

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

**Response from the Commercial
Broadcasters Association to Ofcom**

July 2019



A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

Introduction

1. The Commercial Broadcasters Association (COBA) is the UK industry body for multichannel broadcasters in the digital, cable and satellite television sector, and their on-demand services. COBA members operate a wide variety of channels, including news, factual, children's, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay-TV platforms, as well as on-demand.
2. COBA members are arguably the fastest growing part of the UK television industry, and are increasing their investment in jobs, UK content and infrastructure, largely without public support, direct or indirect.
 - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, helping establish the UK as a leading global television hub.¹
 - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.²
 - UK production: In addition, the sector has increased investment in UK television content to a record £725m per annum, up nearly 50% on 2009 levels.³
3. For further information please contact Adam Minns, COBA's Executive Director, at adam@coba.org.uk or 0203 327 4101.

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2014 Census, Oliver & Ohlbaum Associates for COBA

Response to consultation

1. COBA remains deeply concerned that the BBC Board has not been objective in its process of reviewing the market impact of the iPlayer proposals. Ofcom's BCA has to date mainly focused on market impact, rather than on whether the BBC's procedures have been appropriate. However, Ofcom's Guidance is clear that procedures should be reviewed as part of a BCA, stating (our highlighting):

“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, a full BCA is more likely to be appropriate. This would involve each of: (i) **a review of the procedures the BBC has followed in its public interest test (including consultation with third parties)**; (ii) a review of the public value of the proposed change; (iii) an assessment of any adverse impact of the proposed change on fair and effective competition; and (iv) an assessment of whether the public value of the proposed change justifies any adverse impact of the proposed change on fair and effective competition.”⁴

2. There are four key areas where the BBC Board's part of this process has fallen short:
 - a. The BBC Board, during its consultation process, failed to provide detailed information to external stakeholders about its plans, making it difficult for industry to respond fully.
 - b. It has also failed to communicate the fact to licence fee payers that there will inevitably be costs for the BBC from its proposals, notably in terms rights payments.
 - c. It has still not provided estimated costs to Ofcom, despite these being an explicit requirement under the Operating Framework. This is a major concern at a time when the BBC has stated that its finances are under substantial pressure due to free licence fees for over 75s.
 - d. Proposals for extending the children's window even further were not announced until the final stages of the BBC consultation.

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0028/99415/bbc-public-service-activities-proposed.pdf

3. The regulator's provisional decision notes the lack of detail provided to stakeholders, and the lack of any costings, but stops short of stating whether the BBC has conducted this process adequately, in accordance with the requirements of the Operating Framework. We therefore ask Ofcom to review the BBC Board's procedures and to state whether it views the BBC as having fulfilled its duties under the Charter and accompanying framework. The Operating Framework states that the BBC's consultation: "should also be sufficiently detailed to allow third parties to understand the proposal fully and to be able to provide constructive input."⁵
4. Crucially, the Framework also requires the BBC to be clear about costs, saying: "We expect the BBC's public interest test to clearly articulate the...costs involved."⁶
5. This is more than just a point of process: it is crucial to informing the forthcoming mid-term review of the Charter.
6. Beyond governance, we remain concerned that the iPlayer proposals will impact on the wider market. If the BBC is able to secure a 12 month window for the majority of content on the iPlayer from rights owners, this will inevitably impact on viewing to other on-demand services and linear channels.

⁵ Assessing the impact of proposed changes to the BBC's public service activities, Ofcom, 4.16

⁶ Assessing the impact of proposed changes to the BBC's public service activities, Ofcom, 4.18