



A new BBC Three channel: Public Interest Test consultation

Sky's response to the BBC's Consultation

April 2021

Executive Summary

The BBC is proposing to relaunch BBC Three as a broadcast TV channel, having closed it five years ago on the basis that moving the service online would better meet the needs of younger audiences and respond to the structural shift of viewing to online.

The BBC claims relaunching the channel will help it to better serve certain younger audiences, which it suggests the market is currently failing to serve – in particular, audiences based outside London and the south-east, lower socio-economic groups and those with less access to digital on-demand services.

However, these claims are yet to be substantiated. The BBC has not adequately explained the need for relaunching the channel and, in particular, how it will deliver on the objective of increasing reach amongst apparently under-served audiences.

In the absence of any supporting evidence, it is difficult for Sky and other stakeholders to comment meaningfully on the public value of the BBC's proposal at this stage in the regulatory process. It is clear, however, that relaunching the channel has the potential to have an adverse impact on fair and effective competition by:

- taking viewing share, and therefore revenue, from other channels (including those which already serve those younger audiences targeted by the proposed channel);
- displacing other channels from their current EPG slots (if platform providers are required to reorganise their EPGs in order to provide the relaunched channel prominence); and
- exacerbating the adverse impact on fair and effective competition resulting from the BBC's preferential treatment of BritBox to the detriment of competing pay TV platforms and services.

To satisfy the Public Interest Test, the BBC must therefore clearly demonstrate that relaunching the channel will deliver significant public benefits and that such benefits will outweigh the potential adverse impact on competition. Given that the BBC will be reversing its previous decision, the BBC and Ofcom must be satisfied that this threshold is met with a high degree of certainty, following a full competition assessment by Ofcom.

Introduction

The BBC is the principal public service broadcaster in the UK. It represents a significant state intervention into the UK broadcasting sector.

The BBC is primarily funded by a mandatory licence fee of £159 each year, which (subject to limited exemptions) is payable by every UK household watching linear or catch-up TV. In 2020, the licence fee provided the BBC with £3.52bn of guaranteed revenue, which it supplemented with revenues from commercial ventures and investments, to bring its total revenue to almost £5bn.¹

The BBC's public ownership, funding model, remit and scale mean that it has the potential to have a significant impact on both the interests of UK television viewers and competition in the UK TV sector. The BBC's special status justifies the additional regulation to which it is subject, beyond the rules applicable to the commercial PSBs and broadcasters. This regulation is set out in the BBC Charter and Framework Agreement.

As a new BBC Public Service, the relaunch of BBC Three as a broadcast TV channel would constitute a "material change" to the BBC's UK Public Services under the Framework Agreement. Accordingly, the BBC may only implement its proposal if: (i) the BBC is satisfied that its proposals satisfy the Public Interest Test; and (ii) Ofcom has determined that the BBC may carry out the proposed change, having carried out a competition assessment. This could entail a shorter competition assessment taking less than six months or a full competition assessment. For the reasons set out in this response, and due to the nature of the change, Ofcom should undertake a full competition assessment.

In order for the BBC's proposal to satisfy the Public Interest Test, the BBC and Ofcom must satisfy themselves that the public value in relaunching the channel justifies any adverse impact on fair and effective competition. There are clearly a number of potential adverse impacts on competition as a result of the BBC's proposal (set out below), but it is unclear that the proposal will deliver the public benefits that the BBC is seeking to achieve.

Accordingly, it is essential that the BBC provides supporting evidence for any public benefits before any assessment of whether the public value outweighs the potential adverse impact on competition.

¹ Page 44, 'BBC Group Annual Report and Accounts 2019/20', available at: <http://downloads.bbc.co.uk/aboutthebbc/reports/annualreport/2019-20.pdf>.

Public benefit

In its consultation document, the BBC makes a number of claims about the expected public benefit of the proposal. However, in addition to the lack of any supporting evidence, the BBC fails to address some fundamental questions which affect the scope for the proposal to realise the BBC's objectives.

BBC needs to show what has changed since closing BBC Three to justify its relaunch

In February 2016, the BBC closed BBC Three as a broadcast TV channel and moved the service online. Since then, BBC Three has predominantly operated as an on-demand content brand within BBC iPlayer, with some BBC Three branded content also broadcast on BBC One and BBC Two. These changes were made following approval from the BBC Trust, which considered that:

"We have seen clear evidence of a growth in online consumption and anticipate that this trend will continue as broadband access improves and the use of mobile devices to watch content grows (and we note Government plans in that direction). The long-term future of broadcasting seems likely to be online and the BBC needs to find innovative ways to support the audience move in that direction. The transition will be quicker for younger viewers who already watch less broadcast television, watch more online and use new digital services in different ways".²

The BBC Trust concluded that, in addition to cost savings, the proposal offered public value "by meeting the needs of young adults and responding to the structural shift in their consumption and viewing patterns".³ It considered that these benefits outweighed concerns about the loss of reach amongst young adults lacking a reliable internet connection (whether for affordability or geographical reasons) and the impact on creative risk-taking. These were regarded as short-term risks that could be mitigated by the imposition of certain conditions (including the broadcast of some BBC Three content on BBC One and BBC Two).⁴

Continued shift to viewing online

Since closure of the BBC Three broadcast TV channel, the structural shift to online viewing, especially by younger audiences, is even more pronounced.⁵ Ofcom recently reported that, between 2014 and 2018, there was a decline in daily broadcast TV viewing of 53 minutes amongst 16-24-year olds and 47 minutes amongst 25-34-year olds.⁶ At the same time, viewing to SVoD and online video services, most notably Netflix and YouTube, has increased. Average SVoD daily viewing amongst 16-34-year olds almost doubled from 30 minutes in 2017 to 52 minutes in 2018, with YouTube viewing (not on a TV) increasing by 5 minutes to 64 minutes.⁷

² Para.1.3.2, 'Final decision on proposals for BBC Three, BBC One, BBC iPlayer, and CBBC', BBC Trust, 26 November 2015, available at http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/service_changes/decision/final_decision.pdf.

³ *Id.*, para.6.2.30.

⁴ *Id.*, pages 54-55.

⁵ Page 110, 'Online Nation: 2020 Report', Ofcom, 24 June 2020, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0027/196407/online-nation-2020-report.pdf.

⁶ Page 14, 'Small Screen: Big Debate - a five-year review of Public Service Broadcasting (2014-18)', Ofcom, 27 February 2020, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0013/192100/psb-five-year-review.pdf.

⁷ *Id.*, page 15.

In the light of such trends, the BBC needs to clarify, with supporting evidence, why it nevertheless considers that relaunching BBC Three as a broadcast TV channel in 2022 is justified.

Questions about the Public Interest Test process

If viewing trends remain the same (and funding remains an issue for the BBC), then the apparent U-turn in a finding that the relaunch of BBC Three as a broadcast TV channel is in the public interest raises broader questions about the legitimacy and efficacy of the Public Interest Test process in 2015 and/or now. As the BBC has not argued that its change of heart is due to an unpredicted or unexpected change in the sector or viewing habits, either: (i) the 2015 process was flawed and hence the BBC/Ofcom reached the wrong decision; or (ii) the current proposal is flawed and should be abandoned.

BBC needs to provide evidence that relaunching BBC Three as a broadcast TV channel will reach the target audience

The BBC's consultation document states that the proposal is intended to target *"young people who maintain a strong broadcast TV habit but are very light users of BBC TV. They tend to be the very same audiences we need to do more for – audiences outside of London and the south-east, from lower socio-economic groups, and those with less access to on-demand services"*.⁸

However, it is well known that younger audiences mostly and increasingly consume content online. The viewing share of the BBC Three broadcast TV channel before it closed was low and in decline. For Sky individuals, it averaged 1.2% in 2014 and was down to 0.54% in February 2016.⁹ The audience skewed towards males aged 16-34 years old, with only a slight over-representation in the C2DE socio-economic group and in the south-east and east of the UK.¹⁰

The BBC therefore needs to explain what it will be doing differently this time to ensure that the relaunched channel will reach its target audience, with evidence to support this. Sky notes that the BBC intends to carry out further research and analyses to model estimates of reach, viewing hours and viewing share. As part of this, we would expect the data to outline expected reach, viewing hours and viewing share amongst the channel's target C2DE audience.

Sky notes the BBC considers that the success of the proposed new BBC Three channel *"will be judged on its ability to grow unique reach and iPlayer usage with infrequent, at risk audiences"*.¹¹ However, we are struggling to reconcile this claim with the fact that the BBC has identified these audiences often do not have access to digital on-demand services. How will these viewers be able to access iPlayer if they do not have access to on-demand services (for example because they do not have a reliable internet connection), and why would they engage with iPlayer now, when BBC Three content is already available on the service?

Also, as Ofcom found in its annual report on the BBC, some audiences, particularly those who are younger or in lower socio-economic groups, find *"the for everyone' feel"*

⁸ BBC Trust, *op. cit.*, page 7.

⁹ Sky research based on analysis from BARB.

¹⁰ Profiling of Sky individuals in the 12 months prior to closure of the BBC Three broadcast TV channel. Sky research based on analysis from BARB.

¹¹ BBC Trust, *op. cit.*, page 14.

of BBC iPlayer off-putting and confusing to navigate, so they were less likely to browse for new content, apart from a few programmes that had generated a social buzz in their peer group.”¹² It will be important for the BBC to clarify this as part of its Public Interest Test submission to Ofcom.

BBC needs to show there are not more effective and efficient ways to reach the target audience

The BBC also needs to demonstrate that there are not alternative, more effective and efficient ways to reach these audiences, such as:

- making more BBC Three content available on the BBC’s existing, prominent linear channels and on iPlayer; and/or
- making BBC Three content available, including in secondary rights windows, in places where most viewing takes place amongst these demographics, such as YouTube, Netflix and Sky Go (as discussed below).

Making more BBC Three content available on the BBC’s existing linear channels

The BBC’s proposal appears to be at odds with the BBC’s often-stated concerns about the fragmentation of audiences. The launch of an additional linear service in a less prominent slot than the BBC’s existing services will likely fragment audiences further. If the BBC is truly concerned about audience fragmentation, it should make the most of its existing (and highly prominent) channels and make more content available on these channels that will appeal to the BBC Three’s target audience.

When the BBC Trust approved the closure of BBC Three in 2015, it sought to mitigate concerns that viewers without a reliable internet connection (or who prefer to watch linear television) would no longer be able to access BBC Three output by imposing a condition that BBC Three long-form content be transmitted on BBC One and BBC Two on an ongoing basis and at a variety of times across the schedule. The BBC Trust went on to state:

“We accept that no condition will wholly address the problem of broadband access but consider that the use of slots will mitigate the issue. It will also raise awareness of the online offer and may help to preserve some of the BBC Three unique viewers who would otherwise be lost to the BBC. There is some evidence from BARB to suggest that uniquely reached viewers continue to watch BBC Three programmes when they transfer to the main channels. Over time, the use of slots may therefore be one way to introduce this group to the broader BBC portfolio’.”¹³

The BBC should therefore assess to what extent compliance with this condition has helped drive viewing by the BBC Three target audience. It should also assess whether any changes to this arrangement, such as the quantity or scheduling of the slots, could help drive increased engagement with this demographic (as well as other demographics, for whom BBC Three content is also likely to be attractive). Additionally, the BBC should clarify how the proposal to relaunch the BBC Three channel can be reconciled with its position on audience fragmentation.

¹² Page 23, ‘Ofcom’s Annual Report on the BBC 2019/20’, Ofcom, 25 November 2020, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0021/207228/third-bbc-annual-report.pdf.

¹³ BBC Trust, *op. cit.*, para.6.2.38.

Making BBC Three content available in places where most viewing takes place

The BBC's distribution strategy of pushing viewers to its linear broadcast channels and iPlayer app risks limiting the number and range of viewers that watch BBC content because it is inconsistent with viewer behaviour.¹⁴ Ofcom recently reported that 16-34-year olds now spend more time on average watching non-broadcast content online than live broadcast TV. In the UK, Netflix reaches two-thirds of 15-24-year olds each week, while YouTube reaches 42%.¹⁵ By comparison, BBC iPlayer reaches just 26% of this audience (down from 28% in 2017).¹⁶ Further, viewers aged 16-34 are more likely to watch BBC shows on Amazon Prime and Netflix than they are on BBC iPlayer.¹⁷ Meanwhile, ITV has increased its short-form content on ITV Hub to encourage better engagement with 16-34-year olds, estimating that 80% of all 16-34-year olds in the UK are registered on ITV Hub.¹⁸

The BBC should undertake research to determine what platforms and services the target audience is using and seek to make BBC Three content available on those platforms and services.

Clearly, however, the BBC should be making BBC Three content more widely available on services and platforms where the target audience spend most of their time, and this is increasingly online and via platforms like Netflix and YouTube.

As Ofcom notes, platforms like Netflix create a "second window" for PSB content and can drive engagement with younger audiences.¹⁹ For example, 16-34-year olds are more likely to watch BBC content on streaming services, rather than through BBC iPlayer.²⁰ As Ofcom's Chief Executive has said, the PSBs need to look further at their methods of distribution and, instead of "*fighting a losing battle of drawing people to the more traditional ways of viewing*", they should go "*to where the viewers are*" and "*strike a deal*" with more platforms.²¹

In evidence to the House of Commons Select Committee on the future of public service broadcasting, Channel 4 said that, in terms of news, it has been distributing content on YouTube, Facebook, Twitter and Snapchat.²² It has also made a "*really conscious decision*" to invest in going where young people already are because the key to attracting younger audiences is to find them on the platforms they use and "*make sure they know it is from Channel 4 so that they recognise [the] brand*".²³

For the BBC to avoid the risk of creating a "lost generation" of viewers who do not want to pay the licence fee, the BBC needs to adopt a multifaceted response. In addition to providing content that appeals to younger audiences, the BBC needs to work harder to reach young people by making content that appeals to them and also making it easier for people to find that content.²⁴

¹⁴ See, 'Sky's response to Ofcom's Call for Evidence', December 2020, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0012/211242/sky-response-to-call-for-evidence.pdf.

¹⁵ Page 12, 'Ofcom's annual report on the BBC', Ofcom, 24 October 2019, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0026/173735/second-bbc-annual-report.pdf.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Para.43, 'The future of public service broadcasting - Sixth Report of Session 2019-21', House of Commons Digital, Culture, Media and Sport Committee, 25 March 2021, available at: <https://committees.parliament.uk/publications/5243/documents/52552/default/>

¹⁹ Ofcom 'Small Screen: Big Debate', *op. cit.*, page 6.

²⁰ *Id.*

²¹ House of Commons Digital, Culture, Media and Sport Committee, *op. cit.*, para.84.

²² *Id.*, para.44.

²³ *Id.*

²⁴ Ofcom annual report 2019, *op. cit.*, page 13.

The BBC should assess what changes of this nature it could make in order to demonstrate why there is still a need to relaunch BBC Three as a broadcast TV channel.

BBC needs to demonstrate the relaunch of BBC Three as a broadcast TV channel would bring something unique to the market

The BBC claims that content on the relaunched channel will be creative, unique and distinct, offering a “*point of real differentiation in the UK TV market*”.²⁵ The BBC’s stated aim is to reach a younger C2DE audience that is currently under-served by BBC TV, “*particularly those that retain a strong broadcast TV viewing habit but that the BBC struggles to reach with its existing TV services.*”²⁶

Sky considers that younger audiences are already well served by the market, including by commercial broadcasters and streaming services.

Younger audiences are already the target of another public service broadcaster i.e. Channel 4. Channel 4’s core target audience is 16-34-year olds and Channel 4 Corporation has a statutory remit to make relevant content that appeals to the tastes and interests of older children and young adults.²⁷

Also, there are a wider set of channels attracting the target audience, as demonstrated by their increase in viewing share when the BBC Three channel closed in 2016. For example, a significant percentage of viewers (Sky individuals) shifted to More4, which saw a 32% increase in viewing from the relevant demographic.²⁸ A large number of viewers also shifted to ITV services, with ITV2, ITV4 and ITVBe experiencing an increase in younger audiences of 40%, 35% and 22%, respectively.²⁹

The BBC therefore needs to clarify precisely how the relaunched channel will bring something unique to the market.

²⁵ Pages 9 and 17, ‘A new BBC Three channel: Public Interest Test consultation’, BBC, 5 March 2021, available at: <http://downloads.bbc.co.uk/mediacentre/bbc-three-channel-public-interest-test-consultation.pdf>.

²⁶ *Id.*, page 9.

²⁷ Pages 10-11, ‘Channel 4 Corporation Remit’, research report produced for Ofcom by Kantar Media, 12 July 2017, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0018/104094/Channel-4-Corporation-Remit-Research-Report-2017.pdf.

²⁸ This is based on the viewing of a target of BBC Three viewers pre- and post-closure of the broadcast TV channel. Sky research based on analysis from BARB.

²⁹ As above.

The potential impact on fair and effective competition

The proposal has the potential to impact fair and effective competition in the following ways.

Potential harm to competing channels if BBC Three takes audience share

Regardless of whether or not BBC Three is gifted a prominent slot, there is a risk that the channel will take viewing share from competing channels, such as ITV2, Sky One, Sky Comedy and Comedy Central, which compete in the same space as BBC Three.³⁰ This will, of course, be exacerbated if the channel is afforded prominence.

In addition to attracting viewers from amongst the target audience, the relaunched channel will likely also attract older viewers, at the expense of existing channels. Younger people's average viewing of broadcast TV is much lower and declining much faster than that of older people: "*those aged over 75, for instance, did not reduce their viewing in 2019 and watched an average of 5 hours 49 minutes of TV each day, nearly five times more than that of 16-24-year-olds (1 hour 10 minutes).*"³¹ Accordingly, even if attracting older audiences does not form part of the BBC's strategy in relaunching the channel, given that older audiences typically watch more broadcast TV than younger audiences, this will be a possible side effect.

Sky notes that the BBC intends to carry out further research, including detailed audience reach modelling to identify likely usage of the service over time, and to assess the extent to which the proposal will result in negative impact to horizontal competition. We look forward to reviewing this when the BBC publishes its Public Interest Test submission to Ofcom later this year.

Potential harm to platforms competing with BritBox

Sky is also concerned that the BBC's proposal to double the content budget for BBC Three by 2022/23 will result in a much greater amount of attractive content being made exclusively available to BritBox in secondary rights windows.

As the BBC is aware, and as set out in Sky's response to Ofcom's call for evidence in relation to its BBC Studios review,³² Sky is concerned that the BBC has been pursuing and continues to pursue a strategy aimed at favouring BritBox (in which the BBC holds a 10% stake), by directing BBC Studios to make certain key BBC content exclusively available to BritBox in the primary and secondary windows, and through the existence and application of the BBC's Programme Release Policy (from which BritBox is the sole beneficiary).³³ Granting BritBox an unfair competitive advantage in an increasingly crowded market distorts competition by putting rival pay TV services that might otherwise license BBC content on a commercial basis at a disadvantage.

³⁰ Sky research based on data from BARB and TechEdge for Sky individuals for Mar-20 to Feb-20.

³¹ Page 12, 'Media Nations 2020: UK Report', Ofcom, 5 August 2020, available at: https://www.ofcom.org.uk/data/assets/pdf_file/0010/200503/media-nations-2020-uk-report.pdf.

³² Sky, *op. cit.*, page 5.

³³ BBC's Programme Release Policy for UK Secondary Television and Subscription Video-on-Demand Services, available at: <http://downloads.bbc.co.uk/commissioning/site/bbc-programme-release-policy-october-2019.pdf>.

Assuming any new BBC Three titles are made exclusively available to BritBox when they leave iPlayer, then any significant increase in such content, which (as discussed above) is likely to be attractive to a wide range of viewers and clearly lends itself to on-demand viewing, will clearly exacerbate these adverse impacts.

Affording prominence to BBC Three risks displacing other channels in EPGs

The BBC is seeking a prominent EPG slot for the relaunch of BBC Three as a broadcast TV channel. As a new public service channel, the BBC considers it should sit in the top 24 EPG slots: *“to minimise impact on other channels we propose that this should be at 24 or at the lowest vacant EPG slot within the top 24 slots.”*³⁴

However, if EPG providers are required to allocate BBC Three one of the top 24 slots, it is likely that they will need to displace other channels. For example, there are currently no empty slots in the top 24 slots of Sky's EPG in Scotland or Wales. If Sky (and other platforms) are required to move other channels down the EPG in order to accommodate BBC Three, displaced channels will need to allocate resource to update any marketing materials to reflect their new EPG numbers. They may also lose share of viewing (and ultimately ad revenue) as a result of their lower EPG number and position.

Furthermore, if platforms are required to displace a large number of channels, this is likely to cause significant disruption to viewers until such time as they become accustomed to the revised listings.

Conclusion

Given the potential adverse impacts on competing services of relaunching BBC Three as a broadcast TV channel, it will be essential for the BBC to present clear evidence to show that the expected public value of its proposal outweighs the potential adverse impacts. Ofcom should then undertake a full competition assessment, which is justified by the potential adverse impacts and the fact that the BBC will be reversing its previous decision to close the BBC Three channel.

We look forward to the BBC sharing its supporting evidence, and to reviewing it in due course.

Sky

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³⁴ BBC, *op. cit.*, page 14.