
Ofcom review of proposed increased amount of archive content on BBC iPlayer

Conclusion of initial assessment

[Ofcom review of proposed increased amount of archive content on BBC iPlayer](#) – Welsh overview

STATEMENT:

Publication date: 30 November 2022

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Overview

All major video-on-demand (“VoD”) services offer a mixture of new programmes and catalogues of older content. Since 2019, audiences have been able to access programmes on BBC iPlayer for 12 months from broadcast as standard. Older programmes are also available, such as past series of returning titles. Currently, the BBC limits the availability of older programmes on BBC iPlayer by reference to the volumes that it set out in its 2019 proposal for BBC iPlayer.¹

The BBC has proposed to no longer apply these limits and to increase the amount of older content on BBC iPlayer by publishing – subject to its financial and operational constraints – any title in line with its agreements with producers and underlying rightsholders. It has consulted and subsequently carried out a public interest test (“PIT”) on its plans. The BBC Board has found the PIT to be satisfied and the proposed change to be not material.

As required by the BBC Charter and Agreement, we have conducted an assessment of the BBC’s proposed change to BBC iPlayer, in order to determine whether the proposed change is ‘material’.² We consulted on our provisional view that the proposed change is not material, which would mean that we would not be required under the Agreement to carry out a BBC competition assessment (“BCA”) or a shorter assessment considering elements of the BCA (“Shorter Assessment”).³ We have now taken account of feedback from stakeholders in reaching our conclusion.

In this document we explain our conclusion that the BBC may proceed with its proposal. We summarise the views of stakeholders in response to our consultation and how we have considered these in reaching our conclusion.

Our conclusion

For the purposes of our materiality assessment, **we have considered how BBC iPlayer might realistically evolve in light of the BBC’s proposal over the next few years.** The BBC’s proposal indicates that it would expect to see an increase of less than three times the current levels of archive content on BBC iPlayer during this time. This would constitute a smaller percentage change than the increase in content on BBC iPlayer since the changes to it in 2019, driven by an expansion of older rather than newer content.⁴ We have considered how the proposal might affect BBC iPlayer usage, the extent of any audience substitution that could occur, and how this could affect commercial revenues, while taking into account developments in the market.

¹ BBC, April 2019. [BBC iPlayer Public Interest Test](#), p.31.

² The Agreement, Clause 9(1). The Charter, Clause 46(5).

³ The Agreement, Clause 9(3).

⁴ The BBC’s 2019 PIT included an increase in standard availability from 30 days to 12 months for all commissions. See BBC, April 2019. [BBC iPlayer Public Interest Test](#).

We conclude that the BBC’s proposal is not a material change, having assessed the evidence available, including responses from stakeholders. We consider that the proposal is unlikely to have a large audience impact, and that additional viewers will be drawn from across a large set of rivals, so the effect on individual competitors will be limited. Our conclusion is based on assessing the risks to competition over a reasonable timeframe and does not imply setting limits on how much content the BBC could add.

Our conclusion is therefore that the BBC may proceed with its proposal to increase the amount of archive content on BBC iPlayer. Nonetheless, the BBC will still be required to consider whether any future changes to BBC iPlayer could have a material impact on competition, and Ofcom has regulatory tools available to consider significant competition issues which may emerge over the remainder of the Charter period.

We recognise that stakeholders have concerns about the impact of BBC acquisitions on competition. For this assessment, we have not considered acquisitions on the basis that the BBC will not be changing the availability of acquired content on BBC iPlayer as part of the proposal. However, we reiterate that were the BBC to consider making changes to its approach to acquisitions on BBC iPlayer in future, it would need to consider whether they were material under the regulatory framework. In addition, as part of our review of the Operating Licence, we have consulted on new requirements for the BBC to report on the role acquisitions play in its plans to deliver distinctive output, and their role on BBC iPlayer more widely, which would enable us – and stakeholders – to monitor changes the BBC makes in this area.

We also received feedback from stakeholders about the quality of the BBC’s consultation process. Although we consider that sufficient information was provided in the BBC’s PIT statement to allow us to review materiality, the BBC could have provided more information on the nature and detail of its plans in its PIT consultation to enable stakeholders to understand the proposal fully and to provide constructive input during its process. Alongside this statement, we have published a consultation inviting views on proposed updates to our guidance on how the BBC’s impact on competition is assessed, including additional guidance describing what information we expect the BBC to include in PIT consultations.⁵

The overview section in this document is a simplified high-level summary only. The conclusion we have reached and our reasoning is set out in the full document.

⁵ Ofcom, November 2022. [How Ofcom regulates the BBC’s impact on competition: proposals for changes to guidance and requirements.](#)

Background

- 1.1 The BBC’s Mission is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain.⁶ We expect the BBC to make changes to its services to adapt to changes in technology and changing audience expectations and needs. However, as a large, publicly funded organisation, some changes that the BBC might wish to make could have a significant impact on competition in the wider media market.
- 1.2 The impact may be positive in enhancing public value and encouraging competition by offering more choice, stimulating demand, or promoting innovation to the benefit of UK citizens and consumers. However, some changes that the BBC proposes may harm competition; for example, by crowding out investment from third parties, with ultimately negative consequences for audiences.
- 1.3 Because of this, the Charter and Agreement, which set out the BBC’s Mission and duties, provide for Ofcom to consider the effects on competition of changes to the BBC’s TV, radio and online public services. The Agreement divides this work into two phases:
 - a) to confirm whether the BBC’s proposal is ‘material’ within the definition set out in the Agreement⁷; and, if we determine that the proposal is material;
 - b) to decide what form the second phase assessment should take.⁸

The BBC’s proposal for BBC iPlayer

- 1.4 In 2019, we approved the BBC’s proposal to change BBC iPlayer from a service where programmes are available to ‘catch-up’ for 30 days after broadcast, to one where programmes are available for 12 months as standard, with some available for longer.⁹ In reaching this conclusion, we assessed a specific proposal set out by the BBC in its 2019 PIT, which included indicative volumes and durations of older content on BBC iPlayer, alongside a change to the standard availability of new commissions.¹⁰ We approved its proposal on this basis, but did not set regulatory conditions or restraints limiting the BBC from expanding BBC iPlayer beyond the “baseline” figures in its 2019 proposal. We instead set out our expectation that, as required by the Charter and Agreement, the BBC must consider the potential competition effects of any changes to BBC iPlayer (including adding more content) and whether any changes would constitute a material change.¹¹

⁶ [BBC Royal Charter and Framework Agreement](#). Referred to as “Charter” and “Agreement”.

⁷ A material changes means the carrying out of any activity as a new UK Public Service; and any change to a UK Public Service which might have a significant adverse impact on fair and effective competition. Agreement, Clause 7(7).

⁸ Where Ofcom decide that a proposed change is a material change, it must undertake either a BCA or a Shorter Assessment. Agreement, Clause 9(2).

⁹ Ofcom, August 2019. [BBC iPlayer Competition Assessment: Final determination](#).

¹⁰ BBC, 2019. [BBC iPlayer Public Interest Test](#).

¹¹ Ofcom, 2019. BBC iPlayer Competition Assessment: Final determination, p. 46-47.

- 1.5 The BBC has now proposed to increase the amount of older content on BBC iPlayer beyond the indicative volumes and durations of content it set out in its 2019 PIT. It said that it is “seeking the ability to be flexible and adjust the content on BBC iPlayer as best suits our audiences in order to deliver greater public value”.¹² It said that it does not have a fixed plan for the amount or type of content that it will put on BBC iPlayer, and that the composition of the catalogue will vary over time, “adapting to audience tastes, current events, contractual arrangements with rights holders and other trends”.¹³
- 1.6 As such, the BBC has proposed to have the ability to publish – subject to its financial and operational constraints – any title on BBC iPlayer, in line with its agreements with producers and underlying rights holders (the “**Proposal**”), including: (i) full boxsets for any (new and returning) programmes still in commission; and (ii) non-returning titles and archive programmes (i.e. no longer in commission) (together, “**archive content**”¹⁴).¹⁵ In practice, the Proposal therefore relates to growth in content which would be older than 12 months.
- 1.7 In the BBC PIT submission (“**BBC PIT submission**”), the BBC said it is not proposing to change the standard 12-month availability of new commissions, or make any other change that would require a renegotiation of its Terms of Trade with Pact.¹⁶
- 1.8 The BBC also said that it is not proposing any changes to the availability of acquired programmes or films on BBC iPlayer as part of the Proposal. As such, it considers that acquisitions are outside the scope of its PIT.¹⁷

The BBC’s analysis

The BBC’s public interest test

- 1.9 On 23 June 2022, the BBC published a PIT consultation on the Proposal to increase the availability of programmes on BBC iPlayer (“**BBC PIT consultation**”).¹⁸ The BBC PIT consultation was open for six weeks, during which time the BBC engaged with Ofcom and other stakeholders on the Proposal.
- 1.10 On 19 October 2022, the BBC published its PIT submission, in which it stated that “the BBC Board has decided that the change is not a material change as it will not have a significant adverse impact on fair and effective competition” and that the PIT had been met.¹⁹

¹² BBC, October 2022. [BBC Public Interest Test Submission](#), Section 6.1.

¹³ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 6.1.

¹⁴ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 4.2.3 and Section 6: The BBC defines archive content as “any BBC-commissioned programme on BBC iPlayer after the initial 12 month availability”.

¹⁵ BBC, October 2022. [BBC Public Interest Test Submission](#), Sections 1.2, 4.1, and 4.2.

¹⁶ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 1.2.

¹⁷ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 4.3.3.

¹⁸ BBC, June 2022. [BBC iPlayer II: Public Interest Test consultation](#).

¹⁹ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 1. BBC, October 2022. [BBC Public Interest Test Submission](#), Section 1. The BBC concluded that the Proposal will not have a significant adverse impact on fair and effective competition, and that it is therefore not a material change within the meaning of Clause 7(7) of the Agreement. The BBC also concluded that “it is clear that the Public Interest Test is met”.

- 1.11 This is the first time that the BBC has published a PIT for a proposal without it either being considered by the BBC to be a material change or being previously determined by Ofcom to be a material change.
- 1.12 The BBC’s reasoning relies upon its market impact modelling,²⁰ which is centred around the following scenarios:²¹
- a) a “core estimate” based on a 300% increase in the size of BBC iPlayer archive content. This is based on “assessing plans for the year ahead, what content we believe is available in the market and adding headroom beyond this”;²² and
 - b) a “more extreme” estimate based on a 600% increase in the size of the BBC iPlayer archive.²³
- 1.13 The BBC has estimated that the increase in BBC iPlayer reach will be negligible under either scenario, and that viewing will increase by 3.1% for all viewers in the 300% scenario, and 3.6% for all viewers in the 600% scenario.²⁴ The BBC analysis also suggests that overall, no individual service would face a total revenue loss of more than 0.39% if there were a 300% increase in archive content, or more than 0.46% if there were a 600% increase.²⁵ The BBC argues that at this level of impact, the change is unlikely to alter competitors’ ability or incentives to invest.
- 1.14 The BBC PIT submission also summarised the public value it expected to result from the Proposal, in terms of how a change to the BBC’s UK Public Services adds to the fulfilment of the Mission and the promotion of the Public Purposes.²⁶ It said that “the proposed changes will deliver high public value with regard to value for money, broader range of programmes and genres, improving representation and portrayal, and industry value”.²⁷

Ofcom’s review of the Proposal

- 1.15 Under the Agreement, the BBC is only required to carry out a PIT for a material change to its public service activities. However, as the BBC published a PIT and referred the Proposal to us for consideration, we consider that this engaged the process under the Agreement for us to consider the materiality of the change (even though the BBC has determined that the proposed change is not material). In carrying out our review of the Proposal, we have

²⁰ In Section 6 of the BBC PIT submission, the BBC says “In order to measure the impact of BBC iPlayer changes, we have analysed BBC system data on audiences’ behaviour as we have increased the volume of content available on BBC iPlayer over the past few years. We have used this to model the expected growth to BBC iPlayer viewing as a result of the changes and compare this to forecasts of market growth absent the proposed changes”.

²¹ The BBC has stressed that these are illustrative ranges rather than firm commitments. In Section 1.4 of [BBC Public Interest Test Submission](#), it says that “neither scenario is a forecast, however, in the interest of a robust conclusion on likely market impact, they are intended to model a volume significantly greater than we could accomplish in the next few years”.

²² BBC, October 2022. [BBC Public Interest Test Submission](#), Section 6.1.

²³ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 6.1.

²⁴ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 6.1.

²⁵ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 6.3.2.

²⁶ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 5.

²⁷ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 5.

considered the relevant factors set out in Ofcom’s guidance (“the BCA guidance”) on proposed changes to the BBC’s public service activities.²⁸

Initial assessment consultation

- 1.16 On publication of the Proposal, we began our initial assessment. As set out in the BCA guidance, this process considers whether the BBC’s proposal is material within the meaning set out in the Agreement and, if it is material, determines what further assessment would be appropriate. The further assessment could be a BCA or a Shorter Assessment, drawing on elements of the BCA procedure. The BCA guidance explains when each type of assessment might be appropriate.²⁹
- 1.17 We initiated our process by publishing a consultation (“our consultation”) on 19 October 2022 setting out that we were minded to find that the Proposal was not a material change, and our provisional view that the BBC may proceed with the Proposal.³⁰ For the purposes of our materiality assessment, we considered how BBC iPlayer might realistically evolve in light of the Proposal over the next few years.³¹ We considered how the Proposal might affect BBC iPlayer usage, the extent of any audience substitution that could occur, and how this could affect commercial revenues, as well as taking into account developments in the market.
- 1.18 We invited stakeholders to comment on our provisional assessment, and consider whether they thought the Proposal could affect fair and effective competition. Our consultation was open from 19 October to 14 November to give stakeholders time to consider the information set out by the BBC in its PIT and to provide views to Ofcom on the materiality of the proposed change.³² We received 14 responses to our consultation.³³ We address the comments raised by respondents in Section 3.

²⁸ Ofcom, March 2017. [Assessing the impact of proposed changes to the BBC’s public service activities: Ofcom’s procedures and guidance.](#)

²⁹ Ofcom, 2017. [Assessing the impact of proposed changes to the BBC’s public service activities](#), paragraphs 4.35 to 4.66 describe the procedures for the BCA and Shorter Assessment processes.

³⁰ Ofcom, October 2022. [Consultation: Review of proposed increased amount of archive content on BBC iPlayer.](#)

³¹ The [BBC Public Interest Test Submission](#) indicates that it would expect to see an increase of less than three times the current levels of archive content on BBC iPlayer during this time. This would constitute a smaller percentage change than the increase in content on BBC iPlayer since the change to BBC iPlayer in 2019.

³² Paragraph 4.29 of the BCA guidance sets out that we will generally place a limit of two weeks for third parties to respond to our initial assessment consultation. We have followed this approach for previous initial assessments where the change was already deemed material as a new UK Public Service or because Ofcom had previously instructed the BBC to conduct a PIT.

³³ We received responses from Directors UK, Pact, the Royal National Institute of Blind People (RNIB), Virgin Media O2, Voice of the Listener & Viewer, the Writers Guild of Great Britain, and from eight individuals. Non-confidential responses are published [on our website](#).

Market impact

The BBC's assessment

- 1.19 In our consultation, we asked: “Do you agree with the BBC’s assessment in the BBC PIT submission about the market impact of the Proposal? If you disagree, please provide any evidence supporting your reasoning.”³⁴

Stakeholder comments and our response

- 1.20 Directors UK referenced concerns about the lack of information and analysis in the BBC PIT consultation to support an informed assessment. It welcomed the additional information provided in the BBC PIT submission, while also noting that the modelling and analysis was conducted by the BBC rather than an independent body. Virgin Media O2 also raised concerns about the lack of clarity on the scale of additional archive content in the BBC PIT submission.
- 1.21 Regarding the clarity of the BBC’s PIT documents, we remain of the view that the BBC PIT submission provided sufficient information for us to review materiality and for stakeholders to comment on it.³⁵ Our approach to defining the change, set out in detail below, includes using the BBC’s core estimate of a 300% increase in archive content to provide an upper bound of how BBC iPlayer may realistically be expected to evolve over the next few years.
- 1.22 However, we recognise that Directors UK raised concerns about the quality of the description of the proposed change in the BBC’s PIT consultation, and we note that a number of other stakeholders raised similar concerns in response to the BBC. We consider that the BBC could have provided more information on the nature and detail of its plans in the BBC PIT consultation to enable stakeholders to understand the Proposal fully and provide constructive input during its process.
- 1.23 Alongside this statement, we have published a consultation inviting views on proposed updates to our BCA guidance on how the BBC’s impact on competition is assessed.³⁶ Our proposals include additional guidance on what information, as minimum, we would expect the BBC to set out in its PIT consultations.
- 1.24 The Voice of the Listener & Viewer (VLV) said that, based on the market impact of the 2019 BBC iPlayer changes, it considers the Proposal is unlikely to have a significant market impact on the BBC’s competitors. The Writers’ Guild of Great Britain (WGGB) agreed, given viewer behaviour data and because the BBC does not plan to extend programme

³⁴ Ofcom, October 2022. [Consultation: Review of proposed increased amount of archive content on BBC iPlayer](#), p.8.

³⁵ BBC, October 2022. [BBC Public Interest Test Submission](#).

³⁶ Ofcom, November 2022. [How Ofcom regulates the BBC’s impact on competition: proposals for changes to guidance and requirements](#).

availability beyond 12 months. Seven individual respondents also agreed with the BBC's assessment that the Proposal was not material.

- 1.25 Directors UK, Pact and Virgin Media O2 commented on areas where they considered that the Proposal could have a market impact. As these are also relevant to Ofcom's assessment, we describe and respond to these points in our assessment below.
- 1.26 Some stakeholders also commented on how the Proposal could affect public value. As this assessment is focused on potential competition impacts to reach a view on materiality, we have not summarised views on public value or responded to them.

Ofcom's assessment

- 1.27 In accordance with our duties under the Charter and Agreement, we are required to assess the potential impact on fair and effective competition of the changes proposed by the BBC. In our consultation, we considered how BBC iPlayer might realistically evolve in light of the Proposal over the next few years, and the impact this might have.³⁷ We were minded to conclude that the Proposal is not a material change, because we had not seen evidence to believe there is a reasonable prospect of the Proposal having a significant adverse impact on fair and effective competition.
- 1.28 In our consultation, we asked: "Do you agree with Ofcom's initial assessment that the Proposal is not material? If you disagree, please provide any evidence supporting your reasoning."³⁸
- 1.29 Thirteen stakeholders were fully or broadly supportive of our assessment as set out in our consultation. Virgin Media O2 disagreed with our provisional view that the Proposal is not material, due to the impact that it expected it to have on the Pay TV sector, and some stakeholders raised specific points on our assessment, which we discuss below.
- 1.30 We present our assessment in the following order:
- i) the theories of harm we have considered;
 - ii) the nature of the change we have assessed;
 - iii) our views of the BBC's quantitative analysis; and
 - iv) our final view on the potential market impact of the Proposal.
- 1.31 Where stakeholders have raised specific points on these areas, we first summarise our consultation position, then summarise the relevant responses before setting out our final view. Where no specific points were raised, we just set out our final view.

³⁷ We said the BBC's analysis indicated that it would expect to see an increase of less than three times the current levels of archive content on BBC iPlayer during this time.

³⁸ Ofcom, October 2022. [Consultation: Review of proposed increased amount of archive content on BBC iPlayer](#), p.20.

Theories of harm

- 1.32 The Proposal will result in additional archive content being added to BBC iPlayer over time. As a publicly-funded organisation, the BBC does not need to earn a profit from the addition of that content, and unlike commercial providers, it does not charge BBC iPlayer audiences for content or require them to watch adverts. It is in this context that we consider whether the Proposal may have a significant adverse impact on fair and effective competition.

Crowding out

Ofcom consultation position

- 1.33 In our consultation, we considered ‘crowding out’ of commercial activity to be the most likely way in which the Proposal could have a significant adverse impact on fair and effective competition.

Stakeholder responses

- 1.34 No stakeholders argued that crowding out is not a relevant theory of harm. Virgin Media O2 expanded on its concerns made in response to the BBC PIT consultation that the Pay TV market would be disproportionately affected by the Proposal. We discuss this below.

Ofcom’s view

- 1.35 We consider that ‘crowding out’ of commercial activity is the most likely way in which the Proposal could have a significant adverse impact on fair and effective competition. Crowding out can occur if the BBC changes its services in a way that leads audiences to switch away from commercial services to BBC services, such that it reduces commercial providers’ revenue to an extent that they reduce investment in their services. This would lead to a consequent reduction in overall choice, quality and range of content for audiences. In some extreme cases, commercial providers may cease providing services altogether.
- 1.36 In general, we would expect crowding out to be a higher risk for domestic commercial providers than for large global competitors, as a given impact caused by a BBC change is likely to be proportionately larger for them. Therefore, we have paid particular attention to the potential impact of the Proposal on UK-focused commercial providers as part of our assessment below. This includes further consideration of Virgin Media O2’s specific concerns about the impact on the Pay TV sector.

BBC acquisitions

Ofcom consultation position

- 1.37 The other main competition concern raised in response to the BBC PIT consultation was the potential for adverse effects from changes in the BBC’s approach to acquisitions.³⁹ We

³⁹ We noted in our consultation that the BBC PIT submission describes a concern that were it to increase the amount of acquired content on BBC iPlayer, this could inflate the price of acquisitions for other broadcasters and might not align with

noted the additional data provided in the BBC PIT submission and reiterated that any future changes would require the BBC to consider materiality under the regulatory framework.

Stakeholder responses

- 1.38 VLV stated that it was reassured by the BBC’s response to concerns expressed by stakeholders in response to the BBC PIT consultation regarding acquisitions, saying it would not welcome a significant increase in acquisitions being made available on the BBC iPlayer.

Ofcom’s view

- 1.39 The BBC stated in the BBC PIT submission that it is not proposing any change to its current position on acquisitions and that they “will continue to make up a small proportion of content available on BBC iPlayer”.⁴⁰
- 1.40 The BBC noted that in 2020/21 acquired TV programmes and films made up 6.4% of available hours on BBC iPlayer and that its top five acquired titles accounted for 2.6% of BBC iPlayer viewing.⁴¹ It also stated that acquisitions have never made up more than 5% of the BBC’s public service expenditure on TV content.
- 1.41 We recognise that BBC acquisitions are an important area for stakeholders. Therefore, while out of scope for this Proposal, we reiterate that were the BBC to consider making changes to its approach to acquisitions on BBC iPlayer in the future, it would need to consider whether they are material under the regulatory framework, being mindful of the impact on fair and effective competition. A change to the BBC’s approach could take a number of forms, including changes in the level of available hours, viewing and spend, as well as the proportion of overall content on iPlayer that is acquisitions.
- 1.42 We also note that we have recently consulted on new requirements for the BBC to report in detail the role acquisitions will play in its plans to deliver distinctive output as part of a new BBC Operating Licence, which would increase transparency.⁴² If implemented, this would enable us – and stakeholders – to monitor changes in this area that may impact competition, and we would consider regulatory action if necessary.⁴³

Other theories of harm

Ofcom consultation position

- 1.43 We said that we had not considered other theories of harm in detail, noting that there did not appear to be a risk of crowding out elsewhere in the value chain, and that the BBC

the BBC’s Mission to be distinctive. Ofcom, October 2022. [Consultation: Review of proposed increased amount of archive content on BBC iPlayer](#), p.9.

⁴⁰ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 4.3.3.

⁴¹ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 4.3.3.

⁴² Ofcom, 2022. [Modernising the BBC’s Operating Licence](#).

⁴³ We will publish our decision early next year, with the new Operating Licence coming into effect from 1 April 2023.

proposed to only add additional programmes under the terms agreed with Pact and underlying rights holders.⁴⁴

- 1.44 We said that we had not received evidence to date from stakeholders on any other potential risks to competition.

Stakeholder comments

- 1.45 Two respondents raised concerns about potential impacts that future changes to commercial terms of trade could have on content producers.
- 1.46 Pact said that it did not believe the BBC's proposals would have an impact on fair and effective competition, providing deals with producers are conducted in line with the Terms of Trade. It said that it would be concerned, however, if the BBC made changes to its Programme Release Policy that harmed producers' ability to exploit their secondary rights, as secondary markets are an important element of production financing.⁴⁵
- 1.47 Directors UK said that there should be fair compensation for the use of directors' works when their programmes are put on BBC iPlayer. It also said that the BBC should be more transparent with rightsholders about its on-demand data and its uses, saying that it has been unable to assess the impact of the previous changes since 2019.

Ofcom's view

- 1.48 We acknowledge the concerns raised by Pact and Directors UK, but note that the BBC has not proposed changes to its standard 12-month availability for new programmes on BBC iPlayer, or the terms of trade for commissioning programmes with independent producers.⁴⁶ The BBC has confirmed that where it proposes to publish more returning series as full series boxsets, keep non-returning series on BBC iPlayer for longer, or publish more archive series, it will do so under the terms agreed with Pact and underlying rightsholders.⁴⁷ We have therefore not considered the potential impact of any future changes to the terms of its commissioning in our assessment.
- 1.49 We note, however, that as the market changes, the contractual terms between the BBC (and other PSBs) and independent producers may need to be updated so that the BBC can respond to changing audience needs. The potential for changes to commissioning under the BBC's Commissioning Code of Practice was part of our discussion in Small Screen: Big Debate.⁴⁸ To the extent that there are any additional issues arising from future changes to the Programme Release Policy we would consider those within the framework of the

⁴⁴ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 1.2.

⁴⁵ The BBC's [Programme Release Policy](#) sits under its Commissioning Code of Practice and the associated BBC Terms of Trade. The policy explains the circumstances under which the BBC will consent to the release of a programme into the secondary television and commercial video-on-demand market (both pay-video-on-demand and subscription video-on-demand) during the BBC's licence period, in order to allow independent producers to exploit rights in that market.

⁴⁶ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 4.6.3.

⁴⁷ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 1.2.

⁴⁸ Ofcom, July 2021. [Small Screen: Big Debate: Recommendations to Government on the future of Public Service Media](#), Paragraphs 7.13 – 7.16.

Charter and Agreement. Regarding compensation and transparency for use of directors' works on BBC iPlayer, this is a contractual matter for the BBC to address.

1.50 We have therefore focused our assessment below on the crowding out concern.

The nature of the change we have assessed

- 1.51 To assess materiality, we need to consider a firm proposal from the BBC, including in relation to scale (for example, in terms of financial resource, reach and amount of content) and timescales for implementation.⁴⁹
- 1.52 The BBC described the Proposal as giving it the flexibility to publish full series boxsets for any new and returning programmes and any other archive title, with no fixed or pre-determined constraint on the number of hours or type of archive content that will be added. However, the BBC was also clear that although it has a significant archive, the actual increase in content on BBC iPlayer will be limited by a number of constraints including control of rights⁵⁰ as well as operational and financial constraints.⁵¹
- 1.53 In its assessment, the BBC concluded that even if the BBC were to have a six-fold increase in the level of archive content, the level of market impact estimated by its models would not result in a significant adverse impact on fair and effective competition. Further, it argued that its econometric modelling provided evidence that “even in the absence of the operational and financial constraints the BBC faces, and were the availability of archive to be unlimited, the market impact of the proposed changes is limited”.⁵²
- 1.54 We do not consider it necessary or appropriate to assess whether *any* increase in archive content would be material, as the BBC PIT submission says it would expect to see an increase of less than three times the current levels of archive content on BBC iPlayer in the next few years. We also consider that the BBC's preferred approach of determining that there is no increase in archive content that could have a material impact on competition (and therefore the BBC can increase content free from competition regulation) would be inconsistent with the Agreement. This is because the Agreement places an ongoing requirement on the BBC to consider whether changes it makes to its services are material.⁵³
- 1.55 Therefore, in order to assess materiality, we have considered how BBC iPlayer might reasonably and plausibly be expected to change over the next few years in light of the

⁴⁹ BCA guidance, paragraph 4.25.

⁵⁰ For example, the BBC states it will not have or control the rights to bring back many of these programmes, either because they were made by an independent producer who owns the IP, they were a co-production or have been sold exclusively to another on-demand service. [BBC Public Interest Test Submission](#), Section 6.1.

⁵¹ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 4.4.3 states that the funding for the Proposal is “within the existing budget for the BBC's PSB TV expenditure” and “the change will represent a very modest change to allocations within that budget”. Within its plans for the next three years, which it states are inevitably uncertain given the current economic circumstances, the BBC forecasts that expenditure on BBC iPlayer archive will remain below 1% of the BBC's total PSB TV expenditure.

⁵² BBC, October 2022. [BBC Public Interest Test Submission](#), Section 6.1.

⁵³ As explained below, we also have some conceptual concerns around the BBC's modelling which may affect its robustness or reliability, particularly for larger increases.

Proposal. As described above, in the BBC PIT submission, the BBC modelled two scenarios: one where it increased the amount of BBC iPlayer archive content threefold, and an increase twice this size (a six-fold increase) to demonstrate a more extreme case.⁵⁴ It stated that these scenarios are not forecasts, and are intended to model a volume significantly greater than the BBC could accomplish in the next few years, with the core estimate of 300% increase in archive content based on the BBC's views on its plans, what content the BBC believe is available in the market, and adding headroom beyond this.⁵⁵

- 1.56 Given this, we consider that a 300% increase in archive content provides an upper bound to assess how BBC iPlayer may realistically be expected to evolve over the next few years. Therefore, we have based our assessment of materiality on the potential impact this scale of change could have on fair and effective competition.
- 1.57 This approach is intended to provide a reasonable and realistic basis for assessing whether the Proposal is material and should therefore be subject to a BCA or Shorter Assessment. Our approach does not set a limit or threshold on how much archive content the BBC can add. However, as the BBC develops BBC iPlayer, the regulatory framework set out in the Agreement still applies and the BBC will need to consider whether any developments it wishes to make are material on an ongoing basis.⁵⁶

The BBC's assessment of the potential impact on competition

- 1.58 The BBC's analysis of the impact on competition consists of three models:⁵⁷
- a) An **uplift econometric model**, which estimates the relationship between the volume of content available on BBC iPlayer and the viewing that content receives. This is based on behavioural data collected by the BBC as the volume of content available on BBC iPlayer has increased in recent years. It uses this relationship to forecast the uplift in BBC iPlayer viewing of a further three- and six-fold increase in archive content, split by age and genre.
 - b) A **diversion econometric model**, which uses longitudinal survey data to estimate the relationship between the viewing share of BBC iPlayer archive content and the viewing share of competitors. It uses this relationship to forecast the loss of viewing of competitors' services resulting from the forecast uplift in BBC iPlayer viewing.

⁵⁴ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 1.4.

⁵⁵ BBC, October 2022. [BBC Public Interest Test Submission](#), Sections 1.4 and 6.1.

⁵⁶ Changes to BBC iPlayer, including the amount of content on BBC iPlayer, may be incremental, and individually these changes may not be material. We recognise the potential concern that these changes add up over time to cause significant competitive impacts. Our power under the BBC Agreement to launch a BBC Competition Review ("BCR") of the BBC's public service activities allows us to investigate and take measures to address such impacts.

⁵⁷ BBC, October 2022. [BBC Public Interest Test Submission](#), Annex 2 - modelling. In response to our consultation, Directors UK noted that the modelling and analysis in the PIT submission was conducted by the BBC rather than an independent body. However, this is not a limitation of the modelling in and of itself, and there is no requirement that the BBC should commission independent analysis.

- c) A **revenue model**, which estimates the potential decline in revenues for competitors resulting from the forecast loss in viewing.⁵⁸
- 1.59 We welcome the BBC’s efforts to identify the impact of the Proposal on competitors,⁵⁹ and we agree with the BBC that the results of its modelling suggest that the Proposal is unlikely to have a significant adverse effect on competition. However, the techniques used by the BBC are more complex than those used in previous BBC assessments.⁶⁰
- 1.60 We appreciate the difficulty of forecasting BBC iPlayer viewing and its impact on competition. However, we note that the amount of BBC iPlayer content for which viewing is being predicted (up to around 50,000 hours of content) is considerably more than the largest observation over which the uplift econometric model is estimated.⁶¹ In general, extrapolating the impact of changes significantly beyond the observed data is less reliable.⁶² The BBC also recognises this, stating that the “modelling reflects the relationship that we observe in the current usage of BBC iPlayer. We believe these relationships are likely hold to for smaller increases in volume of content. As we apply larger increases in content, we cannot foresee whether the underlying relationships will change. As a result, the changes to viewing could be larger (or smaller) for larger changes in the archive.”⁶³
- 1.61 We also recognise that forward-looking exercises are inherently uncertain, and as the BBC recognises, require simplifications and assumptions.⁶⁴ The BBC did not include a discussion of the uncertainty surrounding its results which would have provided some insight to the robustness of the analysis. In particular, the exercise the BBC has undertaken involves many modelling choices across a number of model components, but in the BBC PIT submission the BBC presented forecasts based on one final model specification. We understand the BBC has tested different specifications, but these results were not provided.⁶⁵ A more detailed discussion of the robustness checks performed, how different model specifications performed, and how sensitive the forecasts are to these modelling choices would have helped us reach a view about the level of confidence we could have in the forecasts.

⁵⁸ The BBC shared some details of its modelling approach with us as it developed. It has also provided the final models to us and has answered a number of informal questions on models’ methodology.

⁵⁹ Information about the BBC’s work here is provided, including through annexes, on its website for its [iPlayer PIT](#).

⁶⁰ The BBC notes that an alternative approach would have been to rely on bespoke survey data, but states that survey data has significant limitations when trying to assess behavioural changes, particularly in the context of expanding content availability ([BBC Public Interest Test Submission](#), Annex 2). We note that any method for assessing forward-looking effects is inherently uncertain, and so alternative approaches can provide valuable cross-checks even if they have their own limitations.

⁶¹ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 6.1.

⁶² The BBC told us that it based its modelling choices on measures of in-sample fit and professional judgment. However, a model selected based on an in-sample measure of goodness of fit might perform poorly out-of-sample, and particularly for predictions out of the sample range. This is particularly important when considering large changes (e.g. 600%) which significantly exceed what has been observed in reality.

⁶³ BBC, October 2022. [BBC Public Interest Test Submission](#), Annex 2. The BBC argues it is unlikely there would be a significant change in the relationships at larger volumes as VoD viewing across all platforms (regardless of catalogue size) is skewed towards newly commissioned content.

⁶⁴ BBC, October 2022. [BBC Public Interest Test Submission](#), Annex 2.

⁶⁵ For example, we do not know how the results would change under different assumptions about diminishing marginal returns of additional content in terms of BBC iPlayer viewing.

1.62 Given the above, we have not been able to satisfy ourselves of the robustness of the modelling results, particularly when looking at large increases in content. Therefore, we have considered other available evidence to inform our view on materiality.

Potential market impact

Ofcom's consultation position

1.63 Our provisional view was that we had not seen evidence to believe there is a reasonable prospect of the Proposal having a significant adverse impact on fair and effective competition from crowding out. Therefore, we provisionally concluded that the Proposal was not a material change.

Stakeholder comments

1.64 The only stakeholder that challenged our market impact analysis was Virgin Media O2, which raised specific concerns about the impact of the Proposal on the Pay TV sector. We note that a number of stakeholders – including ITV, Channel 4, Channel 5, BT and Sky – did not respond to our consultation.

1.65 Virgin Media O2 said the BBC had not sufficiently considered this impact as part of its PIT. It said the Proposal would increase the overlap between content available on BBC iPlayer and the UKTV pay channels which would result in a reduction in the 'value' of these channels. As well as affecting viewing of those channels, it stated that UKTV pay channels are a fundamental part of Virgin Media O2's Pay TV proposition, and a decline in the attractiveness of this would lead to a disproportionate (and material) impact on its subscriber base and the Pay TV sector as a whole.

1.66 As a result, Virgin Media O2 argued that the Proposal should not continue in its current form, and proposed several measures it considered Ofcom should introduce as protections against the issues it identified (such as limits on the type of archive content the BBC may add to BBC iPlayer).

Ofcom's final analysis and conclusion

1.67 To assess the potential risk of crowding out, we considered how the Proposal might affect the use of BBC iPlayer and the extent of any audience substitution that could occur, and how this could in turn affect commercial revenues. In doing this, we were mindful of recent and ongoing market developments, recognising that this is not a new or embryonic market segment.⁶⁶

1.68 Our assessment is set out below. In summary, our reasoning is as follows:

- a) We would expect an increase in viewing hours following implementation of the Proposal. It is unclear by how much, but we consider it unlikely to be proportionately

⁶⁶ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 2.

greater than that which occurred following the 2019 changes to BBC iPlayer in the next few years.

- b) While the BBC is likely to draw some audiences from competitors, the impact is likely to be dispersed across a number of commercial providers, diluting the impact on individual UK commercial providers.
- c) As a result, BBC iPlayer would need to experience a very large uplift in viewing at the expense of commercial providers to have a discernible impact on an individual commercial provider's viewing and revenue.
- d) This seems unlikely given BBC iPlayer currently accounts for a relatively small share of total viewing of audio-visual services and market developments mean it is likely to be hard to gain significant viewing share. This view is supported by the impact of the 2019 changes to BBC iPlayer on VoD viewing.
- e) We therefore conclude that the Proposal is not a material change.

1.69 We would expect an increase in the amount of archive content on BBC iPlayer to increase viewing, as it would provide a greater breadth and/or depth of content to users. This is what happened as a result of the 2019 BBC iPlayer changes described above, when following an almost three-fold increase in content hours available between May 2019 and April 2022, viewing hours increased by around 75% (although we note other factors also contributed to this increase, including the underlying trend away from broadcast TV to online services).⁶⁷

1.70 It is unclear by how much BBC iPlayer viewing hours would be expected to increase as a result of the Proposal. However, we expect the percentage increase in BBC iPlayer viewing to be smaller than that which occurred following the 2019 changes.

1.71 As discussed above, our assessment of materiality considers the potential impact of a 300% increase in archive content over the next few years, which we consider to be an upper bound for how BBC iPlayer may realistically be expected to evolve over this period. While such an increase would be similar to the percentage change in available content since the 2019 changes, we would expect the additional archive content under the Proposal to have a smaller marginal (per additional hour) impact on viewing than content added since the 2019 changes. This is because, as stated by the BBC, the increase in available content following the 2019 changes was primarily driven by the increase in standard availability of programmes from 30 days to 12 months and the availability of boxsets of returning series.⁶⁸ Only a very small proportion of the additional hours were pure archive titles (i.e. titles no longer in commission and more than 12 months old). While the Proposal will also increase availability of complete boxsets for returning series (and there could be other archive series which are particularly attractive to some audiences), overall we would

⁶⁷ The number of average weekly signed-in accounts for BBC iPlayer increased from 6.4m in 2018/19 to 12.1m in 2021/22, and the number of average weekly streamed hours increased from 25.5m hours in 2018/19 to 44.5m hours in 2021/22. See [BBC Public Interest Test Submission](#), Section 3.1.1.

⁶⁸ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 3.1.1.

expect additional archive content to have diminishing widespread appeal. This reflects the following:

- a) We would generally expect the more popular content to already be on BBC iPlayer.⁶⁹
- b) Archive content is – in general – unlikely to be as attractive to audiences as newer content, which is a key draw to platforms.⁷⁰ This effect is reflected in the fact that archive content (as defined by the BBC in the BBC PIT submission, i.e., any content older than 12 months) accounted for around 49% of BBC iPlayer content⁷¹ but only around 30% of BBC iPlayer viewing in 2022.⁷²
- c) Even within archive content there is likely to be some variability. This is because this definition of archive content includes some comparatively newer content and boxsets of content which is still being commissioned, and these tend to be more popular. Pure archive content which is no longer commissioned is likely to attract lower levels of viewing, in part because it is less likely to benefit from the same levels of active promotion. Therefore, adding lots of archive content – if of diminishing value to users – does not necessarily translate into proportionately more viewing (particularly when increasing content can make it harder for people to find).⁷³

1.72 Therefore, we would expect an increase in viewing hours following implementation of the Proposal but consider it unlikely to be proportionately greater than that which occurred following the 2019 changes.

1.73 We recognise that the increase in BBC iPlayer viewing is likely to attract audiences from commercial providers, which could in turn affect their revenues. However, the impact of the Proposal is likely to be spread across a wide range of services, diluting the impact on any individual commercial provider. This reflects the fact that many users view content from a range of providers, including linear, other BVoD and/or other SVoD services, with significant overlap in reach:⁷⁴

⁶⁹ In describing its modelling approach, the BBC states that it considers that the best performing content is already available on BBC iPlayer, which means that, all else being equal, it would expect the next tranche of content to have lower viewing performance than content currently on BBC iPlayer. [BBC Public Interest Test Submission](#), Annex 2. We also note it argued that constraining the BBC’s archive is more likely to create an incentive to concentrate on identifying those titles with the greatest audience potential. [BBC Public Interest Test Submission](#), Section 4.2.3.

⁷⁰ For example, Ofcom’s PSM Tracker research shows that the most popular reason for using PSB BVoD services is ‘to catch up on programmes missed on live TV’ (63% of respondents), while ‘to access older or archive programmes’ is the fourth most popular reason (35% of respondents). See [Ofcom Media Nations 2022](#), Figure 48. The importance of new content is also reflected in the strategies of VoD services, for example there has been an increase in the volume of originals and exclusives available among SVoD providers (as discussed below), and ITV has announced it is going to invest more in digital-first content ([BBC Public Interest Test Submission](#), Section 1.1). The BBC also notes the importance of first-run programming in Section 6.1.

⁷¹ [BBC Public Interest Test Submission](#), Section 6.1.1. We note Ampere Analysis data suggests a larger share of BBC iPlayer content is more than 12 months old.

⁷² BBC System data used by the BBC in its diversion modelling.

⁷³ Amazon Prime Video’s decision to significantly reduce its library size since 2020 as it trims “the long tail of content that has little appeal to viewers” appears to be consistent with this (although we note that its library size remains larger than BBC iPlayer). Source: Ampere Analysis report, ‘Amazon Prime Video culls its US catalogue’, November 2021.

⁷⁴ Our analysis found that average viewing per day across all devices is split across a number of platforms including live TV, recorded playback, BVoD, SVoD, YouTube and other video (Ofcom estimates of total video viewing; see Media Nations

- a) **Other linear services (including BBC channels)** – most people watch a mix of linear TV and online services, with 84% of regular BBC iPlayer users also watching linear TV on a weekly basis.⁷⁵
- b) **Other BVoD and SVoD services** – most people use both SVoD and BVoD services, and the average number of VoD platforms used is 4.4.⁷⁶ There is a high degree of overlap between use of BBC iPlayer and other BVoD and SVoD services, with 71% of weekly BBC iPlayer users also viewing content on an SVoD each week and 72% also using at least one BVoD other than BBC iPlayer each week.⁷⁷ There are also other free-to-view video services regularly used by viewers, with YouTube the second most popular free-to-view service for watching programmes, films or other video content (used by 56%).⁷⁸
- c) **Other audiovisual and non-audiovisual services** – there is also likely to be overlap with other audiovisual services (for example, short-form content on YouTube, Facebook and TikTok is increasingly popular)⁷⁹ and/or other activities, although these are likely to be less close substitutes to BBC iPlayer given the different characteristics of these services.

1.74 Therefore, given this overlap in usage, we would expect audiences to be drawn from a wide range of services.⁸⁰ These will include the BBC's own linear channels as it retains audiences as they move online (indeed, this is one aim of the BBC's strategy for BBC iPlayer),⁸¹ which has no impact on the viewing of commercial providers.

1.75 We recognise that some of the services above are closer substitutes for BBC iPlayer than others (and this could vary by user), so the impact is unlikely to be uniform across all commercial providers.⁸² While there will be some variability, it seems unlikely that the impact will be highly concentrated on any specific commercial provider. This is because the Proposal, as described by the BBC, is broad in terms of the range of potential archive content that could be added, and is not targeted at a particular segment of viewers.⁸³ The requirements of the Mission and Public Purposes, as well as the Operating Licence, also provide some protection from a more concentrated impact (as, for example, they require the BBC to serve all audiences with diverse and distinctive content).

2022, Figure 3). The BBC also argues that BBC iPlayer competes in a wide, but differentiated, marketplace that includes other BVoD services, SVoD services and linear TV, as well as other services like gaming and audio ([BBC Public Interest Test Submission](#), Section 6.2.1).

⁷⁵ IPA TouchPoints wave 1 2022.

⁷⁶ Ofcom VoD Survey 2022.

⁷⁷ IPA TouchPoints wave 1 2022.

⁷⁸ Ofcom VoD Survey 2022; see Media Nations 2022, Figure 13.

⁷⁹ Short-form video was watched by a third (32%) of online adults in Great Britain aged 15+ daily in Q1 2022, with viewing skewing more to younger audiences. Ofcom Media Nations 2022, p.24.

⁸⁰ This is consistent with MTM research commissioned by the BBC as part of its PIT which shows that among respondents who said they would use BBC iPlayer more because of the change, some people estimated they might use a wide range of other VoD services less and/or are less likely to spend time watching other linear channels as a result. Slides 52-54, BBC/MTM research.

⁸¹ BBC, May 2022. [Plan to deliver a digital-first BBC](#).

⁸² We note this is consistent with the BBC's analysis and modelling which found variability in impact, with diversion greatest from non-VoD (including other BBC services), and the diversion from VoD greatest from Netflix and Amazon Prime Video, followed by All4.

⁸³ The risk of a concentrated impact is likely to be higher where changes are focused on a particular segment currently served by individual commercial provider(s), meaning the viewing substitution is more concentrated.

- 1.76 Therefore, where previously we might have expected viewing gains by the BBC to come predominantly from UK-based commercial providers, the evidence above suggests this is no longer the case. Where viewing does come from competitors, the impact is likely to be dispersed among a large competitor set, including global SVoD services (which are at lower risk of being crowded out, as discussed above). This has the effect of diluting the impact on individual UK commercial providers. As a result, BBC iPlayer would need to experience a very large uplift in viewing at the expense of commercial providers to have a discernible impact on their viewing and revenue.
- 1.77 A very large uplift in BBC iPlayer viewing at the expense of commercial providers seems unlikely given that BBC iPlayer currently accounts for a relatively small share of total viewing of audiovisual services (approximately 2% in 2021) and market developments mean it is likely to be hard to gain significant viewing share.⁸⁴ In particular, the BBC faces a number of domestic and large global VoD competitors which have been investing in and developing their platforms to attract and retain audiences as viewing increasingly moves from linear to online, and the Proposal reflects these wider market developments. In this context we note that:
- a) on-demand streaming services now form an integral part of the PSBs' strategies, as they attempt to maintain revenues and compete for audiences with online streaming platforms as linear viewing declines.⁸⁵ To make their services competitive and appealing to audiences, other BVoD platforms have been increasing their library sizes with more of their back catalogue and 'box sets', improving the functionality of these services, and adopting digital-first strategies to retain audiences;⁸⁶ and
 - b) the most popular global players have much larger libraries than BBC iPlayer and are perceived to provide more relevant recommendations.⁸⁷ Among SVoD providers, there has been an increase in the volume of originals and exclusives available (up 22% in the year to April 2022), reflecting its importance in attracting subscribers.⁸⁸ As well as new SVoD services launching since 2019 (e.g. Disney+), an increasing number of streaming providers are also adopting hybrid models for either 'freemium' or tiered propositions (which combine ad funding with subscription offers), as the maturing market has prompted providers to look at new ways of generating revenue.⁸⁹

⁸⁴ Ofcom analysis based on BARB data, Comscore and IPA TouchPoints data

⁸⁵ We expect this online focus to continue into the long-term, with ITV and Channel 4 having announced a focus on digital growth.

⁸⁶ Ofcom Media Nations 2022, p.56 and p.71.

⁸⁷ BBC, October 2022. [BBC Public Interest Test Submission](#), Figure 4. The BBC's research found that users (particularly 16-34s) often describe Netflix as their 'go-to' service because of its recommendations (among other factors) and states that better recommendations is considered to be an area where BBC iPlayer could improve. [BBC Public Interest Test Submission](#), Section 3.1.2 and 5.5.2.2.

⁸⁸ Ampere Analysis Analytics – SVoD; see Ofcom Media Nations 2022, p.38. Originals are programmes produced or commissioned by an SVoD provider for their service; exclusives are programmes licensed on an exclusive basis (having not been produced or commissioned specifically for the service).

⁸⁹ For example, an increasing number of SVoD services are starting to incorporate advertising into their offerings. Ofcom Media Nations 2022, p.36.

- 1.78 It therefore seems unlikely that the Proposal would significantly uplift BBC iPlayer viewing at the expense of commercial providers (particularly UK platforms), such that its overall share of viewing would increase substantially. We also note that in changing the BBC iPlayer library size, the BBC states that it will be subject to periodic negotiations with rightsholders, and market availability, which – combined with similar market developments we observe by commercial providers – is likely to reduce the risk of any rapid (and irreversible) impacts.
- 1.79 Given the above, we consider that any impact on commercial providers’ viewing – and therefore revenues – is likely to be relatively limited.
- 1.80 This view of the potential impact on viewing is supported by the impact of the 2019 changes to BBC iPlayer on VoD services. Despite a significant increase in absolute viewing hours, there appears to have been a limited impact on the BBC’s share of VoD viewing, which has been fairly stable over time.⁹⁰ Therefore, to the extent the increase in available content increased viewing of BBC iPlayer, it appears to have allowed the BBC to largely keep pace with overall VoD viewing growth rather than make significant gains at the expense of commercial providers.
- 1.81 We also note that the previous change does not appear to have had a significant crowding out effect. Commercial providers have continued to invest in their services and push their digital strategies following the 2019 changes, and we are not aware of any evidence of crowding out from that change. In fact, investing in VoD is a strategic priority for some of the PSBs, and they are continuing to focus on delivering digital growth.⁹¹ Further, we note that although BBC iPlayer has remained the most popular PSB BVoD service, the other BVoDs have also increased their reach over the same period despite these changes to BBC iPlayer, and their share of VoD viewing has also been relatively stable.⁹² The BBC also argues that the digital performance (both operational and financial) of UK PSBs has improved over this period.⁹³
- 1.82 Virgin Media O2 raised a concern about the impact of the Proposal on Pay TV providers. It said that the Proposal will reduce the desirability of the UKTV Pay TV channels⁹⁴ as the majority of content shown on these channels is BBC archive content. It also said that the Proposal will impact its (and other providers’) subscriber numbers as the UKTV channels are a fundamental part of its Pay TV proposition. We do not consider that these factors

⁹⁰ Our analysis of IPA TouchPoints data shows that since 2018 the BBC’s share of VoD viewing has been relatively stable over time. Other BVoD market shares have also been relatively stable over this period. There has been more volatility amongst SVoDs (e.g. recent fall for Netflix, rise for Disney+). Ofcom analysis of IPA TouchPoints data.

⁹¹ ITV will launch ITVX – its integrated AVoD/SVoD platform – in late 2022 as part of its digital-first content strategy ([ITV plc Annual Report and Accounts for the year ended 31 December 2021](#), p.8). Similarly, Channel 4’s Future4 strategy aims to prioritise digital growth over linear ratings, with the goal of doubling All 4 viewing by 2025 ([Channel Four Television Corporation Report and Financial Statements 2021](#), p.21).

⁹² VoD viewing shares based on Ofcom analysis of IPA TouchPoints data. BBC iPlayer was used by 32% of adults (up from 27% in 2017), ITV Hub/STV Player was used by 15% of adults (up from 11%), All4 11% (up from 8%) and My5 7% (up from 4%). The largest SVoD services have also increased reach and viewing hours over the same period. Ofcom Media Nations 2022, BARB Establishment Survey Figure 10 and various sources Figure 44.

⁹³ BBC, October 2022. [BBC Public Interest Test Submission](#), Section 1.1.

⁹⁴ The three UKTV Pay TV channels are Alibi, Eden and Gold. Four other UKTV channels, such as Dave, are also available on other platforms.

mean the Proposal will have a significant adverse impact on fair and effective competition for the following reasons:

- a) We recognise that there is some overlap in content available on BBC iPlayer and the paid-for UKTV channels, which may make them closer substitutes. However, for the reasons set out above, the impact of the Proposal on any specific provider, including UKTV, is unlikely to be significant. We also note that an increase in archive content on BBC iPlayer will not automatically increase the overlap in content (e.g. due to the breadth of potential archive content the BBC could add, as described above). Financial and archive programming rights constraints on the BBC, as well as the commercial incentives of BBC Studios in relation to UKTV,⁹⁵ may also limit the increase in overlap.⁹⁶ UKTV could also seek out new programming in response to changes in the content available on BBC iPlayer.
- b) In any event, we consider any consequential impact on Pay TV subscriber numbers (and therefore Pay TV revenues) is likely to be relatively limited. Although these channels may be important to some subscribers, we have not seen evidence that shows that these channels, and specifically the BBC archive content shown on them, drive subscription decisions for a significant number of Pay TV subscribers.⁹⁷ We also recognise that the content shown on Pay TV channels – not just UKTV – can change over time, which in turn can affect their value to subscribers. However, where this happens we would expect Pay TV operators to respond commercially (e.g. through the purchasing of alternative rights/channels, exclusivity arrangements, renegotiations of fees etc.) to limit the impact on subscriber numbers.

1.83 Therefore, in response to the points raised by Virgin Media O2, while there could be changes in absolute viewing hours and/or subscriber numbers (and therefore revenues) for Pay TV providers as a result of the Proposal, we think the impact is likely to be relatively limited.

Overall conclusion on materiality

1.84 In reaching a final conclusion on whether the Proposal is material we have considered a range of factors, as set out above. Taken overall, our view is that the Proposal is not a

⁹⁵ UKTV is a multi-channel broadcaster which is owned by BBC Studios, a commercial subsidiary of the BBC.

⁹⁶ As set out in the BBC PIT submission, this includes the fact that the BBC will not have or control the rights for some of the programmes, and where this is the case, it will be subject to commercial negotiation and its own budget constraints. BBC, October 2022. [BBC Public Interest Test Submission](#), Section 6.5. We note the BBC also argues it does not have adequate incentive nor market power sufficient to meaningfully restrict the supply of IP as a result of the change, and the way in which it purchases content is unchanged by the expansion of BBC iPlayer.

⁹⁷ Virgin Media O2 points to viewing of UKTV Pay TV channels, for example, UK Gold consistently appears in the top 5 most watched Pay TV channels on its platform. While these channels may be important to some subscribers, this is not evidence that these channels are important to a significant number of subscribers. We note that all seven UKTV channels only account for 5% of total viewing time on Virgin Media devices. The three Pay TV channels provided by UKTV – Alibi, Eden and Gold – make up 2% of viewing on Virgin Media devices. (BARB 28-day consolidated, 4+ individuals. H1 2022.) As discussed above, originals and exclusives are considered important for attracting subscribers to SVoDs. Past assessments by Ofcom have also found that live coverage of top flight football competitions is important in driving Pay TV subscription decisions.

material change. This is because we have not seen evidence to believe there is a reasonable prospect of the Proposal having a significant adverse impact on fair and effective competition from crowding out. This view is based on available evidence and how BBC iPlayer is expected to develop over the next few years.

- 1.85 As noted above, our approach to assessing the materiality of a plausible outcome from the Proposal over the next few years does not place limits on the BBC’s ability to go further than what we have considered. However, any changes will continue to be subject to the regulatory framework – i.e., the BBC would need to consider whether any change to the service is material, and if so, conduct a PIT. We recognise that as a result, similar future changes may be more incremental in effect, and so may never be material individually. However, even in such a scenario, we have the ability to launch a BCR (see above) if we are concerned that a BBC public service activity is having a significant adverse impact on fair and effective competition, even if individual changes have not warranted a BCA or Shorter Assessment. We have also recently consulted on introducing additional reporting requirements into our new Operating Licence; these requirements would improve the ability of Ofcom and stakeholders to monitor significant changes to the BBC’s output.

Further steps

- 1.86 In our consultation we asked: “If you consider that the Proposal is material, please explain whether you consider Ofcom should undertake a BCA or a Shorter Assessment of the Proposal.”⁹⁸

Stakeholder comments

- 1.87 Virgin Media O2 said that while it considered the Proposal to be material and that it should not progress in its current form, the proposed protections set out in its consultation response could avoid the need for a BCA.
- 1.88 Four other stakeholders (Pact, VLV and two individuals) responded to this question, either expressing support for the Proposal or saying that the change is not material.

Ofcom’s analysis and conclusion

- 1.89 We note Virgin Media O2’s response, and address above the concerns it has raised. Given our conclusion that the Proposal is not a material change, we are not proceeding to either a BCA or a Shorter Assessment.

⁹⁸ Ofcom, October 2022. [Consultation: Review of proposed increased amount of archive content on BBC iPlayer](#), p.20.

Final determination

- 1.90 In this section, we set out our final determination that the Proposal is not material, and therefore the BBC may continue to progress with the Proposal to increase the availability of content on BBC iPlayer.
- 1.91 In reaching our conclusion, we have had regard to the objective of the BBC to fulfil its Mission and promote the Public Purposes, as well as our relevant duties under the Communications Act 2003 (“**the Act**”), and the BBC Charter and Agreement, including those concerning protection of competition and support for public service broadcasting. We have exercised our judgement in considering the available evidence from the BBC’s PIT, our own analysis, and relevant information and views offered by stakeholders.
- 1.92 For the reasons set out in Section 3, we have concluded that the Proposal is not a material change. This is because we have not seen evidence to believe there is a reasonable prospect of the Proposal having a significant adverse impact on fair and effective competition from crowding out. This view is based on available evidence including stakeholder responses and how BBC iPlayer is expected to develop over the next few years. The BBC is therefore permitted to proceed with implementing its proposals.
- 1.93 The BBC will still be required to consider whether future changes to BBC iPlayer could have a material impact on competition, and Ofcom has regulatory tools available to consider significant competition issues which may emerge over the remainder of the Charter period.

A1. Legal framework

- A1.1 Ofcom’s principal duty, in section 3 of the Communications Act 2003 (‘the Act’), is to further the interests of citizens in relation to communications matters and of consumers in relevant markets, where appropriate by promoting competition. In performing our duties we must have regard, among other things, to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK and of promoting competition in relevant markets.
- A1.2 Ofcom’s power to regulate the BBC is derived from section 198 of the Act, which sets out that for the purposes of the carrying out of regulation of the BBC, we will have such powers and duties as may be conferred on us by or under the Royal Charter for the continuance of the British Broadcasting Corporation (‘the Charter’)⁹⁹ and the Agreement between the Secretary of State for Culture, Media and Sport, and the BBC (‘the Agreement’).¹⁰⁰ The Charter and Agreement set the BBC’s Mission and Public Purposes and the framework for Ofcom’s regulation of the BBC.
- A1.3 The Charter provides that we must have regard, in carrying out our functions, to such of the following as appear to us to be relevant in the circumstances:¹⁰¹
- a) the object of the BBC to fulfil its Mission¹⁰² and to promote the Public Purposes;
 - b) the desirability of protecting fair and effective competition in the United Kingdom; and
 - c) the requirement for the BBC to comply with its duties under the Charter, including its general duties.¹⁰³
- A1.4 The Charter and Agreement recognise that, in order to fulfil its Mission and promote the Public Purposes, the BBC may need to make changes to the UK public services. However, to protect fair and effective competition, the BBC may only make a material change to the UK public services where:
- a) it has carried out a public interest test and determined that test is satisfied; and
 - b) Ofcom determines that the BBC may carry out the proposed change.¹⁰⁴

⁹⁹ [The Charter](#).

¹⁰⁰ [The Agreement](#).

¹⁰¹ Article 45(2) of the Charter.

¹⁰² The BBC’s Mission is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain (Article 5 of the Charter).

¹⁰³ The BBC’s general duties are set out at Articles 9 to 18 of the Charter. The Agreement also imposes certain general obligations on the BBC. These include, at Clause 61, a requirement for the BBC to do all that is reasonably practicable to ensure that viewers, listeners and other users (as the case may be) are able to access the UK Public Services that are intended for them, or elements of their content, in a range of convenient and cost effective ways which are available or might become available in the future. These could include (for example) broadcasting, streaming or making content available on demand, whether by terrestrial, satellite, cable or broadband networks (fixed or wireless) or via the internet.

¹⁰⁴ Clause 7(6) of the Agreement.

The BBC's analysis

- A1.5 The BBC must therefore initially assess whether a proposed change is material. The Agreement defines a material change as:
- a) the carrying out of any activity as a new UK public service; and
 - b) any change to a UK public service which may have a significant adverse impact on fair and effective competition.¹⁰⁵
- A1.6 If the BBC considers that a proposed change is not material, it may carry out the change, unless Ofcom disagrees with the BBC on materiality. If we consider that the proposed change is material, we may direct the BBC to:
- a) carry out a public interest test and, if the test is satisfied, publish the change; or
 - b) stop carrying out the change in accordance with such directions as we consider appropriate.¹⁰⁶
- A1.7 In order for a public interest test to be satisfied, the BBC must determine that:
- a) the proposed change contributes to the fulfilment of the BBC's Mission and promotion of one or more of the Public Purposes;
 - b) it has taken reasonable steps to ensure that the proposed change has no unnecessary adverse impact on fair and effective competition; and
 - c) the public value of the proposed change justifies any adverse impact on fair and effective competition.¹⁰⁷
- A1.8 If the test is satisfied and the BBC wishes to implement the proposal, it must publish the proposed change and provide a copy to Ofcom.¹⁰⁸

Ofcom's role

- A1.9 Ofcom must then assess whether the proposed change is material and, if so, decide what type of further assessment to conduct.¹⁰⁹
- A1.10 Paragraph 4.33 of Ofcom's BCA guidance document *Assessing the impact of proposed changes to the BBC's public service activities* ('the BCA guidance') sets out a non-exhaustive list of factors we may take into account when assessing the potential significant adverse impact of a change.

¹⁰⁵ Clause 7(7) of the Agreement.

¹⁰⁶ Clause 9(6) of the Agreement.

¹⁰⁷ Clause 8(1) of the Agreement.

¹⁰⁸ Clause 8(3) of the Agreement.

¹⁰⁹ Clause 9 of the Agreement.

A1.11 If we conclude that a proposed change is not material, or if six weeks pass without our informing the BBC of our view, the BBC may carry out the change.¹¹⁰¹¹¹

¹¹⁰ Clauses 9(3) and (4) of the Agreement.

¹¹¹ Where we consider a change is material, our second phase work will either take the form of a BCA or a Shorter Assessment considering elements of the BCA, as set out in our procedures and guidance on assessing the impact of proposed changes to the BBC's public service activities (The "[BCA Guidance](#)", paragraphs 4.35 to 4.66). In either a BCA or a Shorter Assessment, we consult with stakeholders before reaching a final decision.