all stakeholders that any such conditions are clear, proportionate and deliverable to aid overall transparency around and confidence in Ofcom's final decision. We also note that the fast pace of change in audio-visual markets make it imperative that any conditions have sufficient flexibility to allow BBC iPlayer to continue to evolve with changing audience needs.

## **Annex 1: Details and clarifications on Ofcom’s work, including approach to functionality**

There are several further areas of Ofcom’s provisional decision on BBC iPlayer to which we wish to respond.

### **Functionality proposals**

We note Ofcom’s position that the omission of any functionality proposals from our PIT was “not satisfactory as stakeholders do not have sufficient transparency over these types of changes” and that “functionality changes may, in principle, be material changes”.

The BBC’s policy on material changes to its public service activities clearly sets out that changes to “online functionality, discovery or navigation, to the extent that it does not substantially alter the character of the service” would not “count as ‘material’ within the meaning set out in the Agreement”.<sup>11</sup> We consider that the changes to the functionality of BBC iPlayer fall into this business as usual category.

In addition, we have provided a significant degree of transparency about our BBC iPlayer functionality proposals. As such, we do not consider that, as Ofcom asserts, stakeholders have insufficient transparency over our proposals. Moreover, we do not consider that insufficient transparency in itself would make a change ‘material’. Any assessment of materiality must be based on the specific details of the change proposed against the legal test for materiality.

As we set out in a confidential annex to our PIT, our current plans around functionality do not in themselves amount to a significant change to the functionality of BBC iPlayer, nor do they alter the scale or the character of BBC iPlayer. The improvements are incremental, and build on the existing functionality within BBC iPlayer.

We also consider that Ofcom’s view on functionality represents a significant misunderstanding of the development of online and digital services.

App development requires continual, incremental improvement in response to factors like user feedback and testing and market developments. Since our consultation on BBC iPlayer in January this year, we have updated the BBC iPlayer iPhone app 12 times. This is relatively modest compared to other successful apps. Over the same period, Netflix has updated its iPhone app 25 times, Amazon 11 times, ITV Hub 8 times, All 4 7 times, Spotify 20 times, TuneIn Radio 16 times, and Twitter 20 times.

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<sup>11</sup> [Policy on material changes to the BBC’s public service activities and commercial activities](#), BBC, 7 August 2017

There is neither a clearly defined end-point at which we would stop making improvements, nor any break point at which we would assess these types of changes. As a result of the BBC's duty to make its UK Public Services widely available,<sup>12</sup> BBC iPlayer is available on more consumer devices than any other VOD services in the UK - more than 2,500 TV devices and more than 15,000 types of device overall. If these types of improvements need regulatory approval or assessment it would prevent the BBC being able to improve its services to the benefit of licence fee payers and users.

For the avoidance of doubt, we do not disagree that in principle a change to the functionality of BBC iPlayer or on other BBC services could be a material change. For example, turning BBC iPlayer into a social networking site, adding gaming functionality or aggregating third-party content would require consideration of whether it was a material change.

However, in this instance we feel we have presented sufficient evidence to justify that there is no basis to consider any of our current BBC iPlayer functionality proposals to be potentially material and therefore deserving of further assessment. Nor, as we have clearly set out, are future functionality changes on BBC iPlayer necessarily directly related to our BBC iPlayer content proposals. We will continue to consider any further proposals against our policy on material changes.

### **What constitutes an adverse effect of fair and effective competition**

We note Ofcom's finding in its provisional decision that "reductions in revenues" relating to our competitors services "are not trivial" and that they "represent an adverse effect on fair and effective competition" as they could "reduce BVODs' incentives to invest in their services which, in turn, could have some detrimental impacts for their audiences". However, Ofcom then goes on to state that "the scale of the estimated reductions...are unlikely to result in as significant an impact on incentives to invest and innovate as the potential effects of wider industry trends". We also note that Ofcom focuses on impact in 2020 (i.e. the first full year affected by the proposals).

In focusing on 2020, Ofcom appears to have focused more on the static impact of the proposals rather than the dynamic impact. We do not consider that this is a robust definition of competition. Competition is a process of rivalry, which by its nature implies it is a dynamic process. Therefore a negative effect on static viewing and revenue (and therefore market shares) does not necessarily equate to an adverse effect on fair and effective competition. We therefore welcome the fact that Ofcom assessed the impact on dynamic competition by examining the effect that any changes have on rivals' incentives to invest and innovate, and looked at the wider industry trends before reaching any conclusions.

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<sup>12</sup> [Agreement between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation](#), December 2016, Clause 61

## **Public value of other PSBs**

We note Ofcom's finding that "The BBC did not consider impacts on the public value generated by other broadcasters in its PIT. We consider that the PIT is therefore deficient in this respect, and this is an issue we have previously raised with the BBC."

We consider that any public value generated by other PSBs would be through the content they commission and make available to audiences. While our analysis does not specifically refer to the potential loss of public value on other services, our competition analysis does set out the likely impact on viewing of other PSB services. Our analysis found that this adverse impact will be insufficient to reduce investment incentives, and therefore insufficient to reduce any potential public value offered by other PSBs.

As such we consider that the potential impact on public value was internalised and accounted for within our analysis, which estimated the potential loss of viewing. However, our conclusions focussed on the potential commercial impact on PSBs, rather than the potential impact on their ability to continue to deliver public value. In future PITs we will more specifically set out this dimension of public value alongside the potential loss of commercial income for other PSBs.